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Aviation

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AVIATION

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CHICAGO CONVENTION

A seminar commemorating the 25th Anniversary of the Chicago Convention was sponsored by the Section of International and Comparative Law of the American Bar Association and the Federal Bar Association in Washington on December 17, 1969. The program covered the following subjects: *ICAO*, Walter Binaghi, President, Council of International Civil Aviation Organization; *ICAO, Problems and Activities—The U. S. Viewpoint*, Charles Butler, U. S. Representative to ICAO; *ICAO Copes With New Challenges—Hijacking and Crimes Aboard Aircraft*, Frank Loy, Deputy Assistant Secretary of State for Telecommunications and Transportation; *Congestion in Air Transportation—International Impact*, James E. Landry, Vice President (International), Air Transport Association of America; *The Need for Harmony in International Air Transportation*, Knut Hammarskjold, Director General, International Air Transport Association; *INTELSAT and Recent Developments in Global Satellite Communications*, John A. Johnson, Vice President-International, Communications Satellite Corporation; *SST Legal Problems in International Air Travel*, Harold F. Olsen, Attorney. In addition, Najeeb Halaby, President of Pan American World Airways, spoke on the subject of *International Air Transportation Under the Chicago Convention*.

TOKYO CONVENTION

The Tokyo Convention came into force on December 4, 1969. The United States was the twelfth ICAO member to ratify and thus bring the agreement into effect.

WARSAW CONVENTION

The Warsaw Convention and Hague Protocol, which govern claims against airlines involved in an accident during an international flight, remain highly controversial. Coupled with the Montreal Agreement, airlines bound by these agreements are currently subject to absolute liability, and potential unlimited liability. Under current United States judicial

interpretation, it is possible for a claimant to collect or settle for up to \$75,000 under the Montreal provision of absolute liability, then sue under Warsaw for unlimited damages by showing wilful misconduct on the part of the airline.

Currently, the Warsaw Convention is under study by ICAO in an attempt to revise the Convention. There are two subcommittees of the ICAO Committee making extensive research into the problem. These subcommittees are considering proposals made by the United States and the International Air Transport Association, among others.

The United States has proposed a new convention which would set an absolute limit of \$100,000 and would exclude any exemption for higher damages for "wilful misconduct." However, the airline would be absolutely liable for damages up to the limit, except in the case of contributory negligence. But this proposal is opposed by the American Trial Lawyers Association in the United States. Its major objection is to any limit on damages. There are no such limits on damages in most States in the United States, and the American Trial Lawyers feel that the \$100,000 limit is an abandonment of passenger interest in favor of the airlines. It also feels that the U. S. Senate might not approve a treaty which sets limits on damages recoverable.

One of the ICAO subcommittees has proposed replacing the old Warsaw provision which holds the airline liable unless it can prove that it took all necessary measures to avoid the damage. The new rule proposed would make the carrier absolutely liable except where the accident was the direct result of armed conflict, without fault of the carrier. As under the existing provision, however, compensation could be reduced or denied if the claimant or any of his dependents negligently or wilfully contributed to the damages. The Subcommittee agreed that there should be a limit on the damages, but suggested collecting the views of all the States concerned before setting the amount. The Subcommittee suggested that technical points, such as failure to deliver the ticket in proper time or a defect in the ticket, should not be grounds to deprive the carrier of the liability limitation set by the Convention. However, the researchers were divided on the question of whether the limitation on damages should be waived if the claimant proved "wilful misconduct" by the carrier. They considered amended versions of the current rule and even eliminating the rule altogether, but no agreement was reached.

As a result of the deliberations, the Subcommittee drew up some draft articles to revise the existing Warsaw Convention. These drafts, together with a formal report, will be submitted to the Legal Committee of ICAO

for its consideration early in 1970. In the meantime, the views and suggestions of member states, airlines, and concerned international organizations are being received and evaluated.

SPACE LAW

The Inter-American Bar Association's XVI Conference was held in Caracas, Venezuela, November 3-8, 1969. At the Space Law Seminar of the Conference, Brig. Gen. Martin Menter, U.S.A.F. spoke on the "Legal Aspects of Apollo 11 Flight."

In his talk, Gen. Menter explained that the flight and exploration of the moon by Apollo 11 was in accord with international law. Since the United States is one of over fifty nations which have ratified the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, the planting of the United States flag on the moon was not a claim of sovereignty, i.e., the United States was conducting its explorations in peace and for the betterment of all mankind.

The United States undertook to explore the moon and study its surface rocks in compliance with the treaty's provision requiring avoidance of harmful contamination of the moon and the earth resulting from the introduction of foreign matter into the atmosphere. Extensive quarantine of the astronauts and the "moon rocks" insured safety. The return of these materials to Earth was for the purposes of scientific research and is authorized by the treaty.

General Menter explained that, in his interpretation, the Space Treaty does not prohibit commercial excavation of mineral deposits in the moon. He was of the opinion that the treaty provision which prohibits national appropriation is aimed at preventing any acquisition of sovereignty. He compared commercial mining of celestial bodies with the free appropriation of wealth from the high seas even though it is not anticipated that mining celestial bodies will be economically feasible in the near future.

One article of the Space Treaty insures that the country who owns the object launched into space will retain jurisdiction and control over the object while it is in space or on a celestial body. When it returns to Earth, if it lands in a foreign country which is a party to the treaty, under agreements supplementary to the treaty, that country must help rescue the spacecraft and its passengers, and return them to the launching nation. In addition, if a part of a space object connected with the flight, but not containing astronauts, lands in a nation party to the treaty, that

nation must help, at the request and expense of the launching nation, to find the objects and return them.

General Menter ended his talk stressing the United States' position in favor of international cooperation in space ventures. He mentioned that the United Nations is currently working on a new agreement for liability provisions for injury or damages resulting from another nation's space activities. Such new agreements and attitudes of cooperation will help Earth men's space explorations to be conducted under international legal principles.

U. S. AIR POLICY

The much awaited new U. S. policy for international civil aviation evolving at the Presidential staff level is scheduled to be circulated to the aviation industry for comments in the near future. Allegedly included in the new policy are guidelines for airline mergers.

ICAO

The International Civil Aviation Organization Council recently elected its three vice-presidents for 1969-70. They are: Dr. G. F. Scherer, Germany, First Vice President; E. A. Olaniyan, Nigeria, Second Vice President; and Colonel A. H. da Graca, Brazil, Third Vice President. The current President is Walter Binaghi, India.

ICAO's Legal Committee has been reviewing the Warsaw Convention and studying suggested solutions for the problem of aircraft hijacking. In addition, a Special Meeting on Aircraft Noise was set for Montreal for November 25 to December 17, 1969.

IATA

As reported in the last issue of the *Lawyer of the Americas*, IATA is celebrating its fiftieth year as an international organization of air carriers. At the 25th Annual General Meeting, held in Amsterdam from October 20 to 23, Lieutenant General Ali M. Khademi, Managing Director of Iran National Airways, was elected President of IATA for the year 1970/71.

IATA's Passenger Traffic Conference meeting in Caracas reached final agreement on passenger fares for travel via the North and Mid-Atlantic. The Caracas meeting began November 18 and following around the clock sessions ended December 9 successfully concluding negotiations begun previously in Lausanne, Switzerland. The agreement on international

fares covers routes between points in the Western Hemisphere on the one hand and Europe, the Middle East, Africa and India on the other. The basic fares agreement includes a readoption of fares and conditions of service agreed earlier in 1969 at Dallas.

HIJACKING

Air piracy or hijacking has grown to be one of the most serious problems facing governments, airlines, and international organizations in this decade. And, it is proving to be one of the most difficult to solve.

Leaders of the airline industry voiced their anger and concern at the recent IATA General Meeting in Amsterdam in October. Referring to hijacking as a form of "modern piracy", they stressed the danger involved in each incident and the overall threat to the normal operations of air travel.

Both IATA and ICAO are urging some form of international agreement which would bind countries where a hijacked aircraft landed to return immediately the aircraft, crew, passengers and the hijackers to the country of origin. These organizations are also encouraging their members to ratify the Tokyo Convention. IATA recently released a Statement on Unlawful Interference with Aircraft in which the organization's Annual General Meeting:

1. *urged* members to support, in accordance with law, measures which are taken by their respective governments in order to maintain safe, regular and economic civil air transportation in the interests of the peoples of the world, all of which are the prime objectives of IATA,
2. *called upon States* and international governmental organizations which alone have the power to deal effectively with unlawful interference with aircraft, as a matter of urgency, to take all measures, individually or collectively, necessary to end any further unlawful interference with aircraft in public air transport services and to support any action already taken by the United Nations or ICAO on this serious problem,
3. *directed the Director General* to continue, with the full support of the member airlines, to use his good offices to achieve these objectives.

Early in December, 1969, a resolution concerning air piracy was placed before the United Nations General Assembly after approval by the Legal Committee. The resolution called for international action against

aircraft hijackers. On December 12, the General Assembly approved the resolution which also urged that an international convention be prepared making plane seizure a "punishable offense." The resolution was approved by a vote of 72 to 2. One of the negative votes was cast in error; the other was cast by Cuba which called the resolution "ineffective and useless." Seventeen nations abstained.

In addition to this action within the United Nations, the Secretary General, U. Thant, has sought to apply the influence of his office to *discourage future hijackings by condemning them as "criminal acts"*.

The United States is currently taking a number of steps to attempt to find a solution to aerial hijacking. During the renegotiation of extradition treaties with New Zealand, Italy, and Spain, it is being stipulated that hijackers are criminals and are to be extradited for punishment. The United States hopes that by working with other nations, hijacking will become internationally viewed as an extraditable criminal offense, and potential hijackers will be discouraged from their act because of a fear of trial and punishment.

At its Fourth Biennial Conference on World Peace Through Law, Bangkok, Thailand, some 1,500 lawyers from 114 countries, as members of the World Peace Through Law Center of Geneva, Switzerland, unanimously adopted various resolutions dealing with crucial issues designed to promote world peace. Among them, Resolution No. 13 dealt with civil aircraft hijacking. A report by the Committee on Civil Aircraft Hijacking of the World Peace Through Law Center was submitted, and a treaty to deter aircraft hijacking was drafted by the Center.

GROUND CONTROL

The U.S. Federal Aviation Administration has recently proposed a new regulation concerning aircraft flying near major airports in the United States. The proposed regulation has grown from recent studies on mid-air collisions, near misses, and aircraft traffic congestion around major air terminals.

The proposed rule would create restricted air spaces around the busiest United States airports. Only aircraft equipped with minimum electronic equipment, including a radar beacon "transponder," would be permitted in the zone. Before entering such a control area, a pilot would be required to get control tower clearance, and the air traffic controllers would assume responsibility for keeping the aircraft clear of other traffic in the zone. Speed limits and control patterns would be applied in the zone. Smaller aircraft not equipped with the sophisticated electronic and

radio equipment, student pilots, and pilots without instrument qualification during adverse weather would not be permitted in the restricted zones.

The rule is expected to be placed in effect sometime during December, after review by the airline industry. The rule is generally approved by commercial airline companies and their pilots for application at the larger, busier airports in this country. The high incidence of mid-air collisions has convinced the interested parties that strict electronic and radar control is essential in heavy traffic areas.

Mexico has announced plans for an \$11.2 million program to modernize the nation's air traffic control system in Mexico City, Mazatlán, Merida and Monterrey. The centers will direct all air traffic in their respective areas and will be linked to certain points in the United States.

NOISE

Aircraft noise problems continued to trouble the aviation industry. In the United States, lawsuits are more frequently being filed charging that noise is a nuisance, or constitutes inverse condemnation or an invasion of property rights coupled with overflights. Although the jurisdictions vary in their application of aircraft noise law, recoveries are fairly common.

The airline industry generally asserts that it has exhausted all technical means of reducing noise, such as preventive aircraft maneuvers. A further reduction through the use of operational maneuvers could not be brought about without risking the safety of the aircraft. The airlines feel that the solution must rest with the manufacturers and designers of aircraft engines, and in better airport design and zoning.

Apparently, the Federal Aviation Administration agrees, at least to some extent. In November, the FAA promulgated the first Federal regulation to limit the noise of jet airliners. Although this rule applies only to future jetliners, the FAA is expected to pass a similar regulation to require the muffling of noise from existing jets.

The new regulation resulted from Congressional legislation passed in 1968. It sets maximum noise levels for jet engines measured at three stages during flight: descent to land, acceleration on a runway, and takeoff. The noise limits will be one half those of existing jets and will be applied to new jet-powered civil aircraft after December 1, 1969. The limits must be met, or the aircraft cannot receive the Government flight certificate necessary for service in the United States.

The new Boeing 747, although quieter than earlier jets, does not

quite meet the new standards. Boeing applied for its Government certificate well before the noise legislation or the new FAA rule became effective, thus neither applies to this jet. However, the 747 must meet a provision which requires the noise level to be reduced as much as possible.

The new FAA regulation will be applied to all jet aircraft whose initial certificate application was filed after January 1, 1967. Those which were filed before that date will, like the 747, have to reduce the noise level as much as is economically reasonable and technically possible.

Thus, through the combination of technical advancements and legislative requirements, perhaps some of the jet noise will be reduced. Still unsolved, however, is the difficult problem of the sonic boom, an area which will be magnified with the introduction of the new Supersonic Transport (SST).

EXIMBANK

The Export-Import Bank of the United States has promulgated a new policy, i.e., the Bank will henceforth guarantee a loan made by a foreign bank for the purchase of United States products. The first application was the guarantee of a loan by a German bank to Air-India for the purchase of a Boeing 747 aircraft. The Bank's legal advisors approved the new policy after concluding that such guarantees of foreign loans would fall under the Bank's authority as set forth by the U. S. Congress. The Nixon Administration approved the new policy in Summer, 1969. By facilitating such loans to smaller airlines, the Bank encourages both their growth and the purchase of U. S. products. The loans also help to lessen the U. S. balance of payment's problem. The guarantee, which covers commercial and political risks, will assure the lending institution repayment by the borrower of principal up to 100% of the credit, and up to 6% interest on outstanding balances.

SAO PAULO AIRPORT

An international airport is planned for Cumbica, about 12 miles from Sao Paulo. Local business interests will be asked to supply a major part of the required capital. The field may be operational in three years and when completed will serve as an alternate to the supersonic airport planned for the Rio de Janeiro area.