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6-1-1969

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C. E.B. McKenry

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Recommended Citation

C. E.B. McKenry, *Aviation*, 1 U. Miami Inter-Am. L. Rev. 107 (1969)

Available at: <http://repository.law.miami.edu/umialr/vol1/iss2/11>

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AVIATION

C.E.B. McKENRY
Director, Center of Urban
Studies and Professor of
Law and Management,
University of Miami

WARSAW CONVENTION

In November 1968, an Illinois State Circuit Court ruled that the venue and damage liability limitations of the Warsaw Convention violated the due process and equal protection clauses of the U.S. Constitution. The claim grew out of the crash of a Canadian Pacific flight between Hong Kong and Tokyo on March 4, 1966.

While the constitutionality of the Warsaw Convention has been generally upheld on the appellate level, this case, *Burdell v. Canadian Pacific Airlines, Inc.*, represents the first direct U.S. constitutional attack on Warsaw since the *Froman (Ross)* case of approximately twenty years ago. Moreover, the carrier in the *Burdell* case will have the added burden of seeking a reversal rather than an affirmation in the appellate courts.

On another front, the Warsaw Convention and Hague Protocol have been the target of intensive study by the Legal Commission of the International Civil Aviation Organization (ICAO). That Commission has suggested revisions of the international agreement which limits liability arising from aviation accidents. A final draft of the proposed revisions will be completed during 1969, so that it can be presented to a diplomatic conference early in 1970.

HIJACKING

The problem of airline hijacking remains one of international concern. Despite accelerated efforts by airlines, some governments, and international organizations, a suitable solution has not yet been discovered.

Some of the more recent attempts at preventing hijacking and suggested solutions to the problem include:

1. A proposal by the United States State Department for extradition procedures submitted for consideration to the United Nations.

However, it appears that concerted international action is not likely in the near future since only a few nations have suffered a hijacking of one of their flag carriers. There is, therefore, little interest in the international community for United Nations action.

2. The offer of awards for information leading to the prevention of a hijacking or to the capture of a hijacker by the Air Transport Association and the Air Lines Pilot Association.
3. A conference between Knut Hammarskjold, Director General of the International Air Transport Association, and government officials of Cuba. Officially, the trip was termed a "familiarization visit" with Cubana Airlines, but the talks covered the hijacking problem. Regretfully, there is little evidence that positive results will flow from this particular visit to Cuba.
4. The United States Federal Courts have begun to issue orders for the arrest of those hijackers whose identity has been discovered. Although there will apparently be very few prosecutions resulting, it is hoped that the publicity of the warrants will serve as a warning to potential hijackers that criminal action will be taken against them. Aircraft piracy is a Federal offense in the United States and is punishable by death, if a jury so recommends. There is a twenty year minimum imprisonment upon conviction.
5. The Legal Commission of the International Civil Aviation Organization has recommended that all of its member nations, who have not yet done so, ratify the Tokyo Convention as soon as possible. The Commission felt that Article 11 of the Convention providing for the immediate return of aircraft, cargo, and passengers in the event of a wrongful seizure of an aircraft is of special importance, and requested that it be given immediate effect by the ratifying nations.

All these proposals are being studied on an international level with a sense of urgency, but an effective solution continues to elude the interested parties.

Cuba and the United States have agreed that airliners hijacked to Cuba can leave the island with their passengers on board if the pilot will take responsibility for their safety. Previously, only the crew could return on the big jets, and the passengers were detained for a flight from Cuba on another plane. This appears to be a hesitant step to reach an

understanding, but there is still no indication that a substantial agreement will be reached to end the hijackings.

Cuba has promulgated a law providing that any foreign aircraft entering the air-space over its territorial waters without notification or without first having obtained appropriate certification, or a special permit, will suffer the sanctions imposed by the law. The law also provides that if an aircraft is forced to land in Cuba, or does so without complying with the law, such aircraft will be subject to the provisions of applicable laws and will be liable for all costs incurred in connection with the landing.

In Mexico, Article 170 of the Federal Criminal Code has been amended so as to cover skyjacking. A decree of December 17, 1968, provides a penalty of five to twenty five years in prison for anybody who "makes an airplane change its destination by threats, violence, intimidation, or any other illicit means, or makes it deviate from its route."

In the meantime, despite the United States government offer of free rides to anyone wishing to go to Cuba, the hijackings continue.

JET NOISE AND SONIC BOOMS

The growth and expansion of jet transportation has led to the growth of the legal problems resulting from jet noise and sonic booms. Legislative and regulatory measures are being taken in an attempt to limit, as much as possible, the adverse effects and unpleasantness of the noise accompanying the operation of jet aircraft.

As jet operations increase in frequency and residential developments continue to expand around airport facilities, greater noise control is required. Noise abatement procedures, especially in take-offs, have been instituted in many areas, much to the displeasure of the pilots, who fear that some of these procedures are unsafe.

The International Aviation Transport Association supports the concept of "noise certification", which places certain restrictive rules on the manufacture of aircraft. It is hoped that these restrictions, coupled with housing development property restrictions around airports and other noise abatement procedures will reduce some of the disturbances in and around airports.

In addition, the Boeing Scientific Research Laboratories are currently conducting extensive research for improved mechanical remedies to the noise problem. Based on advanced electro-aerodynamic and aero-

thermochemical techniques, these studies may also help to reduce jet engine noise.

The Federal Aviation Administration is currently considering new regulations concerning aircraft noise standards to be applied to the subsonic transport category. These standards, which would apply to certain types of certificates will probably subject foreign aircraft to the same noise controls. This action by the F.A.A. is the first taken under the recently enacted Public Law 90-411. Through this law, Congress has granted the F.A.A. broad authority to regulate aircraft noise, even, to the extent of refusing certification of an aircraft until it meets the prescribed noise standards.

Both IATA and ICAO committees are also studying the noise and sonic boom problems. The ICAO Council plans to formulate an international agreement on the measurement of sonic booms and on air navigation for the protection of the public.

In the meantime, many lawsuits continue to arise because of jet noise. Los Angeles International Airport alone alleges that lawsuits totaling over one billion dollars have already been filed against the airport. Recently, the city of Inglewood, California filed a petition claiming \$400 million in damages against Los Angeles International for "noise pollution caused by jets in the approach zone." Inglewood also seeks injunctive relief to prevent any further expansion of the airport's north runways.

Legal problems such as the above are plaguing airports and airline companies throughout the world. The noise and sonic booms created by the more advanced aircraft will complicate existing legal problems unless noise reduction equipment is improved or effective abatement procedures are adopted.

AVIATION CODES

In the last issue of *Lawyer of the Americas* (Vol. 1, No. 1, Feb. 1969), the new aviation code of Argentina was reviewed. In this issue, the international and conflicts of law aspects of the Brazilian Code of the Air are considered.

The introductory title contains some important conflicts provisions. According to Art. 4, acts which originate in a foreign aircraft are considered to have occurred in Brazil if they produce consequences or damages on Brazilian territory. If such acts originate on Brazilian aircraft but cause damages in a foreign territory, they are governed jointly by Brazilian and the respective foreign laws. Interests in rem and

privileged claims are subject to the law of the nationality of the aircraft, and a change of the nationality of the aircraft does not affect previously established interests (Art. 5). Provisional measures (*medidas assecuratorias*) are always subject to the law of the situs of the aircraft (Art. 6). Provisions of the Code regulating liability of the carrier, including the minimum amount are jurisdictional rules and are cogent in nature (Art. 7).

Aircraft may be inscribed in the Brazilian Aeronautical Register, provided they are owned by Brazilians, or Brazilian legal entities of which at least eighty percent of the capital belongs to Brazilians. A private aircraft owned by aliens who reside in Brazil may be inscribed at the discretion of the aeronautical authorities, as may be one owned by a foreign legal entity qualified to do business in Brazil, provided that the aircraft is intended for their own use (Art. 14).

Aircraft may be mortgaged (Art. 19), subject to privileged liens (Art. 21), such as liens for the salaries of the crew and claims by the State for taxes and airport services.

Among the provisions dealing with aviation labor law (Arts. 29-42), the Code provides for the exceptional employment of aliens (Art. 30). Extensive provisions deal with airports (Art. 43-78). Air services must be licensed by the government (Art. 69), and international conventions, as well as domestic rules apply to foreign air carriers. The latter on a case by case basis. An operating license will be issued to Brazilian legal entities only if they are headquartered in Brazil, at least eighty percent of the capital belongs to Brazilians, management is in the hands of persons domiciled in Brazil, and, in case the entity is a corporation, its shares are nominative (Art. 69).

A major section of the Code deals with air transport. All air transport with points of departure and/or destination in Brazil are considered domestic flights and are subject to the Code (Art. 81). A domestic flight may only be performed by Brazilian aircraft; foreign aircraft leased or chartered to Brazilians or Brazilian legal entities may not engage in domestic flights (Art. 83). The carrier is responsible for damages (Arts. 97-108); liability for personal injury or death to a passenger is limited to an amount equal to 200 times the high minimum salary in force in Brazil (Art. 103), except where a special agreement for a higher limitation is reached.

The Code also deals with damages to third persons on the ground (Arts. 109-121) as well as with claims arising from collisions (Arts.

128-133). The final title deals with administrative penalties (Arts. 153-161).

THE JUMBO JETS

The maiden flight of the Boeing 747 took place on February 9, 1969, and was termed a success. The introduction of this huge aircraft and its eventual use by the worlds' airlines has caused national aviation organizations to study its effects on the air transport industry.

The IATA Technical Committee studying the problems surrounding mass travel by air is in the process of publishing its recommendations concerning the handling of increased volumes of passengers, baggage and cargo. Improvements and expansion have already begun at some airports and terminal facilities. The Committee is also joining the major aircraft manufacturers in publishing information dealing with the physical characteristics of the airplane and its airport requirements.

Boeing plans to put the first production model through at least 1,400 hours of testing in the most extensive flight certification program in aviation history. But airports which handle international traffic should be prepared for the new aircraft, probably carrying around 360 passengers and their baggage, to test their facilities in the near future.

THE SST

The Supersonic Transport, like the Jumbo Jets, presents new legal and technical problems to the aviation industry.

The Technical Panel on Supersonic Transport Operations of ICAO held its first meeting last year in Montreal, Canada. The Panel, which is conducting an extensive study of the operational requirements of the SST aircraft, proposes to offer some guidelines for future regulation of the SST. A thorough flight test program is being demanded as a prerequisite to certification.

The Panel is trying to originate concrete safety, testing, and equipment regulations at an early stage in the development of these new aircraft. Thus, even before extensive test flights begin, the international aviation community is planning minimum safety precautions and preparing the necessary service facilities for the SST.

The Legal Committee of IATA is also studying the SST. One of the issues of prime concern is providing a legal framework for efficient utilization of these specialized aircraft, equipment and crews. Agreements on an international level for the interchange of aircraft and

equipment are being studied. Special attention is being given to the insurance problem, with the aim of avoiding multiple insurance and increased or unexpected liability which might result from participation in an interchange arrangement.

As international aviation interests plan and prepare for the technical, legal and intergovernmental problems raised by the SST, the building and testing of the supersonic aircraft continue.

AIR TRAFFIC CONTROL

The international aviation organizations, airlines, pilots associations, and interested governments continue to evidence their concern for air traffic regulation, safety and airworthiness of aircraft. Sometimes their interests tend to overlap.

Both ICAO and IATA have expressed concern over new unilateral governmental requirements dealing with commercial air traffic. Bilateral agreements now exist which recognize the need for International Traffic Conferences to make recommendations on fares and rates. Yet, some governments continue to influence, limit, or control traffic to or from their respective territories by unilateral orders which vary greatly from the rates, fares, charges and other regulations agreed upon by the Traffic Conferences and approved by the governments concerned. This is occurring despite the fact that the ICAO Assembly meeting in Buenos Aires last year adopted a resolution stressing the importance of compliance with the regulations agreed upon by the Traffic Conferences and approved by the respective governments. IATA, at its general meeting in October 1968, adopted a resolution urging governments to refrain from promulgating such conflicting unilateral orders except when a serious matter of public interest warrants such action.

SAFETY

International aviation organizations carry out continuing programs of safety investigation and often offer proposals for legislation or regulation on the subject.

IATA is currently working on new regulations to guide manufacturers in the areas of greater design and operational safety. It stresses a "total" concept of airline safety, dealing with both major accidents and those of less consequence, but of major overall cost to the airlines. Additional review is being given to current safety rules on crashworthiness and passenger evacuation plans and equipment.

Both ICAO and IATA are working on all-weather operation studies in an attempt to develop highly accurate instrument landing systems and to evolve specifications for the necessary approach and runway lighting systems. The committees concerned are urging more of the member nations to adopt their specifications.

BANK SETTLEMENT PLAN

The Composite Passenger Traffic Conference which met in Cannes, France in the Spring 1969 approved enabling legislation which will allow a new Bank Settlement Plan (BSP) for passenger sales agents to be introduced for consideration in those nations where it would appear to be economically desirable.

An IATA Study Panel is investigating the new BSP and is making preliminary arrangements with interested banks. The Panel estimates that the first BSP could be functional by the end of this year.

The plan can bring advantages to both passenger sales agents and airlines in handling larger traffic volumes. One of these advantages can be the reduction in paper work through the use of one standard ticket form for all participating airlines. The plan would centralize the source of the ticket forms and will cut down on work and expense by replacing the multiple sales reports currently required of passenger sales agents. The BSP would establish one center office for the processing of the documents and remittances.

In addition, the centralized BSP would encourage the use of the most modern and efficient ticketing equipment and would present the customer with a more attractive ticket. The system will result in economies in both time and money.

The plan now provides for joint control of the BSP by IATA and the various airlines concerned.

SOUTH AMERICAN TOURISM

A new, \$15 million South American tourist development program has been originated under the administration of Tourism Investments South America (TISA). This new corporation represents a multi-nation effort to expand the tourism development in South America. The inter-American aviation interests will follow its growth with great interest.

Plans include extensive building of resort hotels, restaurants and other facilities to enhance the tourist attractions of that continent.

NEW INTER-AMERICAN ROUTES

New tour charter routes were granted by the CAB for inter-American service. Overseas National Airways was granted authority in the Caribbean; Standard Airways received U. S. authority to fly into Canada and the Caribbean; and Vance International Airways was authorized to operate to Mexico and Canada.

In addition, Airlift International was granted CAB authority to continue indefinitely its participation in the U. S. government sponsored program of transporting Cuban refugees. The route is from Varadero Airport in Cuba to Miami, Florida.

INTER-AMERICAN AVIATION LAW CONFERENCE

The Sixth Inter-American Aviation Law Conference met in Miami, Florida on March 19-21, 1969. The Conference was co-sponsored by the Law Center of the University of Miami and the Spanish-American Institute of Air and Space Law of Madrid, Spain.

Lectures were delivered by distinguished speakers and were translated simultaneously into both English and Spanish.

Rafael C. Benitez, Acting Dean of the University of Miami School of Law, gave the opening address welcoming the airline personnel, government officials, attorneys, guests and speakers. Carl E. B. McKenry, Jr., Director of the Center for Urban Studies and Professor of Law and Management at the University of Miami, spoke on Legal Developments during 1968 in International Air Transportation.

A lecture on the Unification of Procedural Rules Relating to the Air Transport Contract was presented by Dr. Enrique Mapelli López, the Secretary General of the Spanish-American Institute of Air and Space Law. Dr. Luis Tapia Salinas delivered a talk on the Influence of Air Agreements on International Air Transport Policy and Law: Spain's Viewpoint. Dr. Salinas is the President of the Spanish-American Institute of Air and Space Law.

The Washington counsel of the Aircraft Owners and Pilots Association, John S. Yodice, spoke on the field of General Aviation. Burton A. Landy, Attorney at Law, from Miami, Florida, gave a lecture on the subject of Cooperative Agreements Between Foreign Airlines: A Review of the Policy of the United States Civil Aeronautics Board. A talk entitled Spain's Aeronautical Legislation: The Role of Flight Personnel was given by Indalecio Rego Fernandez, a member of the Spanish-

American Institute of Air and Space Law. Mr. Rego is also an attorney and a pilot with Iberia.

In addition to these authoritative lectures, those attending the conference participated in debates on the subjects and enjoyed a luncheon, hosted by the Boeing Company, and a reception given in their honor by Parker and Company International, aviation and general insurance brokers.