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AVIATION

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HIJACKING

Hijacking of aircraft continued to plague air lines during 1968. A sharp increase in the number of such incidents catapulted the problem, relatively dormant in 1967, to a position of prominence on the list of carrier headaches. Surprisingly, the phenomena is not limited to operations within range of Cuba. Statistics through November 1, 1968 include the attempted seizure by a U.S. serviceman of a Pan American DC-6 departing Saigon for Hong Kong; the unsuccessful effort by a convict under custody to divert to Mexico a TWA B-727 enroute from Albuquerque to Las Vegas; and, an El Al B-707 enroute from Rome to Tel Aviv forced to land at Algiers. Nevertheless, the primary destination of most hijackers remains Cuba.

The ICAO Assembly met in September, 1968 in Buenos Aires and considered the problem without reaching any firm conclusions on the subject. One item debated, however, was the Tokyo Convention concerning criminal offences and certain other acts committed on board aircraft while engaged in international flight. Although the treaty was signed in 1963, ratifications by individual countries have been extremely slow, particularly among the nations of North, Central and South America. Cuba, apparently concerned over the substantial increase in the number of hijacking incidents, is reported to be interested in signing the Convention. Similarly, following the hijacking of the El Al aircraft to Algeria, Israel's cabinet endorsed a proposal for that nation to participate in the Tokyo Convention. In the United States, hearings have been held in the Congress, but the Senate has not given its advice and consent.

The U.S. Federal Aviation Administration, in co-operation with the airline industry, is attempting to develop a practical electronic device to detect firearms and other weapons carried by enplaning passengers. The emphasis on detection before boarding is in line with the FAA's belief that once a plane is in the air there is little that can be done to stop an armed and determined hijacker. Lockheed Aircraft claims a device that

will detect a ferrous weapon concealed in clothing or in baggage through the movement of magnetic fields associated with ferrous metal objects. There are many problems, however, involved in the development of a device feasible for installation in airports. One difficulty is designing an instrument that will ignore small objects such as wrist watches, women's compacts and belt buckles, but yet flash a warning signal for larger metal objects, for example, pistols or hand grenades. If the device signalled a warning for every metal object, the delays in processing passengers would seriously disrupt airline schedules thus making the detection idea impractical.

The placing of armed guards on commercial flights has been suggested. This alternative is prohibitively expensive and also impractical. For example, in the fiscal year ending June 30, 1967 there were 4,331,405 flights by scheduled commercial airlines in the U.S., and about 2500 planes in the commercial fleet. Except for intervals for maintenance and safety checks many of these planes were flying 24 hours a day. Placing guards aboard these 2500 planes, assuming two or three eight-hour shifts and days off, would have required between 5000 and 7500 guards, perhaps more. The FAA and the airlines naturally worry that a shooting incident in flight may lead to death or wounding of passengers. Therefore, the FAA is reluctant to authorize the arming of airplane crews, posting of armed guards in passenger cabins, equipping the crew with tear gas, instructing the pilots to put the plane in sharp dives or turns to throw a hijacker off balance. Additional proposals to equip planes with screens to protect the pilot, or to install a bulletproof lock on the door to the pilot's compartment have also been found wanting in substance. One-way viewing devices and improved locking mechanisms, however, have been installed in the doors between the passenger cabin and cockpit, and door jams reinforced to prevent forced entry. Further, airline ticket agents, ramp and other personnel have been realerted to prevent apparently intoxicated or mentally unbalanced persons from boarding the aircraft. Lastly, emergency signal procedures have been developed by many airlines between the flight attendants and flight crews. Because of the belief that it is virtually impossible to stop a determined hijacker once the plane is in the air, pilots have standing instructions to take a hijacker where he wants to go rather than jeopardize the passengers and the plane.

The Department of State has attempted to remove some of the incentive that may have led to the hijacking of U.S. commercial airlines by offering Cuban exiles free rides on the return flights of the freedom airlift planes. These are the airplanes that bring Cuban refugees to the United States on a daily schedule. However, the only clearly evident point at this time is that no entirely satisfactory solution to the hijacking problem is likely to emerge in the near future.

NEW APPROACH TO AVIATION INSURANCE

The delivery of the first generation of so-called Jumbo Jets, scheduled to start in late 1969 and early 1970, has led to a reexamination of present insurance underwriting methods. Representatives from twelve companies of the world air transport industry met in New York in January, 1968 under the joint auspices of the Air Transport Association of America and the International Air Transport Association to discuss the possible formation of an airline owned insurance organization. The New York meeting was followed by a high-level August meeting in San Francisco, and it appears that the interested parties are past the preliminary stages in the formation of an airline insurance organization. Membership in the plan will be open to all operating airline companies willing to provide the statistical data required, and to support capitalization.

AVIATION ORGANIZATIONS

The two major international aviation organizations held their annual meetings during this reporting period — the International Civil Aviation Organization (ICAO) in Buenos Aires, and the International Air Transport Association (IATA) in Munich.

ICAO

Delegates from more than 100 members states of ICAO attended the 16th Session of the Assembly held in Buenos Aires, September 3-28, 1968. Concurrently, a diplomatic conference on the adoption of French and Spanish texts of the Convention on International Civil Aviation was also scheduled.

ICAO Council President Walter Binaghi pointed out the success of the Regional Plan concept, particularly in Latin America, and commented on a new ICAO Regional study entitled "Development of Latin American Air Passenger Travel" (ICAO Circular 90-AT/16). The study consists of a detailed analysis of recent developments in air passenger traffic in Latin America, and a resume thereof may be found in the September, 1968 issue of the ICAO Bulletin (Vol. 23, No. 9).

IATA

The 24th Annual General Meeting of the International Air Transport Association was held in Munich, Germany, October 28-31, 1968. The following items highlighted the Annual Report of the Director General.

1. The growth rate of world scheduled airline traffic in 1967 was the most impressive since 1951. Although the growth rate of 19.3% brought the overall traffic total to 32,770 million ton-kilometers, the world scheduled passenger load factor declined one point to 56.6%. The international passenger load factor was down 1.2 points to 53.8% the domestic load factor down 0.9 points to 58.6%. On the South Atlantic, the scheduled passenger traffic of eleven IATA airlines showed an increase of 28.8%, increasing from 181,700 passengers in 1966 to 234,000 passengers in 1967. Due to increased capacity, however, the average passenger load factor declined slightly. Passenger traffic in the North America—South America market gained 33%, second only to the South Pacific region in terms of the rate of increase. North America-Central America traffic was up 17%.
2. The world's scheduled airlines face a deterioration of their financial position and are, in fact, caught in a squeeze between rising unit costs and declining unit revenues. Moreover, the industry's financial problems are accentuated by the tremendous capital requirements of the 1970's.
3. A review of airport and air navigation charges gives rise to considerable concern over the rapid rate of increase in user charges which are increasing at a much higher rate than other costs.
4. By the end of 1967 the total fleet of aircraft operated by IATA member carriers numbered 3,725 aircraft. With more than 1000 subsonic and supersonic jet aircraft on order, the capital investment is in the order of \$18,000 million.

VI INTER-AMERICAN AVIATION LAW CONFERENCE

The Sixth Inter-American Aviation Law Conference of the University of Miami is scheduled for March 19-21, 1969 in Miami, Florida. The Conference, sponsored by the Institute of Inter-American Legal Studies of the School of Law, and co-sponsored by the Ibero-American Institute of Air and Space Law of Spain, is an annual affair designed to provide airline personnel, government officials, and attorneys a forum for the exchange of information of pertinency to civil aviation. As in past years, distinguished personalities in the field of international aviation will deliver the lectures which will cover the following subjects: General Aviation; Legal Cases of Significance to the Air Transport Industry; Policy of the U.S. Civil Aeronautics Board Concerning Cooperative Agreements between Foreign Airlines; Spain's Aviation Policy; Influence

of Bilateral Agreements on International Air Policy and Law; and The Air Transport Contract—Its Procedural Rules. English and Spanish will be the working languages and simultaneous translation will be provided. Interested parties may obtain additional information by writing the Director, Inter-American Aviation Law Conference, School of Law, University of Miami, Coral Gables, Florida. 33124.

AVIATION CODES

Both Argentina and Brazil have promulgated new aviation codes within the past two years. Each code contains substantial changes from the previous laws on the subject. In this issue the international and conflict of laws aspects of the Argentine code will be considered. The Brazilian code will be reviewed in the next report.

Article 1 of the Argentine Aviation Code states that it shall apply within Argentine territory, its territorial waters, and in the airspace. The entry of foreign aircraft into Argentina is regulated in Arts. 15 to 24 of the Code. Domestic aircraft will be inscribed in the National Aircraft Register (Art. 38), provided they are owned by persons domiciled in Argentina; by co-owners, the majority of whom have de facto domicile in Argentina; or by an association constituted under Argentine law with the legal situs in Argentina (Art. 48). Under special circumstances, a foreign acquired aircraft may be registered provisionally subject to security arrangements constituted abroad (Art. 42). In order to qualify for registration, acts and contracts celebrated abroad must appear in the form of a public act, or be authenticated by Argentine consular authorities (Art. 51).

Foreign participation in domestic air companies is limited but not excluded (Art. 99), provided the seat (domicilio) of the enterprise is in Argentina, and that persons who control and manage are domiciled in the country (Art. 99). Corporate carriers must have majority of Argentine stockholders, and the Chairman of the Board, the managers, and at least two thirds of the directors or administrators must be Argentine nationals (Art. 99).

Foreign air carriers may engage in international air operations in accordance with treaties in force, after obtaining a permit from Argentine administrative authorities in compliance with pertinent regulations (Art. 129). Air cabotage is expressly prohibited (Art. 97).

Provisions of the Code regarding liability to passengers (Arts. 139-154), damages on the ground (Arts. 155-162), and those arising out of collisions (Arts. 165-174) apply within the Argentine air space. The Code also contains additional conflict provisions regarding occurrences,

acts, and crimes on board aircraft, i.e. Argentine law applies in cases of private Argentine aircraft in flight within areas delimited in Art. 1 as well as in areas under no sovereignty (Art. 199), or in flight over foreign territory whenever a "legitimate interest of Argentine or persons there domiciled would be affected," or if the first landing takes place in Argentina subsequently to such occurrences, acts, or crimes (Art. 199). In regard to foreign private aircraft in flight in Argentine air space (Art. 200), Argentine law applies whenever laws regarding: (1) public, military or financial safety have been violated, or (2) traffic rules have been violated, or (3) public safety or public order or the interest of the state or persons domiciled in Argentina was affected, or the foreign aircraft landed after these occurrences in Argentina, provided no extradition was demanded. In case of foreign government operated aircraft (Art. 37), such occurrences are governed by the "law of the flag and adjudicated by these courts" (Art. 201). In regard to criminal acts, additional provisions must be found (Art. 2) in the first book of the Argentine Penal Code (1966).

NEW INSTITUTE

An Iberian-American Institute of Aeronautical and Space Law has been established in Madrid to associate specialists of all Spanish and Portuguese speaking countries. Two outstanding Spanish jurists will serve as the President and Secretary General respectively, Luis Tapia-Salinas and Enrique Mapelli.

AIR TRANSPORT COURSE

The second annual Air Transport Course was conducted at the University of Miami, Coral Gables, Florida October 28 - November 8, 1968. Among the airlines and organizations represented by the fourteen students were Eastern, National, LaNica, Lacsá, Avianca, Modern Air Transport, the U.S. Civil Aeronautics Board, the Bahamian Government, and the Nicaraguan Government. Airline executives, Government officials and University of Miami professors were the lecturers.

PRIVATE FINANCING OF AIRCRAFT SALES ABROAD

Financing by private banking institutions for U.S. commercial aircraft sales abroad is being studied closely. Private Export Finance Corporation, proposed by Bankers Association for Foreign Trade, may be the answer to the long standing request of the airlines, particularly non U.S. air carriers, for financing other than that presently available.

NEW ASSOCIATION

The South American Civil Aviation Association (ASAC) was constituted in Buenos Aires in September, 1968, during a meeting of the civil aviation authorities of Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay, and Venezuela.

The new organization foresees a membership composed of all Latin American countries and plans to be guided by the norms of the International Association of Civil Aviation (ICAO).