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## AVIATION JURISDICTION IN THE AMERICAS

S. A. BAYITCH\*

Jurisdiction vested in courts may be general, due to the broad sweep of their powers and, consequently, independent of the subject matter of the litigation. Or it may be limited to specific areas of the law involved in the proceedings. Such specialization *ratione materiae* supports the distinction between civil and criminal courts and is characteristic of administrative tribunals. Civil jurisdiction may further be divided into strictly civil, commercial and admiralty, responding to the needs of these particular kinds of human activities.

Traditionally, aviation has been divided between civil (private) and administrative (public) law. In most countries (private) aviation cases are litigated in civil courts of general jurisdiction. However, in some countries having a separate body of commercial law, aviation litigation may be heard in commercial courts. In others, aviation drifted into admiralty courts, not only because it borrowed many of the substantive rules from maritime law but also because these courts have reached, in some countries, far into aviation litigation. But as modern and as important as aviation may have become, it has only been granted the distinction of separate enactments, even of codes. It should be noted, however, that with regard to adjudication in aviation matters there is practically no country<sup>1</sup> which provides for special aviation courts, and only suggestions have appeared, on the international plane, advocating a World Aviation Court to unify rulings in private cases arising from international conventions.<sup>2</sup>

In regard to jurisdiction particular problems arise from the fact that aviation is prevailingly an international activity and therefore involves legal problems touching on more than one legal system. Thus, these problems may be solved unilaterally by municipal law or by international cooperation through treaties. Countries with a dual system of government, including the judiciary, face an additional problem, namely where to allocate jurisdiction: in national (federal) or local (state) courts. Finally, the interrelations between the judiciary and the administrative functions in aviation, including judicial review, must not be overlooked.

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This study is an attempt to present, in outline, the rules applicable to judicial jurisdiction both civil and criminal, in cases arising from civil aviation. It will show how common law and civil law traditions of the Hemisphere face jurisdictional problems created by the same technological phenomenon: the dynamic development of aviation.

## I. UNITED STATES

### ACCESS TO COURTS

Access to courts is the right of individuals or legal entities to appear in civil litigation as a party and to proceed under the rules of the forum. Before this right can become effective two requirements must be met: one, to be a person or legal entity recognized by the forum; second, to be granted the right to proceed. The *ius standi in iudicio* of physical persons is by now one of the human rights, although in some jurisdictions alienage still constitutes a limitation. The recognition of the existence of a legal entity, particularly of the corporate type, presents a more complex picture. In some jurisdictions the question of existence was solved by resorting to comity or to reciprocity. For many countries this question is regulated by treaties, mainly treaties of friendship and commerce.<sup>3</sup> The treaty with Honduras (1937),<sup>4</sup> for example, contains the following provision (art. XIII):

Limited liability and other corporations and associations whether or not for profit, which have been or may hereafter be organized in accordance with and under the laws, national, state or provincial, of either High Contracting Party and maintain a central office within the territories thereof, shall have their jurisdictional status recognized by the other High Contracting Party, provided they pursue no aims within its territory contrary to its laws.

A similar rule is included in the treaty with Nicaragua (1956).<sup>5</sup> It reads (art. XXII, para. 3):

Companies constituted under the applicable laws and regulations within the territories of either Party . . . shall have their jurisdictional status (*personería jurídica*) recognized within the territories of the other Party.

The Convention of Establishment with France (1959),<sup>6</sup> applicable also to Martinique, Guadeloupe and Guiana (art. XV, 1b) provides in art. XIV,

para. 5 that companies of either country "shall have their juridical status recognized within the territories of the other High Contracting Country," with the proviso that even though advantages under the Convention may be denied because the company is controlled by nationals of a third party, still the recognition of its status remains unaffected (art. XIII).

The second requirement concerns the particular right to proceed as a party litigant.<sup>7</sup> In many instances this right is granted in derogation of the *lex fori*, by treaties. The previously mentioned treaty with Nicaragua, for example, provides that national and most-favored-nation treatment shall be accorded in "courts of justice and administrative tribunals and agencies . . . in all degrees of jurisdiction, both in pursuit and in defense of their rights" (art. V, para. 1).<sup>8</sup> Essentially the same rule based on equal (national) treatment appears in the convention with France, but with two significant qualifications: one, providing that companies "not engaged in activities within the other's territory shall enjoy such access therein without any requirement of registration" (art. III, para. 1); and the other, that the access under the equal national treatment does not "affect the regulation of the forum concerning the *cautio judicatum solvi*" in France<sup>9</sup> (Protocol, para. 3). Finally, the Inter-American Declaration of the Juridical Personality of Foreign Companies, signed at Washington in 1936<sup>10</sup> provides that companies constituted in any of the contracting countries may "enter all appearances in the courts as plaintiffs or defendants, provided they comply with the laws of the country in question." The understanding added by the United States that such companies "shall be permitted to sue or defend suits of any kind without the requirement of registration or domestication" is apparently designed to prevent the application of such requirements by the *lex fori*, if the final proviso should be interpreted as a reservation in favor of local law.

(a) *State law.* In addition to proving its existence, a foreign legal entity must meet requirements of the *lex fori*,<sup>11</sup> unless such rule yields to treaty law. In Florida, for example, a foreign corporation (which term includes not only corporations established abroad but also those incorporated in a sister state) must, in order to sue, comply with the requirements of chapter 613 of the Florida Statutes, a provision mitigated in interstate situations by the standard of undue burden on interstate commerce.<sup>12</sup>

(b) *Federal law.* In federal courts the capacity of a foreign corporation to sue is "determined by the law under which it was organized" (Federal Rules of Civil Procedure, 17, B).<sup>13</sup>

## CIVIL JURISDICTION

While rules granting or denying access to court affect mainly plaintiffs, individual or corporate, the amenability of party defendants is of interest primarily to corporate air carriers.<sup>14</sup>

(a) *State courts.* Foreign corporations are amenable to jurisdiction of state courts of general jurisdiction on a number of grounds. First, through incorporation in the state, and secondly through having been authorized by a state administrative agency to engage in business within the state. The jurisdictional effect of such permit is tantamount to their amenability to local courts regardless of where the cause of action arose (connexity). Jurisdiction may also be predicated on appearance in court, or by consent in advance (prorogation). A far-reaching method to establish jurisdiction over foreign defendants, including corporations, has been made available by long-arm statutes which vest jurisdiction on the basis of a variety of jurisdiction creating acts or activities on the part of the non-resident corporate defendant, as defined by such statutes, which — in most instances — require also connexity.

Long-arm statutes of interest to aviation litigation may rely specifically on activities related to aviation, or they may be more general in scope. An example of the former type is a Florida statute (§48.19) which supports jurisdiction based on “operation, navigation or maintenance by a non-resident of an . . . aircraft” in the state, provided the action arises out of “an accident or collision in which such non-resident may be involved”. Among other long-arm statutes available in aviation litigation are, again taking Florida as an example,<sup>15</sup> those which require that a foreign corporation operate, conduct, engage in, or carry on a business or business venture, or which has an office or an agency within the state (§48.181), coupled again with connexity.<sup>16</sup> Another long-arm statute of particular interest to aviation rests on the fact that damage to persons or property within the state was caused by a tortious act committed outside of the state, provided the non-resident defendant “expects or should reasonably expect the act to have consequences in this state, or in any other state or nation, and derives substantial revenue from interstate or international commerce” (§48.182 Fla. Stat.).<sup>17</sup>

The various long-arm statutes apply not only in interstate but also in international situations and may, as indicated, be used against carriers and manufacturers.<sup>18</sup> They also apply in federal courts when sitting in diversity.<sup>19</sup>

There are additional bases for jurisdiction, among them quasi in rem<sup>20</sup> and in rem.<sup>21</sup> It should be added that the *forum non conveniens* doctrine frequently appears in aviation litigation.<sup>22</sup>

(b) *Federal courts.* Generally, federal jurisdiction is based on the federal origin of the rule by which the demand is to be decided, i.e., federal question jurisdiction; or on the nature of the parties involved in the litigation as, for example, diversity of citizenship or when the United States is a party.

Federal question jurisdiction — in most instances exercised concurrently with state courts — is present whenever the decisive substantive rule<sup>23</sup> comes from the federal Constitution, from federal laws or from treaties (28 U.S.C. §1331a).<sup>24</sup> Bypassing the first alternative as largely impractical in aviation litigation, federal question jurisdiction rests, for example, on the Federal Aviation Act (49 U.S.C. §1301 ss.);<sup>25</sup> or the Federal Tort Claims Act (28 U.S.C. §1346 ss.),<sup>26</sup> or the Death on the High Seas Act (46 U.S.C. §761 ss.). Federal jurisdiction may also rely on the Federal Railway Act (45 U.S.C. §151 ss.)<sup>27</sup> which applies to “every common carrier by air engaged in interstate or foreign commerce . . . and every pilot or other person who performs any work as an employee or subordinate official of such carrier” (§ 181).

It may be added that federal jurisdiction under §1333(a) presupposes a claim in excess of \$10,000; however, federal question cases “arising under any act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies” do not (§1337).<sup>28</sup>

The third basis for federal jurisdiction are treaties ratified by the United States, provided their provisions are fundamental for the decision<sup>29</sup> and not only collateral in nature as qualifying the demand or offering defenses. In aviation cases this class of federal jurisdiction was frequently tested in suits involving the Warsaw Convention. Since courts uniformly hold that the Convention did not create a new cause of action<sup>30</sup> but only modifies substantive rules applicable under the *lex fori*, the mere fact that the flight qualifies as an international flight under art. 1 of the Convention or that recoverable damages are subject to limitations established in art. 22, does not bring the litigation within federal jurisdiction.<sup>31</sup> In any case, in most instances diversity jurisdiction is available.<sup>32</sup>

Another basis for federal jurisdiction frequently used in aviation cases is diversity of citizenship of the parties, individual or corporate, provided the value exceeds \$10,000. Such cases may arise from interstate as well as international situations, and in both cases state long-arm statutes may apply.

Aviation litigation may experience removal from state to federal courts (28 U.S.C. §1441, b), transfer and remand (§1404, a).<sup>33</sup> The doctrine of *forum non conveniens*<sup>34</sup> may be invoked by the defendant. An opportunity also exists to take advantage of provisions regulating multi-district litigation (28 U.S.C. §1407) to consolidate actions brought in various districts but arising from the same aviation accident.<sup>35</sup>

Finally, federal courts have "exclusive of state courts" jurisdiction in "any civil case of admiralty or maritime jurisdiction" (28 U.S.C. §1333).<sup>36</sup> Generally, such jurisdiction depends on the locality or on the nature of the claim involved. It is granted specifically by the Federal Death on the High Seas Act which established federal jurisdiction over claims arising from deaths caused by a wrongful act "on the high seas beyond a marine league from the shore of any State" (46 U.S.C. §761). This jurisdictional grant is interpreted to include aviation accidents over and on the surface of the high seas.<sup>37</sup> Difficulties which developed regarding aviation accidents within the one marine league area have been recently clarified.<sup>38</sup>

(c) *Prorogation.* Contractual selection of a forum has not been "favored by American courts. Many courts, federal and state, have declined to enforce such clauses on the ground that they were 'contrary to public policy' or that their effect was to 'oust the jurisdiction' of the court", an attitude bound to change in view of a recent decision by the Supreme Court holding that such forum selecting clauses, if properly negotiated, shall be given effect.<sup>39</sup>

Prorogation is limited under art. 32 of the Warsaw Convention. It makes "null and void" any agreement "contained in the contract" underlying the international transportation as well as "all special agreements by which parties purport to infringe the rules laid down by this convention . . . by altering the rules as to jurisdiction," but only if such agreements have been entered into "before the damage occurred". It would seem that prorogation is effective after the damage to be litigated has occurred. It is interesting to note that the qualification grafted on arbitration in the following sentence, namely that it must be subject to the Convention and take place within one of the "jurisdictions referred to in the first paragraph of article 28" apparently does not apply.

(d) *Arbitration.* The effects of agreements to arbitrate and of the resulting awards are regulated by state or federal law. Turning again to Florida as an example, the Arbitration Code (ch. 682 Fla. Stat.) gives such agreements as well as awards thereunder validity. As to federal law,

arbitration is regulated by statute (9 U.S.C.). This title was implemented (§200 to 208) in pursuance of the ratification of an international convention to be mentioned later. It may be added that voluntary arbitration of labor disputes in aviation is provided in the Railway Labor Act (45 U.S.C. §157).

Provisions dealing with agreements to arbitrate and with arbitral awards appear in some treaties of friendship and commerce.<sup>40</sup> The Warsaw Convention (art. 32) provides that in regard to transportation of goods arbitration clauses "shall be allowed, subject to this Convention, if the arbitration is to take place within one of the jurisdictions referred to in the first paragraph of article 28."

International regulation of arbitration was achieved by the Convention for the Recognition and Enforcement of Foreign Arbitral Awards signed at New York in 1958,<sup>41</sup> ratified by the United States and implemented by federal statute.<sup>42</sup> This statute also includes arbitration arising from commercial transactions with the proviso that an arbitration agreement or award which is "entirely between citizens of the United States shall be deemed not to fall under the Convention, unless that relationship involves property located abroad, envisages performance or enforcement abroad, or has some other reasonable relation with one or more foreign countries" (§202).

(e) *International law.* In addition to the basic principles of international law governing jurisdictional powers as emanating from sovereignty, further rules originate in multilateral treaties, among them the widely discussed provision of the Warsaw Convention<sup>43</sup> (art. 28) which reads as follows:

(1) An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the court of the domicile of the carrier or of his principal place of business, or where he has a place of business through which the contract has been made, or before the court of the place of destination.

The Convention<sup>44</sup> provides both bases for jurisdiction: the subject matter, namely actions for damages, apparently insofar as affected by the Convention, and the jurisdictional contacts, four in number. Based on these factors the Convention provides that any action of this kind "shall be brought in the territory" of the member country identified by one of the jurisdictional contacts. Thus, jurisdiction appears to be exclusive



without the Convention indicating the consequences of actions and effects of judgments recovered in member countries not so identified or in non-member countries. However, the main difficulty in interpreting this provision lies on whether the four contacts are designed only to identify the country, i.e., allocate jurisdiction on the international plane to a particular country as a whole or to function also as an internal jurisdictional rule<sup>45</sup> and as such implement or even eliminate the forum's jurisdictional law. Recently this alternative was clearly identified.<sup>46</sup> In Warsaw cases

there are two levels of judicial power that must be examined to determine whether suit may be maintained. The first level . . . is that of jurisdiction in the international or treaty sense under art. 28 (1). The second level involves the power of a particular . . . court, under federal statutes and practice, to hear a Warsaw Convention case — jurisdiction in the domestic sense.

Opinions supporting the exclusively international scope<sup>47</sup> of art. 28, para. (1) rely on the language of the article by pointing out that it refers initially to the "territory of one of the High Contracting Parties". However, this argument weakens in the light of the subsequent language which refers to the "court of the domicile of the carrier" and continues the same reference to the principal place of business and to that of destination, while omitting it only in relation to the third contact.

Such inconsistencies may be attributed to poor drafting, but this does not help solve the problem. Courts have by now accepted the international thrust of the provision and reserved internal jurisdictional aspects to the *lex fori*. Consequently, the logical procedure would dictate that first the international allocation of jurisdiction be explored and, if found, jurisdictional requirements of the forum be considered. However, in a recent case the court started out with the latter task by exploring jurisdiction *in personam* against a foreign carrier under the controlling state long-arm statute, and only when it found that such jurisdiction existed, turned to the discussion of the international contact. Fortunately, the court found the contact effective by an extensive interpretation of the "place of business through which the contract has been made".

These difficulties have been encountered mainly in countries with a dual judicial system, particularly the United States. Bypassed by the conferences in The Hague (1955) and in Guadalajara (1961), the problem was taken up in Guatemala (1971).<sup>48</sup> This last conference re-

tained para. (1) of art. 28 unchanged, added a new para. (2) and relegated the original para. (2) to para. (3). The new para. (2) reads as follows:

In respect to damages resulting from death, injury or delay of a passenger or the destruction, loss, damage or delay of baggage, the action may be brought before one of the courts mentioned in para. (1) of this article, or in the territory of one of the High Contracting Parties, before the court within the jurisdiction of which the carrier has an establishment if the passenger has his domicile or permanent residence in the territory of the same High Contracting Party.

The new para. (2) consists of a two part sentence connected with an "or". Turning to the first part, it would appear at first glance that it contains only an unnecessary repetition when referring to para. (1) since this paragraph was retained in full. However, upon closer examination two innovations appear. The first is the limitation of the subject matter of litigation, as compared with para. (1), namely that para. (2) applies only in actions for damages to passengers and not shippers.<sup>49</sup> The second innovation is the reference to "courts mentioned in para. (1)." Such language is hardly proper since, as it was just shown, para. (1) makes such reference only in conjunction with three out of the four contacts. One may speculate that this language intends to make contacts retained in para. (1) effective on both the international and internal level aiming them directly to the courts and thus by-passing the territory. But such interpretation overlooks that no change occurred in the original language of the retained para. (1) and that, probably, such intent would have been expressed by a change in para. (1).

In analyzing the second part of the sentence contained in para. (2) it should be noted that the contacts of domicile and of the principal place of business of the carrier not only are reasonably clear but also ascertainable in fact and, moreover, in most countries paralleled by contacts used by internal jurisdictional rules. Only the remaining two contacts cause difficulties, particularly the place of destination which has no parallel in most fora. Nevertheless, the amendment deals only with the third contact (establishment), but at the same time retains the notion of business and thus ineptly continues an unsatisfactory terminological difficulty. The main problem, however, still lies in the two ways to interpret art. 28, the international or the internal, the latter subordinate to the former. The prevailing international interpretation leads, in many instances, to un-

expected results. One, that the internationally competent country cannot take advantage of art. 28 because the *lex fori* does not conform to the jurisdictional rules of the Convention. Or it may happen that the Convention denies jurisdiction to a particular country which, under its own jurisdictional rules, has the power to take cognizance of the case.<sup>50</sup>

It seems that these difficulties have triggered the demand to amend art. 28. While the first part of the new para. (2) does not respond to this need, the second part might have been influenced by such considerations, as poorly as they have been understood or, if understood, badly expressed in the text. As stated, the amended para. (2) uses the third of the four contacts, available in para. (1), as the vehicle for the reform, namely carrier's establishment which, in the original version retained in para. (1), remains unchanged and continues in force as the establishment "through which the contact has been made". The additional version adopted in para. (2) waived—within the scope of this paragraph—the requirement of having been instrumental in contracting. Instead, it imposes a new alternate qualification on the contact of establishment and introduces an additional contact related this time to the plaintiff. The former modification requires that the carrier have an establishment within the jurisdiction of the particular court and not within the "territory" of the respective country, according to para. (1). The supplemental contact is the domicile or residence of the plaintiff within the respective country and not necessarily within the particular jurisdiction of the court. The result may be summarized by stating that now the contact of carrier's establishment will be, under the Convention, effective under two conditions: one, that it was instrumental in contracting (para. 1), or as being located in the jurisdiction of the particular court, with the plaintiff domiciled or residing in the same country (para. 2). However, in spite of these innovations the chances that plaintiffs may avoid the unwanted consequences of the international interpretation have not been enhanced. It is quite possible that the forum's law might not consider plaintiff's contacts with the forum material to support jurisdiction over the defendant based on the contact of his establishment within the forum. This is particularly true in countries where the operation of an establishment is, as in most long-arm statutes in this country, only partly adequate to support jurisdiction in view of the fact that, in most instances, connexity is a decisive constitutional (due process) requirement.<sup>51</sup>

A few additional remarks are in order. The Convention on the International Recognition of Rights in Aircraft (Geneva, 1948)<sup>52</sup> contains no jurisdictional rules. Such rules are included in the Convention on Dam-

age Caused by Foreign Aircraft to Third Persons on the Surface (Rome, 1952)<sup>53</sup> which has not been ratified by the United States. Two procedural conventions may be of interest to aviation litigations: the Convention of Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters (Hague, 1965),<sup>54</sup> and the Convention on the Taking of Evidence Abroad in Civil and Commercial Matters (Hague, 1970), both ratified by the United States.

(f) *Immunity from jurisdiction.* According to a traditional common law rule, one's own sovereign is immune from judicial jurisdiction unless the sovereign waives this privilege. In regard to the states, the rule varies but seems to be on the way out. In regard to the federal government,<sup>55</sup> sovereignty is waived within the scope of the Federal Tort Claims Act, frequently applied to aviation cases. In essence the Act provides that the government is liable for torts committed by its agents acting (within the territorial limits of the United States) within the scope of their employment as private tortfeasors would be liable "under the law of the place where the act or omission occurred".<sup>56</sup>

Concerning foreign countries, the traditional immunity was restricted by the United States in the Tate Letter (1952)<sup>57</sup> which, distinguishing between acts *iure imperii* and acts *iure gestionis*, denied immunity in regard to the latter. The limited doctrine found expression also in treaties of friendship and commerce as, for example, in the Nicaraguan treaty<sup>58</sup> which provides (art. XVIII, para. 3) :

No enterprise of either Party, including corporations, associations and government agencies and instrumentalities, which is publicly owned or controlled shall, if it engages in commercial, industrial shipping or other business activities within the territories of the other Party, claim or enjoy, either for itself or for its property, immunity therein from taxation, suit, execution of judgment or other liability to which privately owned and controlled enterprises are subject therein.

There is also in force, in relation to the Netherlands, a convention on the waiver of such immunity (1953).<sup>59</sup> Finally, a waiver of sovereign immunity is as a matter of routine included in licenses granted to foreign carriers.<sup>60</sup>

It may be added that a bill is presently before Congress to regulate the question of sovereign immunity due to foreign countries.<sup>61</sup>

(g) *Judicial v. administrative jurisdiction.* By now the principle is "firmly established that in certain cases raising issues of fact not with-

in the conventional experience of judges or cases requiring the exercise of administrative discretion, agencies created by Congress for regulating the subject matter should not be passed over.”<sup>62</sup> This principle of primary administrative jurisdiction applies also to administrative authorities dealing with aviation even though such power may impinge on the jurisdiction of the courts as, for example, in cases involving antitrust laws in which area the Civil Aeronautics Board has statutory functions (49 U.S.C. § 1382).<sup>63</sup>

The review by courts of administrative rulings is based on the administrative record (49 U.S.C. § 1006, e); nevertheless, the court may remand the case for further proceedings where additional facts are needed.<sup>64</sup> Final orders of the Civil Aeronautics Board or of the Secretary of Transportation are subject to review<sup>65</sup> by federal appellate courts (49 U.S.C. § 1006, b), vested with exclusive jurisdiction to “affirm, modify, or set aside in whole or in part” the orders under review (§ 1006, d), except orders involving foreign carriers subject to approval by the President (§ 1372, 1461).<sup>66</sup> Decisions by the appellate courts are subject to review by the Supreme Court upon certiorari (§ 1006, f).

The enforcement of “any rule, regulation, requirement, or order thereunder, or any term, condition, or limitation of any certificate or permit, and the punishment of all violations thereof,” including the Federal Aviation Act, is vested in the federal district court “wherein such person carries on his business or wherein the violation occurred” (§ 1007).<sup>67</sup>

## CRIMINAL JURISDICTION

In civil litigation the controlling law — except in federal question cases — does not determine jurisdiction. In principle, the opposite is true in criminal cases. In other words, a court will take jurisdiction in a criminal case only where the substantive criminal law of the forum applies, namely to acts committed within its territorial jurisdiction except in cases where extraterritorial application of its criminal law is proper.

(a) *State courts.* Criminal law, statutory and common law, in force in the several states supports jurisdiction of state courts insofar as, in crimes involving aviation, the matter is not preempted by federal law.

(b) *Federal courts.* Federal courts exercise “original jurisdiction, exclusive of the courts of the states, of all offenses against the laws of the United States” (18 U.S.C. § 3231).

Criminal acts involving aviation may be common crimes committed in relation to aviation or they may be specific crimes covering particular situations in aviation, for example, those involving destruction of aircraft (18 U.S.C. § 32), or air piracy (49 U.S.C. § 902, i). Related to aviation are also crimes committed on board aircraft. In this respect an enactment in 1952 created the "special maritime and territorial jurisdiction of the United States" (18 U.S.C. § 7, para. 5)<sup>68</sup> which includes:

Any aircraft belonging in whole or in part to the United States or any citizen thereof or to any corporation created under the laws of the United States, or any State, Territory, District or possession thereof, while such aircraft is in flight over the high seas, or over any waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.

*In these cases jurisdiction is based on two contacts: first, that of property of the aircraft (not nationality), and the second, the location of the aircraft at the time of the commission of the crime. The crimes falling into this jurisdiction are marked as such throughout the Criminal Code.*

In 1964 new federal crimes were added, not to the Federal Criminal Code but to the Federal Aviation Act (49 U.S.C. § 902, i to m). Some of these crimes were punishable if committed in flight (e.g., air piracy, § 902, i; interference with the crew 902, j; and a list of crimes punishable under the Federal Criminal Code when committed within the "special maritime and territorial jurisdiction of the United States", § 902, k). Other crimes added include carrying weapons aboard aircraft (§ 902, l), and false information (§ 902, m). The flight involved had to be a "flight in air commerce" which includes "interstate, overseas, or foreign air commerce" as well as transportation of mail "within the limits of any Federal airway", as well as "any operation or navigation of aircraft which directly affects . . . safety in, interstate, overseas, or foreign air commerce" (§ 101, para. 20).

In pursuance of the ratification of the Tokyo Convention (1963) by the United States, a federal statute<sup>70</sup> has changed the qualification of the three in-flight crimes (air piracy, interference with the crew and crimes punishable within the "special maritime and territorial jurisdiction of the United States") to "special aircraft jurisdiction of the United States" (49 U.S.C. § 101, para. 32), but not with regard to the two remaining crimes which remain punishable if committed "aboard an aircraft being operated by an air carrier in air transportation". Consequently, the first three crimes belong to the federal courts whenever committed in flight

within such "special jurisdiction", i.e., from the moment power is applied for the purpose of takeoff until the moment when the landing run ends. This jurisdiction encompasses American registered aircraft regardless of their location at the time of the crime and foreign registered aircraft when the crimes listed have been committed on a flight

- (i) within the United States, or
- (ii) outside of the United States with its next scheduled destination or last point of departure in the United States, provided that in either case it actually next lands in the United States.

(c) *International law.* An ever increasing number of international conventions deal with what is called criminal law of the air, both with regard to common crimes committed in flight as well as with specific crimes particular to aviation.

Among the conventions to which the United States is a party, the Convention of the High Seas (Geneva, 1958)<sup>71</sup> may be mentioned since it deals with air piracy (art. 15 and 17), and allocates jurisdiction to courts of the state which "carried out the seizure" of the piratical aircraft (art. 19). Jurisdictional rules are also included in the Convention on Offenses and Certain Other Acts Committed on Board Aircraft (Tokyo, 1963).<sup>72</sup> This Convention deals with criminal acts as well as "acts which, whether or not they are offences, may or do jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board" (art. 1, para. 1, a and b), provided they are committed on board an aircraft registered in a member country, while such aircraft was in flight as defined (art. 1, para. 3), or "on the surface of the high seas or of any other area outside the territory of any State". The state of registration has the authority to "exercise jurisdiction over offenses and acts committed on board" (art. 3), and is bound to "take such measures as may be necessary to establish jurisdiction as the State of registration over offences committed on board aircraft registered in such State" (art. 3, para. 2). However, the Convention does not prevent any other criminal jurisdiction being available under the domestic laws of a member state (art. 3, para. 3).

A special provision regulates the jurisdiction of member states in regard to criminal acts committed on board aircraft registered in another country by limiting it to a number of specific situations: (a) the offence has effect on the territory of the state resolved to interfere; (b) the

offence has been committed by or against a national or permanent resident of such state; (c) the offence is against the security of such state; (d) the offense violates rules regarding flight or operations therein; or (e) the exercise of such jurisdiction is "necessary to ensure the observance of any obligation of such State under a multilateral international agreement" (art. 4).

Further jurisdictional provisions are found in the Convention for the Suppression of Unlawful Seizure of Aircraft (Hague, 1970),<sup>73</sup> and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 1971),<sup>74</sup> both ratified by the United States. The former convention requires member countries to establish jurisdiction not only over the particular offence of air piracy<sup>75</sup> as defined in art. 1, but also over other acts of violence against passengers or crew committed in connection with piracy (art. 4, para. 1), provided (a) such acts have been committed on board aircraft registered in the same state; or (b) the aircraft lands in the state with the offender on board, or (c) in case of a lease of aircraft without crew and the lessee has his principal place of business, or at least he is a permanent resident of such state (art. 4).

The Montreal Convention adopted in essence the same jurisdictional contacts used in The Hague Convention under (c) and (d), and added those instances in which the offence has been "committed in the territory of that State" (i.e., exercising jurisdiction), or has been "committed against or on board an aircraft registered in that State" (art. 5, b), an extension included also in art. 5 (d).

In connection with these conventions the question arises whether or not their provisions, at least some of them, are self-executing, meaning effective without additional federal statute. In any case, there can be no doubt that jurisdiction exists with regard to crimes as defined and within the protection of federal courts according to their criminal choice-of-laws rules, and identical with those dealt with by the conventions.

## II. CANADA

Even though aviation matters are within the legislative powers of the national Parliament,<sup>76</sup> judicial jurisdiction in aviation cases is vested, with few exceptions involving the Federal Court, in provincial courts of general jurisdiction.<sup>77</sup> There, jurisdiction is perfected according to general, statutory as well as decisional requirements. Service on non-resident individual and corporate defendants (*ex juris*) must be authorized by



court on *ex parte* application, supported by affidavit showing reasons for granting it. The leave to serve a writ out of the jurisdiction remains discretionary with the court. Once served, the defendant may, by leave of court, enter a conditional (special) appearance.

The jurisdiction of the Federal Court of Canada, being a "court of law, equity and admiralty, continued from the Exchequer Court" (Sec. 3)<sup>78</sup> includes within its maritime jurisdiction some matters involving aviation (sec. 22). A federal trial court has original jurisdiction, concurrent with provincial courts, of the following claims (sec. 22): for "salvage of life, cargo, equipment or other property of, from or by an aircraft to the same extent and in the same manner as if such aircraft were a ship" (sec. 22, j); for "towage in respect . . . of an aircraft while such aircraft is waterborn" (sec. 22, k), and for "pilotage in respect of . . . an aircraft while such aircraft is waterborn" (sec. 22, l). This jurisdiction is available (sec. 22, para. 3, b) in regard to aircraft where the cause of action arises from the three instances just listed, regardless of "whether those aircraft are Canadian or not and wherever the residence or domicile of the owners may be", and whether these claims arise "on the high seas or within the limits of the territorial, internal or other waters of Canada or elsewhere and whether such waters are naturally navigable or artificially made so, including . . . in case of salvage, claims in respect to cargo or wreck found on the shore of such waters" (sec. 22, 3, c).

This jurisdiction may be exercised *in personam* (sec. 43), also *in rem* (art. 43, para. 2) against an aircraft, except in cases under sec. 22 (k), involving towage, unless "at the time of the commencement of the action, the . . . aircraft . . . that is the subject of the action is beneficially owned by the person who was the beneficiary owner at the time when the cause of action arose" (sec. 43, para. 3).

It may be added that the same court has jurisdiction against the Crown in situations analogous to those within the Federal Tort Claim Act in this country. The process of the court "shall run throughout Canada, including its territorial waters, and any other place to which legislation enacted by the Parliament of Canada has been made applicable" (sec. 55).

Canada has ratified two conventions containing jurisdictional rules pertaining to aviation. One is the Warsaw Convention enacted in Canada as the Carriage by Air Law,<sup>79</sup> with its art. 28 and 32. The other is the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface (Rome, 1952), enacted as the Foreign Aircraft Third Party

Damage Act.<sup>80</sup> Actions based on this Convention are within the exclusive jurisdiction of the courts of the member country "where the damage occurred" (art. 20, para. 1). However, litigants are free to prorogate a forum in another member country, but proceedings there shall have no "effect of prejudicing in any way the right of persons who bring actions in the State where the damage occurred". Parties may also agree to submit their disputes to arbitration provided arbitration takes place in a member country (art. 20). Member countries promise to take all necessary measures to ensure that defendants and other parties are notified and have "a fair and adequate opportunity to identify their interests" (art. 20, para. 2), as well as "ensure . . . that all actions arising from a single incident and brought in accordance with para. (1) of this article, are consolidated for disposal in a single proceeding before the same court" (art. 20, para. 3).

Canada has ratified the three conventions dealing with crimes of the air: Tokyo (1963), The Hague (1970), and Montreal (1971). Their pertinent provisions are discussed elsewhere in this study.

The Act to amend the Criminal Code dealing with offences committed on board aircraft (art. 6) grants Canadian courts jurisdiction over such acts if punishable by indictment; they are then deemed to have been committed in Canada whenever they occurred on or in respect to an aircraft registered in Canada, or leased without crew and operated by a person qualified under the Aeronautics Act to be registered as an owner of an aircraft while it is in flight, or on an aircraft whose flight terminates in Canada. The same Act also enacted crimes of piracy, endangering the safety of an aircraft and taking offensive weapons and explosive on board.<sup>81</sup>

Administrative powers vested under the Act to Authorize the Control of Aeronautics<sup>82</sup> in the Minister of Transportation, include authority to issue regulations (sec. 6, para. 4). Their violation, when committed outside of Canada and involving Canadian aircraft, will be punished by the court "having jurisdiction in respect to similar offences in the judicial division of Canada where that person is found, in the same manner as if the offence had been committed in that judicial division" (sec. 6, para. 6).

### III. LATIN AMERICA

Some of the fundamental rules on recognition of foreign legal entities and their access to courts may be gleaned from multilateral conventions,

signed in Montevideo in 1889, supplemented in 1940,<sup>83</sup> and in Havana, the later known as the *Código Bustamante* (1928).<sup>84</sup>

The Bustamante Code refers the question of recognition of foreign legal entities to the "territorial law" (art. 32), i.e., to rules "binding alike on all persons residing within the territory, whether or not they are nationals" (art. 3, para. III). Instead of such choice-of-law solution, the Treaty on the International Terrestrial Commercial Law (1940, art. 8) supplies a combined rule that "Commercial associations shall be governed by the laws of the State of their commercial domicile, [i.e., principal place of business, art. 3], shall be accorded full legal recognition in the other contracting States, and shall be considered qualified to perform acts of commerce and appear in law suits."

The previously mentioned Inter-American Declaration (Washington, 1936), as well as bilateral treaties supply additional rules together with domestic enactments. The recent Business Associations Law of Argentina (1972),<sup>85</sup> for example, provides that "associations established abroad are governed in regard to their existence and form by the law of the place where they have been constituted". If these requirements are met the companies may engage in isolated acts and appear in courts in Argentina (art. 118).

It will be noticed that in terms of legislation and judicial jurisdiction aviation faces, in some Latin American countries, a dual system similar to the one in the United States. In three such countries authority to legislate on aviation is vested in national (federal) legislatures. In Argentina the rule appears in both aviation codes (art. 182 of the Code of 1954, Law No. 14.307, and art. 197 of the Code of 1967, Law No. 17.285). The same policy found expression in the Brazilian Constitution (1967, art. 8, XV, c). In Mexico such power is vested in the national Congress pursuant to art. 73 (XVII) of the 1917 Constitution as a matter pertaining to "general means of communication".

This position is reflected in the allocation of judicial powers in Argentina and in Brazil. In Argentina courts have since the 1940's ruled that litigation involving aviation belongs in national (federal) courts.<sup>86</sup> In 1950 this decisional rule was enacted as an amendment (Law No. 13.998, art. 42, b) which provided that national courts shall have cognizance of cases "governed by the . . . law of aviation". The rule was continued in the first (1954, art. 183) and retained in the second Aviation Code (1967, art. 198) where it reads:

The cognizance and decision of cases involving aviation and air commerce generally and of crimes which may affect them, is vested in the Supreme Court of Justice and in subordinate courts of the Nation.

In Brazil the jurisdictional grant to the federal judiciary is included in the Constitution (1967, art. 119, IX) by referring to "questions of maritime law and navigation, including air navigation". In Mexico, by contrast, such jurisdiction is exercised by federal courts concurrently with state courts. According to art. 104(I) of the Constitution, federal courts shall have civil jurisdiction whenever federal laws or treaties apply, adding that "whenever such controversies affect private interests", the controversies may be adjudicated, at the election of the plaintiff, by "local", i.e., state courts. This rule was refined by the subsequent Organic Law of the Judicial Power of the Federation (1936) which vested jurisdiction regarding controversies "between private persons" and involving federal laws in federal courts, at the election of the plaintiff (art. 43, I).

There is only one country in the Western Hemisphere with special aviation courts and the only where aviation litigation is vested in military tribunals. This *mayor absurdo jurídico*<sup>87</sup> appears in Chile where the Law on Air Navigation (1931) established *tribunales aeronáuticos* (art. 76 to 91, as amended in 1944). These tribunals are manned by military officers and exercise jurisdiction not only with regard to violations by military personnel related to aviation but also in criminal cases against persons who are not members of the armed forces; also in civil actions arising from violations within military jurisdiction "in order to recover things or their value" (art. 5, No. 4 of the Code of Military Justice). Appeals belong before a *Corte Marcial*<sup>88</sup> composed of two justices of the appellate court in Santiago and one member of the following services: Army, Air Force and *Carabineros*.

In most Latin American countries aviation litigation belongs in civil courts of general jurisdiction. An express provision to this effect appears in the Law on Civil Aeronautics in force in El Salvador (1955). This law grants courts of general jurisdiction (*tribunales comunes*) the power to "adjudicate in summary proceedings cases involving aviation or air commerce in general" (art. 6, general and transitory provisions). The Peruvian Law of Civil Aeronautics (1965) allocates actions for damages brought by passengers or by members of the crew (art. 108) to *juicios de menor cuantía* (art. 109).

Alternatives are open in countries where commercial courts are charged with matters within the scope of the commercial codes, provided they include aviation among commercial activities. However, there are countries where aviation is included in the commercial code, e.g., in Costa Rica, but because there are no commercial courts, courts of general jurisdiction administer the Code and related aviation regulations. On the contrary, the Venezuelan Commercial Code (1942, art. 2) does not list aviation among commercial activities; nevertheless, aviation cases are litigated before commercial courts.

Jurisdiction so allocated must be defined further. In countries with a single system of courts the delimitation must draw the line in international situations. In countries with a dual court system another line of jurisdictional demarcation is needed to separate aviation litigation vested in one system of courts from the jurisdictional powers of the other. This is done in a number of Latin American countries in two ways: by a general clause and by jurisdictional rules dealing with events on board aircraft. Taking Argentina again as an example of countries with a dual system of courts, the previously quoted general jurisdictional grant confers upon national courts, civil and criminal, jurisdiction in matters of aviation and air commerce.<sup>89</sup> This general clause does not limit jurisdiction to cases where the Aviation Code applies but allows also jurisdiction in cases where, under the choice-of-law rule of the Argentine forum foreign contract or tort law might apply. On the contrary, with regard to events (civil and criminal) on board aircraft, Argentine judicial jurisdiction is coextensive with the application of Argentine substantive civil or criminal law. These rules deal — limiting this survey to non-public aircraft — with domestic and foreign aircraft in a variety of situations, namely when in flight within their own sovereignty, in areas without sovereignty, and within foreign sovereignty at the time when the event occurs. In essence, Argentine courts will exercise jurisdiction with regard to events on board Argentine aircraft whenever they occur within Argentine sovereignty or in areas under no sovereignty (art. 199, para. 1); or within foreign sovereignty, provided the “legitimate interests” of Argentina or of persons domiciled there have been affected, or if the aircraft landed in Argentina immediately after the event (art. 199, para. 2). With regard to events on board foreign aircraft, Argentine courts will have jurisdiction only over events which occurred in their flight within Argentine sovereignty and if the acts violate laws concerned with safety, military or fiscal laws; or air traffic rules, or endanger public safety and order or interests of Argentina or persons domiciled there or if the first

landing took place there after the event and no extradition is requested (art. 200). Similar jurisdictional rules appear in the Law of Civil Aeronautics of Peru (1965, art. 5) except, that for events on board foreign aircraft in flight within Peruvian sovereignty, the law contains a choice-of-law rule but refrains from including jurisdiction (art. 6); in the Aviation Code of Paraguay (1957, art. 156 and 157), and in the recently enacted but vetoed Costa Rican General Law of Civil Aviation (1973, art. 23).

Nicaragua has provisions all its own. Art. 259 of the Code of Civil Aviation (1956) confers jurisdiction on domestic courts over claims against Nicaraguan air carriers arising from international transportation as well as against foreign carriers for personal injuries to Nicaraguan passengers or aliens domiciled in Nicaragua; for the loss, average or delay affecting goods or baggage belonging to the same kind of persons, provided the goods or baggage have been shipped from Nicaragua or were destined to arrive there, and for damages to persons or goods located on the ground in Nicaragua. Jurisdiction includes (art. 250, c) "all other cases not here included nor excluded" by these provisions.

Other Latin American aviation laws use the term *jurisdicción* without specifying that it includes also judicial powers. In the Dominican Law of Civil Aeronautics (1969, art. 6) this term is used for events on board aircraft. Similarly, the Regulation of Civil Aviation in force in Panama (1963, art. 3) uses the term "Panamanian jurisdiction" when referring to events on board aircraft. The Guatemalan Civil Aviation Law (1949, art. 3) subjects all aircraft within Guatemala to the laws of the Republic and to the "jurisdiction of her authorities". Other republics use the term *jurisdicción y competencia*, followed by choice-of-laws provisions regarding events on board aircraft (Venezuela, art. 4) with an additional article specifically referring to civil or commercial acts there (art. 5). The same rules are adopted in the Law on Civil Aeronautics of Honduras (1957, art. 3 to 5).

In countries which ratified the Warsaw (1929) and Rome (1952) conventions, their art. 28<sup>90</sup> and 20, respectively, apply. However, from available materials their real impact is difficult to assess.

The effect of forum selecting clauses (*prórroga*) is regulated in two international conventions, the Warsaw Convention (art. 32), and the Rome Convention on Damages on the Ground (art. 20), discussed elsewhere in this study. Two aviation acts contain provisions related to aviation litigation. The Code of the Air in force in Brazil (1966, art. 7)

denies effect unless the *forum prorogatum* is that of the place of destination. Nicaragua, on the contrary, allows an unrestricted choice (art. 259, b). In other countries prorogation is regulated by the codes of civil procedure which, as a rule, allow only agreements involving changes in venue (*competencia territorial*).

As it was shown, in many countries the same jurisdictional rules apply to civil and criminal jurisdiction, e.g., in Argentina. There are, in some aviation acts, particular provisions for criminal jurisdiction. Brazil, for example, has allocated to federal courts jurisdiction over crimes "covered by an international treaty or convention and those committed on board . . . aircraft, taking into account the jurisdiction of military justice" (Constitution, 1967, art. 119, V). Panama allocates to regular courts the adjudication of crimes included in the Regulation of National Aviation (1963, art. 218 and 219). In Mexico, the federal Criminal Code (art. 5, IV) grants federal courts jurisdiction over crimes "committed on board national or foreign aircraft within the territory or airspace or national or foreign territorial waters in cases analogous to these contained in the previous section dealing with vessels."

In all cases the jurisdiction (*competencia*) of courts has to be perfected according to the respective *lex fori*. This is done, in most instances, along the maxim of *actor sequitur forum rei* and contacts derived therefrom. Among contacts of most interest to this study will be those which would make non-resident carriers amenable to foreign courts. This is achieved in two ways: by using as a jurisdictional contact the fact that a non-resident acted within the court's jurisdiction or through local representatives who must be appointed with sufficient authority to make their non-resident principal amenable to local jurisdiction.

A general provision of the first kind is adopted in the Treaty on International Terrestrial Commercial Law (Montevideo, 1889, art. 7, and 1940, art. 11) which provides that with regard to a "business association domiciled in one contracting country and engaged in business in another, the latter's courts will have jurisdiction in regard to claims arising therefrom." This typical long-arm statute found no general acceptance, in spite of the fact that in some countries decisional law moves in its direction.<sup>91</sup> There are two ways to bring foreign corporate carriers into local courts. One is indicated in some of the aviation codes; the other is shown in general enactments dealing with business associations, i.e., in commercial codes or enactments regulating business associations generally. An example for the first type is found in the Panamanian Regulation of

National Aviation (1963, art. 93). It charges foreign aviation enterprises with maintaining permanently in Panama a "representative with sufficient authority to appear before administrative and judicial authorities . . . in order to litigate any demand or claim which may be pressed for acts or omissions related directly or indirectly to air transportation or acts". Similar provisions appear in the aviation laws of El Salvador (art. 141), Nicaragua (art. 113) and Honduras (art. 118). The recently vetoed Costa Rican General Law on Civil Aviation (1973) provides not only that foreign aviation enterprises must "submit expressly to this law and to the jurisdiction of Costa Rican authorities in case of damage to passengers, cargo or baggage, or to persons or goods on the ground" and waive diplomatic intervention (art. 145, c), but also appoint in Costa Rica a permanent representative with full powers (*poder generalísimo*) "sufficient to attend to business of the company" (art. 178).

As indicated, further provisions emanate from rules applicable to foreign business associations generally. The Argentine Law on Business Associations (1972), for example, makes foreign business associations amenable to Argentine courts on the basis of an "isolated act through the person of an agent (*apoderado*) who intervened in the act or contract out of which the cause of action arose (*motive el litigio*)" or where there is a subsidiary or establishment (*asiento*) or other kind of representation (art. 122)<sup>92</sup> Similarly, the Commercial Code of Colombia (1971) requires that in order to transact business there, a foreign business association must, among other requirements, designate a general agent (*mandatario general*) authorized to conduct business within the scope of the charter and to "represent the subsidiary for all legal purposes" (art. 472).

In some Latin American countries additional functions in aviation matters are given to the judiciary. In Argentina, for example, records executed by administrative authorities in cases of damages caused by aircraft will be forwarded to judicial authorities (art. 203); for their part, courts as well as police and security forces which intervene in matters involving aircraft or aviation are bound to inform proper administrative authorities (art. 207). The investigation of aviation accidents is generally within the functions of administrative authorities. However, the Ecuadorean Law of Air Transit (1950) makes it a judicial function (art. 32) and courts at the *locus delicti* will take jurisdiction of actions for damages caused to persons or things by aircraft, domestic or foreign (art. 34, para. 1).

Administrative decisions in aviation matters are, in most Latin American countries, subject to administrative review in three ways: by



the respective Ministry or by administrative tribunals or both. In Paraguay (art. 170) and in Uruguay (art. 171) appeals go to the Ministry which in both countries "closes the administrative way". In Uruguay the administrative decision may also be attacked for illegality before courts of general jurisdiction until an administrative tribunal has been established (art. 182). In other republics judicial review is available in cases of high fines as, for example, in Venezuela (art. 83). Peru allows review by the Supreme Court of administrative rulings involving not only penalties but also suspensions or cancellations of permits (art. 113, para. 2). In Colombia recourse against administrative acts is limited mainly, even though not exclusively, to administrative tribunals.<sup>94</sup> In many Latin American countries there is a possibility for judicial review of legislative<sup>95</sup> as well as administrative regulatory acts on constitutional grounds. In Mexico, for example, individual administrative acts may be contested through *amparo* whenever they violate civil rights guaranteed by the Constitution (art. 2 to 28).<sup>96</sup>

In conclusion, the following general impressions may be registered. A strong adherence to traditional jurisdictional principles persists in the Hemisphere coupled with a lack of domestic jurisdictional rules designed to cope with international situations, except those applicable to specific situations as, for example, to events on board aircraft. National interests prevail not only in developing aviation policies but also in the legislative and judicial powers being vested in national authorities in countries with a dual system of government. Even though in some countries administration of aviation is entrusted to military departments, civil courts, with one exception, prevail. And finally, the contribution by treaties to international jurisdictional problems arising in aviation is rather limited, due not only to a small number of ratifications of the respective treaties but also to difficulties in their application.

#### NOTES

<sup>1</sup>For exception, see *infra* III, at n. 87.

<sup>2</sup>Drion, *Toward a Uniform Interpretation of Private Air Law Conventions*, 19 J. Air L. & Comm. 423 (1952); Margeloth, *A Unified System for the Interpretation of Private Air Law Conventions*, 3 *Il Diritto Aereo* 221 (1964); 1 Videla Escalada, *Derecho Aeronáutico* 239 (Buenos Aires, 1969).

<sup>3</sup>Bayitch, *Conflict Law in United States Treaties* 28 (1955).

<sup>4</sup>45 Stat. 2618.

<sup>5</sup>9 U.S.T. 449.

<sup>6</sup>11 U.S.T. 2398.

<sup>7</sup>Wilson, Access to Court Provisions in United States Treaties, 47 Am. J. Int'l L. 20 (1953).

<sup>8</sup>Free access to courts under the equal national treatment is guaranteed in a number of treaties with Latin American countries, e.g., with Bolivia (1858, art. 13); Costa Rica (1851, art. VII) and Chile (1832, art. 10). The treaty with El Salvador (1926, art. XII) refers to the *lex fori*.

<sup>9</sup>This security has been abolished (61 Revue Critique de Droit International Privé 797, 1972).

<sup>10</sup>55 Stat. 1201, ratified also by Chile, Dominican Republic, El Salvador, Nicaragua and Venezuela.

<sup>11</sup>Argentine Airlines v. Aircraft Dynamics Corp., 170 N.Y.S. 2d 600 (1957). Cases cited are for illustration rather than for documentation.

<sup>12</sup>Bayitch, Conflict of Laws: Florida, 1968-69, 24 U. Miami L. Rev. 433, 460 (1970).

<sup>13</sup>Joseph Muller Corp. Zurich v. Société Anonyme de Gerance, 451 F.2d 727 (1971).

<sup>14</sup>Davidson, Factors Influencing Choice of Forum in Aircraft Disasters, 37 J. Air L. & Comm. 309 (1971); Walker, Foreign Corporation Laws: a Current Account, 47 N. Car. L. Rev. 733 (1969).

<sup>15</sup>Bayitch, Conflict of Laws (1967-68), 22 U. Miami L. Rev. 517 (1968).

<sup>16</sup>Savage v. Transportes Aereos Centro Americanos, 66 N.Y.S. 2d 280 (1956); Hayes v. Aeronaves de Mexico, 222 N.Y.S. 2d 470 (1961), *aff'd* 230 N.Y.S. 2d 291 (1962); Bryant v. Finnish National Airline, 203 N.E. 2d 439 (1965); Taca International Airlines, S.A. v. Rolls-Royce of England, Ltd., 204 N.E. 2d 329 (1965); Falk Corp. v. United States Aviation Underwriters, 304 F. Supp. 140 (1969).

<sup>17</sup>Bayitch, Conflict of Laws: Florida, 1970-71, 26 U. Miami L. Rev. 25 (1971).

<sup>18</sup>Mooney Aircraft, Inc. v. Donnelly, 402 F.2d 400 (1968); Goldenaire v. Lycoming Division of Arco Corp., 290 F. Supp. 349 (1968); Gill v. Fairchild Hiller Corp., 312 F. Supp. 916 (1970); Federal Insurance Co. v. Piper Aircraft Corp., 314 F. Supp. 855 (1972).

<sup>19</sup>Hoffman v. Air India, 393 F.2d 53 (1968); Donnelly v. Kellog Co., 293 F.Supp. 53 (1968); Miller v. Trans World Airlines, Inc., 302 F.Supp. 174 (1969); Giuliano v. Alitalia Airlines, Inc., 218 F. Supp. 78 (1963).

<sup>20</sup>Commercial Air Charterers, Inc. v. Sundorph Aeronautical Corp., 57 F.R.D. 84 (1972, fraudulent); Barrios v. Dade County, 310 F. Supp. 744 (1970).

<sup>21</sup>Berlanti Construction Co. v. Republic of Cuba, 145 So. 2d 256 (1962); Cuba Aeropostal Agency, Inc. v. Kane, 145 So. 2d 764 (1962).

<sup>22</sup>Faulkner v. S.A. Empresa de Viacao (VARIG), 222 So. 2d 805 (1969); Varkonyi v. S.A. Empresa de Viacao Aerea Rio Grandense, 277 N.Y.S. 2d 577; 281 N.Y.S. 2d 354, 292 N.Y.S. 2d 670 (1968).

<sup>23</sup>Gully v. First National Bank, 299 U.S. 109 (1936).

<sup>24</sup>Yelinek v. Wortley, 284 F. Supp. 679 (1968).

<sup>25</sup>Mortimer v. Delta Airlines, 302 F. Supp. 276 (1969).

<sup>26</sup>Richards v. United States, 369 U.S. 1 (1962). Otten, The Federal Tort Claims Act and Other Statutes Relating to Government Liability Exemplified by Government

Aircraft Accidents, 65 Dick. L. Rev. 35 (1960); Shapiro, Federal Tort Claims Act: Claims Arising out of Operation by Aircraft, 5 A.L.R. (Fed.) 440 (1970). *Four Star Aviation, Inc. v. United States*, 409 F.2d 292, 1969 (release of aircraft to Venezuelan authorities, 24 U. Miami L. Rev. 498, 1970).

<sup>27</sup>*Rutas Aereas Nacionales, S.A. v. Edwards*, 244 F. 2d 784 (1957); *Decker v. Linea Aeropostal Venezolana*, 258 F. 2d 153 (1958); *Rossi v. Trans World Airlines*, 350 F. Supp. 1263 (1972). *Air Line Stewards Int'l v. Northwest Airlines*, 162 F. Supp. 684, aff'd 267 F.2d 170, cert. denied, 361 U.S. 901 (1958); *Air Lines Stewards Int'l v. Trans World Airlines, Inc.*, 173 F. Supp. 369, aff'd 273 F. 2d 69 (1959).

<sup>28</sup>*Mortimer v. Delta Airlines*, 302 F. Supp. 276 (1969); *Gabel v. Hughes Air Corp.*, 250 F. Supp. 612 (1972).

<sup>29</sup>*In Aerovias Interamericanas de Panama, S.A. v. Board of County Commissioners* (197 F. Supp. 230, rev'd on other grounds, 307 F. 2d 802, 1962) the action was held by the court to have been brought under the Convention on Civil Aviation (Chicago, 1944, art. 15) and under various bilateral conventions (at 236).

<sup>30</sup>*Komlos v. Companie Nationale Air France*, 209 F. 2d 436 (1953); *Noel v. Linea Aeropostal Venezolana*, 247 F. 2d 677, cert. denied, 355 U.S. 907 (1957).

<sup>31</sup>*Winsor v. United Airlines*, 159 F. Supp. 856 (1958); *Zousmer v. Canadian Pacific Air Lines, Ltd.*, 307 F. Supp. 892 (1969).

<sup>32</sup>*Gilles v. Aeronaves de Mexico*, 468 F. 2d 281 (1972); *Boryk v. deHavilland Aircraft Co.*, 341 F. 2d 666 (1965).

<sup>33</sup>*Glenn v. Trans World Airlines*, 210 F. Supp. 31 (1962); *Quandt v. Beach Aircraft Co.*, 317 F. Supp. 1009 (1970).

<sup>34</sup>*Ciprari v. Servicos Aereos Cruzeiro do Sul, S.A.*, 232 F. Supp. 433 (1964).

<sup>35</sup>*Peterson & McDermott, Multidistrict Litigation: New Form of Judicial Administration*, 36 A.B.A.J. 737 (1970); *McDermott, The Judicial Panel on Multidistrict Litigation*, 57 F.R.D. 215 (1973); symposium in 38 J. Air L. & Comm. 159 (1972).

<sup>36</sup>*Currie, Federalism and the Admiralty: the Devil's Own Mess*, 1960 Sup. Ct. Rev. 158.

<sup>37</sup>*D'Aleman v. Pan American World Airways*, 259 F. 2d 493 (1958).

<sup>38</sup>*Executive Jet Aviation, Inc. v. City of Cleveland, Ohio* 93 S. Ct. 493 (1972); *Hark v. Antilles Airboats, Inc.*, 355 F. Supp. 683 (1973). On jurisdiction of actions against manufacturers, *Middleton v. Universal Air Corp.*, 204 F. Supp. 650 (1960), but see *Noel v. United Aircraft Corp.*, 204 F. Supp. 929 (1962).

<sup>39</sup>*M/S Bremen v. Zapata Off-Shore Co.*, 92 S. Ct. 1907 (1972).

<sup>40</sup>*Bayitch, Treaty Law of Private Arbitration*, 10 Arb. J. 188 (1955).

<sup>41</sup>21 U.S.T. 2517, summarized in *Bayitch, Conflict of Laws: Florida, 1970-71*, 26 U. Miami L. Rev. 1, 31 (1971). In the Western Hemisphere the Convention is ratified also by Ecuador, Mexico, Trinidad and Tobago, and by the Netherlands for Surinam and Netherlands Antilles.

<sup>42</sup>84 Stat. 692.

<sup>43</sup>49 Stat. 3000. In the Western Hemisphere ratified also by Argentina, Barbados, Brazil, British dependencies, Canada, Colombia, Cuba, Dominican Republic, Ecuador, Guyana, Jamaica, Mexico, Netherlands for Surinam and Curacao, Paraguay, Trinidad and Tobago, and Venezuela.

<sup>44</sup>McKenry, *Judicial Jurisdiction under the Warsaw Convention*, 29 *J. Air L. & Comm.* 205 (1963); Deddish, *Judicial Jurisdiction: a Study in International and Comparative Law*, 6 *Comp. Jur. Rev.* 55, 83 (1969). Robbins, *Judicial Jurisdiction under Art. 28 of the Warsaw Convention*, 9 *McGill L.J.* 352 (1963); Comment, *Art. 28 of the Warsaw Convention: a Suggested Analysis*, 50 *Minn. L. Rev.* 697 (1966).

<sup>45</sup>*Dunning v. Pan American World Airways*, 4 *Av. Cas.* 17.394 (1954).

<sup>46</sup>*Smith v. Canadian Pacific Airways, Ltd.*, 452 *F. 2d* 798 (1971), noted 13 *Harvard Int'l L.J.* 518 (1972); *Eck v. United Arab Airlines*, 360 *F.2d* 804 (1966).

<sup>47</sup>*Martens v. Flying Tiger Line, Inc.*, 341 *F. 2d* 851, cert. denied 382 *U.S.* 816 (1965).

<sup>48</sup>FitzGerald, *The Guatemala City Protocol to Amend the Warsaw Convention*, 9 *Can. Yb. Int'l L.* 217, 241 (1971); Mankiewicz, *The 1971 Protocol of Guatemala City to Further Amend the 1929 Warsaw Convention*, 38 *J. Air L. & Comm.* 519 (1972).

<sup>49</sup>Archinard, *Quelques Réflexions Concernant l'Application des Art. 28 et 32 de la Convention de Varsovie dans le Transport Contractuel par Air de Merchandises*, 10 *Il Diritto Aereo* 314 (1971).

<sup>50</sup>*Calli v. Re-Al Brazilian International Airlines*, 211 *N.Y.S. 2d* 206 (1961).

<sup>51</sup>In *Varkonyi v. S. A. Empresa de Viacao Rio Grandense*, 336 *N.Y.S. 2d* 193 (1972), the court followed the international interpretation of art. 28, using the Guatemala Protocol as an argument. However, it is misplaced since the United States proposal quoted in the opinion that the "defendant carrier has a place of business and is *subject to jurisdiction in that State*" was, in regard to the critical (emphasized) part, not adopted.

<sup>52</sup>U.S.T. 1830.

<sup>53</sup>Text in 19 *J. Air L.* 447 *L.* 447 (1952); see note 80, *infra*.

<sup>54</sup>20 *U.S.T.* 361, summarized in Bayitch, *Conflict of Laws: Florida, 1968-69*, 24 *U. Miami L. Rev.* 433, 465 (1970).

<sup>55</sup>Shapiro, *Federal Tort Claims Act: Claims Arising out of Operation of Aircraft*, 5 *A.L.R. (Fed.)* 440 (1970). *Civil Aeronautics Board v. Alitalia*, 328 *F. Supp.* 795 (1971).

<sup>56</sup>28 *U.S.C.* 1346 (b).

<sup>57</sup>26 *Dep't State Bull.* 984 (1952). Seltzer, *The Immunity Waiver for State-Controlled Business Enterprises in United States Treaties*, *Proceedings of the American Society of International Law* 89 (1961).

<sup>58</sup>See *supra* note 5.

<sup>59</sup>U.S.T. 1610.

<sup>60</sup>Bayitch, *International Law*, 16 *U. Miami L. Rev.* 240, 269 (1961).

<sup>61</sup>68 *Dep't State Bull.* 149 (1973); text in 12 *Int'l Leg. Mat.* 122 (1973), summarized in the present issue under *Interamerican Legal Developments*.

<sup>62</sup>*Far East Conference v. United States*, 342 *U.S.* 570 (1952).

<sup>63</sup>*Breen Air Freight, Ltd. v. Air Cargo, Inc.*, 470 *F. 2d* 767 (1972); *Lavenson v. Trans World Airlines*, 471 *F. 2d* 76 (1972).

<sup>64</sup>*American Importers Association v. Civil Aeronautics Board*, 473 *F. 2d* 168 (1972).

<sup>65</sup>14 A.L.R. (Fed.) 725 (1972).

<sup>66</sup>British Overseas Airways Corp. v. Civil Aeronautics Board, 304 F. 2d 952 (1962).

<sup>67</sup>Civil Aeronautics Board v. Donaldson Line, Ltd., 343 F. Supp. 1059 (1972).

<sup>68</sup>Bayitch, *International Law*, 16 U. Miami L. Rev. 240, 260 (1961); Brown, *Jurisdiction of United States Courts over Crimes in Aircraft*, 15 Stanford L. Rev. 45 (1962).

<sup>69</sup>Included are: assaults (§ 113), maiming, etc. (§ 114), theft (§ 661), receiving stolen property (§ 662), murder (§ 1111), manslaughter (§ 1112), including attempts (§ 1113), sexual offenses (§ 2031 and 2032), robbery (§ 2111) and sec. 22-1112 of the D.C. Criminal Code.

<sup>70</sup>84 Stat. 921 (1970). Attempted air piracy on ground is not within federal jurisdiction, *United States v. Pliskow*, 354 F. Supp. 369 (1973).

<sup>71</sup>13 U.S.T. In the Western Hemisphere ratified also by Costa Rica, Dominican Republic, Guatemala, Haiti, Jamaica, Mexico, Trinidad and Tobago and Venezuela.

<sup>72</sup>20 U.S.T. 2941. In the Western Hemisphere ratified also by Argentina, Barbados, Brazil, Canada, Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Mexico, Panama, Paraguay, and Trinidad and Tobago. Denaro, *In-Flight Crimes, the Tokyo Convention, and Federal Judicial Jurisdiction*, 35 J. Air L. & Comm. 171 (1969).

<sup>73</sup>22 U.S.T. 1641. In the Western Hemisphere ratified also by Argentina, Brazil, Canada, Colombia, Chile, Costa Rica, Ecuador, El Salvador, French dependencies, Guyana, Mexico, Panama, Paraguay, Trinidad and Tobago.

<sup>74</sup>T.I.A.S. No. 7570. In the Western Hemisphere ratified also by Brazil, Canada, Guyana, Panama, and Trinidad and Tobago.

<sup>75</sup>Gjidara, *La Piraterie Aérienne en Droit International et en Droit Comparé*, 24 *Revue Internationale de Droit Comparé* 791 (1972); McWhinney, *Aerial Piracy and International Law* (1971).

<sup>76</sup>Reference re *Aeronautics in Canada*, 1 D.L.R. 58 (1932); *Johannesson v. West St. Paul*, 4 D.L.R. 609 (1952). McNairn, *Aeronautics and the Constitution*, 49 *Can. B. Rev.* 411 (1971).

<sup>77</sup>Castel, *Assumed Jurisdiction of Canadian Common Law Courts*, 35 *Sask. L. Rev.* 146 (1970), also *Procedure and the Conflict of Laws*, 16 *McGill L.J.* 603 (1970).

<sup>78</sup>An Act respecting the Federal Court of Canada, 1970-71-72, c. 10.

<sup>79</sup>R.S. c. 45; c. C-14 R.S.C. (1970) including in Schedule I the text of the Warsaw Convention and in Schedule III the Hague Protocol. Sec. 3 of the Act provides in regard to the Protocol added to the Convention, dealing with the application of the Convention to international carriage by states, that member countries who had not taken advantage of this Protocol shall "for the purposes of any action brought in a court in Canada in accordance with the provisions of art. 28 . . . to enforce a claim in respect of carriage undertaken by him, be deemed to have submitted to the jurisdiction of that court, and accordingly rules of court may provide for the manner in which any such action is to be commenced and carried on, but nothing in this section shall authorize the issue of any execution against the property of any High Contracting Country". Cf. Castel, *Exemptions from the Jurisdiction of Canadian Courts*, 11 *Can. Yb. Int'l L.* 159 (1971).

Schedule II to this Act contains provisions establishing persons entitled to press claims as members of passenger's family (para. 1), regarding plaintiffs in such actions (para. 2) and related procedural rules (para. 3).

<sup>80</sup>1955, c. 15; c. F-28 R.S.C. (1970). In the Western Hemisphere ratified also by Argentina, Brazil, Cuba, Dominican Republic, Ecuador, Haiti, Honduras, Mexico and Paraguay. Toepper, Comments on Article 20 of the Rome Convention of 1952, 21 J. Air L. & Comm. 420 (1954).

<sup>81</sup>Bayitch, *Interamerican Legal Developments*, 4 Law, Am. 487 (1972).

<sup>82</sup>Ch. A - R.S.C. (1970).

<sup>83</sup>Translation in 37 Am. J. Int'l L. (supp.) 95 (1943).

<sup>84</sup>Text in 4 Hudson, *International Legislation* 2283 (1931).

<sup>85</sup>Bayitch, *Interamerican Legal Developments*, 4 Law. Am. 476 (1972).

<sup>86</sup>Horowicz v. Cruzeiro do Sul, Ltd., 51 La Ley 691 (1948).

<sup>87</sup>Hamilton, *Manual de Derecho Aereo* 374 (Santiago, 1960).

<sup>88</sup>Id. 377.

<sup>89</sup>Ini v. Iberia (1964), Maciel, *Interpretación Judicial de la Ley Aeronáutica* 12 (Buenos Aires, 1968).

<sup>90</sup>Telschow v. Flota Aerea Mercante Argentina (Supr. Ct. of Justice, 1952), Foglia-Mercado-Mellone, *Jurisprudencia Aeronáutica Argentina* 100 (Buenos Aires, 1968).

<sup>91</sup>The Court of Justice in Guanabara (Brazil, No. 7.511, 1972) held that a foreign corporation may be served in Brazil through its local representative in actions for claims arising from business in Brazil carried on by the same representative.

<sup>92</sup>Kaller de Orchansky, *Las Sociedades Comerciales en el Derecho Internacional Privado Argentino*, 36 La Ley 7 (August 24, 1972).

<sup>93</sup>Bayitch. *Interamerican Legal Developments*, 3 Law. Am. 528 (1971).

<sup>94</sup>Uprimny, *Der Gerichtliche Rechtsschutz des Einzelnen gegenüber der vollziehenden Gewalt in Kolumbien*, in Max Planks Institute (ed.), *Judicial Protection against the Executive* 635 (1970).

<sup>95</sup>Eder, *Judicial Review in Latin America*, 21 Ohio S.L.J. 570 (1960).

<sup>96</sup>Baker, *Judicial Review in Mexico: a Study of the Amparo Suit* 92 (1971); Fix Zamudio, *Judicial Protection of the Individual against the Executive in Mexico*, op. cit. n. 94, 713, 744 (1970).