

10-1-1971

## Aviation

C. E.B. McKenry

Follow this and additional works at: <http://repository.law.miami.edu/umialr>

---

### Recommended Citation

C. E.B. McKenry, *Aviation*, 3 U. Miami Inter-Am. L. Rev. 661 (1971)  
Available at: <http://repository.law.miami.edu/umialr/vol3/iss3/12>

This Report is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Inter-American Law Review by an authorized administrator of Institutional Repository. For more information, please contact [library@law.miami.edu](mailto:library@law.miami.edu).

## AVIATION

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

### GUATEMALA CITY PROTOCOL

One of the most important events in Private International Law in recent years took place in Guatemala City on March 8, 1971 with the signing of the Guatemala City Protocol amending the Warsaw Convention. Pertinent extracts from the Final Act of the Conference follow:

#### FINAL ACT

of the International Conference on Air Law held under the  
auspices of the International Civil Aviation Organization  
at Guatemala City in February — March 1971

The Plenipotentiaries of the International Conference on Air Law held under the auspices of the International Civil Aviation Organization met at Guatemala City, on the invitation of the Government of the Republic of Guatemala, from 9 February to 8 March 1971, for the purpose of considering the draft Articles for the revision of the "Warsaw Convention as amended at The Hague, 1955", prepared by the Legal Committee of the International Civil Aviation Organization. The Governments of the following 55 States were represented at the Conference:

Argentine Republic, the  
 Australia, the Commonwealth of  
 Barbados  
 Belgium, the Kingdom of  
 Bulgaria, the People's Republic of  
 Brazil, the Federative Republic of  
 Byelorussian Soviet Socialist  
 Republic  
 Canada  
 China, the Republic of  
 Colombia, the Republic of  
 Congo, the People's Republic  
 of the  
 Costa Rica, the Republic of  
 Czechoslovak Socialist Republic  
 Denmark, the Kingdom of  
 Dominican Republic  
 Ecuador, the Republic of  
 El Salvador, the Republic of  
 Finland, the Republic of  
 French Republic, the  
 Germany, the Federal Republic of  
 Greece, the Kingdom of  
 Guatemala, the Republic of  
 Holy See, the  
 Honduras, the Republic of  
 India, the Republic of  
 Indonesia, the Republic of  
 Ireland  
 Israel, the State of  
 Italian Republic, the

Jamaica  
 Japan  
 Korea, the Republic of  
 Mexican States, the United  
 Netherlands, the Kingdom of  
 New Zealand  
 Nicaragua, the Republic of  
 Nigeria, the Federal Republic of  
 Norway, the Kindom of  
 Peru, the Republic of  
 Polish People's Republic  
 Portugal, the Republic of  
 Spain  
 Sweden, the Kingdom of  
 Swiss Confederation, the  
 Tanzania, the United Republic of  
 Thailand, the Kingdom of  
 Trinidad and Tobago  
 Uganda, the Republic of  
 Ukrainian Soviet Socialist  
 Republic  
 Union of Soviet Socialist  
 Republics  
 United Kingdom of Great Britain  
 and Ireland  
 United States of America  
 Venezuela, the Republic of  
 Yugoslavia, the Socialist  
 Federal Republic of  
 Zambia, the Republic of

## PROTOCOL

to Amend the Convention  
 for the Unification of Certain Rules  
 Relating to  
 International Carriage by Air  
 Signed at Warsaw  
 on 12 October 1929  
 as Amended by the Protocol  
 Done at The Hague  
 on 28 September 1955

## THE GOVERNMENTS UNDERSIGNED

CONSIDERING that it is desirable to amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12 October 1929 as amended by the Protocol done at The Hague on 28 September, 1955

HAVE AGREED as follows:

CHAPTER I  
AMENDMENTS TO THE  
CONVENTION

Article I

The Convention which the provisions of the present Chapter modify is the Warsaw Convention as amended at The Hague in 1955.

Article II

Article 3 of the Convention shall be deleted and replaced by the following:

“Article 3

1. In respect of the carriage of passengers an individual or collective document of carriage shall be delivered containing:
  - a) an indication of the places of departure and destination;
  - b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place.
2. Any other means which would preserve a record of the information indicated in a) and b) of the foregoing paragraph may be substituted for the delivery of the document referred to in that paragraph.
3. Noncompliance with the provisions of the foregoing paragraphs shall not affect the existence or the validity of the contract of carriage, which shall, none the less, be subject to the rules of this Convention including those relating to limitation of liability.”

Article III

Article 4 of the Convention shall be deleted and replaced by following:

## "ARTICLE 4

1. In respect of the carriage of checked baggage, a baggage check shall be delivered, which, unless combined with or incorporated in a document of carriage which complies with the provisions of Article 3, paragraph 1, shall contain:

- a) an indication of the places of departure and destination;
- b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place."

2. Any other means which would preserve a record of the information indicated in a) and b) of the foregoing paragraph may be substituted for the delivery of the baggage check referred to in that paragraph.

3. Non-compliance with the provisions of the foregoing paragraphs shall not affect the existence or the validity of the contract of carriage, which shall, none the less, be subject to the rules of this Convention including those relating to limitation of liability."

## Article IV

Article 17 of the Convention shall be deleted and replaced by the following:-

## "Article 17

1. The carrier is liable for damage sustained in case of death or personal injury of a passenger upon condition only that the event which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking. However, the carrier is not liable if the death or injury resulted solely from the state of health of the passenger.

2. The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or in the course of any of the operations of embarking or disembarking or during any period within which the baggage was in charge of the carrier. However, the carrier is not liable if the damage resulted solely from the inherent defect, quality or vice of the baggage.

3. Unless otherwise specified, in this Convention the term "baggage" means both checked baggage and objects carried by the passenger."

#### Article V

In Article 18 of the Convention —

paragraphs 1 and 2 shall be deleted and replaced by the following:-

"1. The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any cargo, if the occurrence which caused the damage so sustained took place during the carriage by air.

2. The carriage by air within the meaning of the preceding paragraph comprises the period during which the cargo is in charge of the carrier, whether in an airport or on board an aircraft, or, in the case of a landing outside an airport, in any place whatsoever."

#### Article VI

Article 20 of the Convention shall be deleted and replaced by the following:-

##### "Article 20

1. In the carriage of passengers and baggage the carrier shall not be liable for damage occasioned by delay if he proves that he and his servants and agents have taken all necessary measures to avoid the damage or that it was impossible for them to take such measures.

2. In the carriage of cargo the carrier shall not be liable for damage resulting from destruction, loss, damage or delay if he proves that he and his servants and agents have taken all necessary measures to avoid the damage or that it was impossible for them to take such measures."

#### Article VII

Article 21 of the Convention shall be deleted and replaced by the following:

##### "Article 21

If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, the carrier shall be wholly or partly exonerated from, his

liability to such person to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When by reason of the death or injury of a passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from his liability to the extent that he proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger."

### Article VIII

Article 22 of the Convention shall be deleted and replaced by the following:

#### "Article 22

1. a) In the carriage of persons the liability of the carrier is limited to the sum of one million five hundred thousand francs for the aggregate of the claims, however founded, in respect of damage suffered as a result of the death or personal injury of each passenger. Where, in accordance with the law of the court seised of the case, damages may be awarded in the form of periodic payments, the equivalent capital value of the said payments shall not exceed one million five hundred thousand francs.

b) In the case of delay in the carriage of persons the liability of the carrier for each passenger is limited to sixty-two thousand five hundred francs.

c) In the carriage of baggage the liability of the carrier in the case of destruction, loss, damage or delay is limited to fifteen thousand francs for each passenger.

2. a) In the carriage of cargo, the liability of the carrier is limited to a sum of two hundred and fifty francs per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the consignor's actual interest in delivery at destination.

b) In the case of loss, damage or delay of part of the cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the loss, damage or delay of a part of the cargo, or of an object

contained therein, affects the value of other packages covered by the same air waybill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

3. a) The courts of the High Contracting Parties which are not authorized under their law to award the costs of the action, including lawyers' fees, shall, in actions to which this Convention applies, have the power to award, in their discretion, to the claimant the whole or part of the costs of the action, including lawyers' fees which the court considers reasonable.

b) The costs of the action including lawyers' fees shall be awarded in accordance with subparagraph a) only if the claimant gives a written notice to the carrier of the amount claimed including the particulars of the calculation of that amount and the carrier does not make, within a period of six months after his receipt of such notice, a written offer of settlement in an amount at least equal to the compensation awarded within the applicable limit. This period will be extended until the time of commencement of the action if that is later.

c) The costs of the action including lawyers' fees shall not be taken into account in applying the limits under this Article.

4. The sums mentioned in francs in this Article and Article 42 shall be deemed to refer to a currency unit consisting of sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into national currencies in round figures. Conversion of the sums into national currencies other than gold shall, in case of judicial proceedings, be made according to the gold value of such currencies at the date of the judgment."

#### Article IX

Article 24 of the Convention shall be deleted and replaced by the following:-

#### "Article 24

1. In the carriage of cargo, any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Convention.

2. In the carriage of passengers and baggage any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and limits of liability set out in this Convention, without prejudice to the question



as to who are the persons who have the right to bring suit and what are their respective rights. Such limits of liability constitute maximum limits and may not be exceeded whatever the circumstances which gave rise to the liability.”

### Article X

Article 25 of the Convention shall be deleted and replaced by the following:-

#### “Article 25

The limit of liability specified in paragraph 2 of Article 22 shall not apply if it is proved that the damage resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result: provided that, in the case of such act or omission of a servant or agent, it is also proved that he was acting within the scope of his employment.”

### Article XI

In Article 25 A of the Convention — paragraphs 1 and 3 shall be deleted and replaced by the following:

“1. If an action is brought against a servant or agent of the carrier arising out of damage to which the Convention relates, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the limits of liability which that carrier himself is entitled to invoke under this Convention.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply to the carriage of cargo if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.”

### Article XII

In Article 28 of the Convention — the present paragraph 2 shall be renumbered as paragraph 3 and a new paragraph 2 shall be inserted as follows:

"2. In respect of damage resulting from the 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 paragraph 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."

### Article XIII

After Article 30 of the Convention, the following Article shall be inserted:

#### "Article 30 A

Nothing in this Convention shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any other person."

### Article XIV

After Article 35 of the Convention, the following Article shall be inserted:

#### "Article 35 A

No provision contained in this Convention shall prevent a State from establishing and operating within its territory a system to supplement the compensation payable to claimants under the Convention in respect of death, or personal injury, of passengers. Such a system shall fulfil the following conditions:

a) it shall not in any circumstances impose upon the carrier, his servants or agents, any liability in addition to that provided under this Convention;

b) it shall not impose upon the carrier any financial or administrative burden other than collecting in that State contributions from passengers if required so to do;

c) it shall not give rise to any discrimination between carriers with regard to the passengers concerned and the benefits available to the said passengers under the system shall be extended to them regardless of the carrier whose services they have used;

d) if a passenger has contributed to the system, any person suffering damage as a consequence of death or personal injury of such passenger shall be entitled to the benefits of the system."

#### Article XV

After Article 41 of the Convention, the following Article shall be inserted:

#### "Article 42

1. Without prejudice to the provisions of Article 41, Conferences of the Parties to the Protocol done at Guatemala City on the eighth March 1971 shall be convened during the fifth and tenth years respectively after the date of entry into force of the said Protocol for the purpose of reviewing the limit established in Article 22, paragraph 1 a) of the Convention as amended by that Protocol.

2. At each of the Conferences mentioned in paragraph 1 of this Article the limit of liability in Article 22 paragraph 1 a) in force at the respective dates of these Conferences shall not be increased by an amount exceeding one hundred and eighty-seven thousand five hundred francs.

3. Subject to paragraph 2 of this Article, unless before the thirty-first December of the fifth and tenth years after the date of entry into force of the Protocol referred to in paragraph 1 of this Article the aforesaid Conferences decide otherwise by a two-thirds majority vote of the Parties present and voting, the limit of liability in Article 22, paragraph 1 a) in force at the respective dates of these Conferences shall on those dates be increased by one hundred and eighty-seven thousand five hundred francs.

4. The applicable limit shall be that which, in accordance with the preceding paragraphs, is in effect on the date of the event which caused the death or personal injury of the passenger."

CHAPTER II  
SCOPE OF APPLICATION  
OF THE CONVENTION  
AS AMENDED

Article XVI

The Warsaw Convention as amended at The Hague in 1955 and by this Protocol shall apply to international carriage as defined in Article 1 of the Convention, provided that the places of departure and destination referred to in that Article are situated either in the territories of two Parties to this Protocol or within the territory of a single Party to this Protocol with an agreed stopping place in the territory of another State.

CHAPTER III  
FINAL CLAUSES

Article XVII

As between the Parties to this Protocol, the Warsaw Convention as amended at The Hague in 1955 and this Protocol shall be read and interpreted together as one single instrument and shall be known as the *Warsaw Convention as amended at The Hague, 1955, and at Guatemala City, 1971*.

Article XVIII

Until the date on which this Protocol enters into force in accordance with the provisions of Article XX, it shall remain open for signature by all States Members of the United Nations or of any of the Specialized Agencies or of the International Atomic Energy Agency or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to this Protocol.

Article XIX

1. This Protocol shall be subject to ratification by the signatory States.
2. Ratification of this Protocol by any State which is not a Party to the Warsaw Convention or by any State which is not a Party to the Warsaw Convention as amended at The Hague, 1955, shall have the effect of accession to the *Warsaw Convention as amended at the Hague, 1955, and at Guatemala City, 1971*.

3. The instruments of ratification shall be deposited with the International Civil Aviation Organization.

#### Article XX

1. This Protocol shall enter into force on the ninetieth day after the deposit of the thirtieth instrument of ratification on the condition, however, that the total international scheduled air traffic, expressed in passenger-kilometers, according to the statistics for the year 1970 published by the International Civil Aviation Organization, of the airlines of five States which have ratified this Protocol, represents at least 40% of the total international scheduled air traffic of the airlines of the member States of the International Civil Aviation Organization in that year. If, at the time of deposit of the thirtieth instrument of ratification, this condition has not been fulfilled, the Protocol shall not come into force until the ninetieth day after this condition shall have been satisfied. This Protocol shall come into force for each State ratifying after the deposit of the last instrument of ratification necessary for entry into force of this Protocol on the ninetieth day after the deposit of its instrument of ratification.

2. As soon as this Protocol comes into force it shall be registered with the United Nations by the International Civil Aviation Organization.

#### Article XXI

1. After the entry into force of this Protocol it shall be open for accession by any State referred to in Article XVIII.

2. Accession to this Protocol by any State which is not a Party to the Warsaw Convention or by any State which is not a Party to the Warsaw Convention as amended at The Hague, 1955, shall have the effect of accession to the *Warsaw Convention as amended at The Hague, 1955, and at Guatemala City, 1971*.

3. Accession shall be effected by the deposit of an instrument of accession with the International Civil Aviation Organization and shall take effect on the ninetieth day after the deposit.

#### Article XXII

1. Any Party to this Protocol may denounce the Protocol by notification addressed to the International Civil Aviation Organization.

2. Denunciation shall take effect six months after the date of receipt by the International Civil Aviation Organization of the notification of denunciation.

3. As between the Parties to this Protocol, denunciation by any of them of the Warsaw Convention in accordance with Article 39 thereof or of the Hague Protocol in accordance with Article XXIV thereof shall not be construed in any way as a denunciation of the *Warsaw Convention as amended at The Hague, 1955, and at Guatemala City, 1971*.

### Article XXIII

1. Only the following reservations may be made to this Protocol:

a) a State whose courts are not authorized under its law to award the costs of the action including lawyers' fees may at any time by a notification addressed to the International Civil Aviation Organization declare that Article 22, paragraph 3 a) shall not apply to its courts; and

b) a State may at any time declare by a notification addressed to the International Civil Aviation Organization that the *Warsaw Convention as amended at The Hague 1955, and at Guatemala City, 1971* shall not apply to the carriage of persons, baggage and cargo for its military authorities on aircraft, registered in that State, the whole capacity of which has been reserved by or on behalf of such authorities.

2. Any State having made a reservation in accordance with the preceding paragraph may at any time withdraw such reservation by notification to the International Civil Aviation Organization.

### Article XXIV

The International Civil Aviation Organization shall promptly inform all signatory or acceding States of the date of each signature, the date of deposit of each instrument of ratification or accession, the date of entry into force of this Protocol, and other relevant information.

### Article XXV

As between the Parties to this Protocol which are also Parties to the Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by

a Person Other than the Contracting Carrier, signed at Guadalajara on 18 September 1961 (hereinafter referred to as the "Guadalajara Convention") any reference to the "Warsaw Convention" contained in the Guadalajara Convention shall include reference to the *Warsaw Convention as amended at The Hague, 1955, and at Guatemala City, 1971*, in cases where the carriage under the agreement referred to in Article 1, paragraph b) of the Guadalajara Convention is governed by this Protocol.

#### Article XXVI

This Protocol shall remain open, until 30 September 1971, for signature by any State referred to in Article XVIII, at the Ministry of External Relations of the Republic of Guatemala and thereafter, until it enters into force in accordance with Article XX, at the International Civil Aviation Organization. The Government of the Republic of Guatemala shall promptly inform the International Civil Aviation Organization of any signature and the date thereof during the time that the Protocol shall be open for signature in Guatemala.

The Guatemala City Protocol and its impact on Warsaw were discussed at the VIII Inter-American Aviation Law Conference sponsored by the Law Schools of the University of Miami and the University of Panama, and held at Miami in April 1971. Mr. L. H. Wilcox, Senior Vice President of Parker & Company International, Inc. (Interocean Group) made the following comments in his prepared speech.

A question of great interest today is — what is the potential effect of the Protocol drawn at Guatemala City on an airline insurance program?

First of all, let us review the major changes:

- (1) The limit is increased to \$100,000 in comparison to \$8,300 under the Warsaw Convention; \$16,600 under the Hague Protocol, or \$75,000 under the Montreal Agreement.
- (2) The provable damages up to \$100,000 for death or personal injury to passengers will be absolute. They have gone to an extreme to insure that this maximum is not surpassed by using the words — "Such limits of liability constitute maximum limits and may not be exceeded whatever the circumstances." There is a provision to increase the limit by \$12,500 five years after the effective date and by another \$12,500 ten years after the effective date.

- (3) **Baggage and Cargo** are now treated separately. Under the original Convention the same limitation of liability, namely \$16.58 per Kilo, applied to Cargo and Checked Baggage; Personal Effects remaining with the passenger were treated separately.

#### *Baggage*

The new Protocol has a combined limit equal to \$1,000 per passenger for both "Checked" and "Unchecked" baggage. It should be noted that there is no recognition in this Protocol for a special declaration for value to increase the airlines' liability in consideration of an additional charge.

#### *Air Cargo*

The Carrier's Liability for air cargo remains unchanged at \$16.58 per Kilo.

- (4) All defenses are waived in death or injury cases except "the carrier is not liable if the death or injury resulted solely from the state of health of the passenger."

Claims arising out of passenger and baggage delays, also loss or destruction of cargo, may be defended on the grounds that the carrier has "taken all necessary measures to avoid the damage or that it was impossible . . . to take such measures."

All claims are subject to the comparative negligence doctrine.

There are numerous other changes which, we are gratified to see, are fair to carriers and claimants alike. There are fewer technicalities that the carrier must comply with—thus saving certain administrative costs.

The fact that notices of limitations will not be required will eliminate the necessity of individual ticketing of all passengers on charter flights. This should be a welcome relief to the traffic personnel, particularly when dealing with groups of several hundred.

A Signatory state may independently establish a system "within its territory" whereby the limits for death or personal injury to passengers may be supplemented. There are no specific guidelines as to the form such a system should take. There are conditions stated which protect the carriers from discrimination and financial or administrative burden. The only requirement is that the carrier collect the "contributions" from the passengers.



After ratification it is certain that the U.S. will establish such a system. Carriers have been invited to offer suggestions on how such a system should operate. The U.S. Department of Transport will consider the suggestions before the system is established.

The problem areas are numerous in this connection, including the interpretation of the words "within its territory." Would this prevent a passenger from participating in the system if he is outside the territory of the State establishing the system?

— Will the supplementation take the form of accident insurance or merely increase the limit of the protocol regarding provable damages?

— If available to passengers originating at foreign ports— what would be the mechanics for a carrier whose operations are confined to a local area such as the Southern Part of South America?

— Assuming this additional protection follows the passenger for the entire trip— how will changes in original ticketing, made en route by other airlines, be handled?

— Will the system be underwritten by individual companies, pools or governments?

Before looking at influences on costs— please remember that:

This protocol is an amendment to existing international conventions and, like each of the previous conventions and the Montreal Agreement, it will apply only to certain international passengers. The application of each depends upon the ticketing of each and every passenger. Various passengers on the same flight can be subject to different laws.

— The Warsaw convention limit of \$8,300 applies only to those international passengers whose first point of origin and final point of destination, shown in the ticket contract, are both within countries which have ratified the Convention.

— The Hague Protocol increased the limit from \$8,300 to \$16,600 for those passengers coming within the scope of the Warsaw Convention provided that the first point of origin and final point of destination are both within countries which have also ratified the Hague Protocol.

— These two are multi-lateral agreements among nations. The Montreal Agreement is really numerous separate agreements between the U.S. CAB and each of the adhering airlines to contractually increase the limit to passengers coming within the scope of the Warsaw Con-

vention to \$75,000 provided that:

1. There is a scheduled stopping place in the United States of America, and
2. The Carrier has signed the Montreal Agreement. (CAB 18-900).

Remember that the basic prerequisite is that the passenger must first come within the scope of the Warsaw Convention.

— The Guatemalan Protocol, unlike the Montreal Agreement, will be a multi-lateral agreement among nations to change the terms of the Warsaw Convention as amended by the Hague Protocol. The amendments of this protocol, as referred to earlier, will apply only to those Warsaw Convention passengers provided their first point of origin and final point of destination are within countries that will have ratified the new protocol.

Passengers not coming within any of these laws, are subject to the applicable local laws of each country. One can still have 5, 10 or more sets of laws and limits applicable to different passengers on the same flight.

At the present time the rates for each airline take into account the percentage of passengers and/or passenger miles subject to the \$75,000 Montreal limit versus those subject to lower Convention or local limits. The increase from \$75,000 to \$100,000 is of little consequence — even 34 passengers at \$75,000 each would use up a policy catastrophe passenger limit of \$2,500,000. The big difference will be the increase in the percentage of passengers subject to a higher limit, i.e., those where the limit will increase from \$8,300 or \$16,600 to \$100,000.

If all of the present adherents of the Warsaw and/or Hague were to ratify the new Protocol, all Warsaw Convention passengers will become subject to the \$100,000 limit. Airlines which now only have perhaps 30% or 40% of its passengers subject to the Montreal Agreement could have 90% or more of future passengers subject to \$100,000. — This will be the test.

Naturally, there will be extremes. An airline serving only a few countries in Central or South America (without routes to the United States) could jump from a Zero percent to 70 or 80%. On the other hand, carriers — such as the Mexican airlines — that now have possibly 80% or more of their passengers subject to \$75,000 should feel a minimal effect.

The various layers of liability insurance, i.e., the primary and each excess level, will be affected differently:

In most cases there should not be a great effect — if any at all — on the primary levels up to two million or two and a half million dollars depending upon the capacity of the aircraft versus the policy catastrophe limit.

The greatest effect will be on the first ten to twenty million dollars of excess liability — again, depending upon the capacity of the aircraft. It is this level that will be hit the hardest and therefore we can anticipate increases in this area.

There should be favorable rate considerations with respect to higher limits of excess liability. As the exposure above 20 million dollars would be confined to third party liability (unless one is operating a Jumbo aircraft).

Hopefully, the increases and the decreases will nearly balance out.

As you can see, rates are promulgated and revised based on applicable laws and traffic statistics which are the measures of exposure. I therefore urge all airlines to maintain complete statistical information by routes with respect to passengers and miles flown and, to the extent possible, ticketing, so that when and if this Protocol becomes effective their insurance advisors and Underwriters can make a true analysis of the effect of this new International Convention and re-rate the policies on a fair and equitable basis.

I am very concerned about something which I feel will minimize the outward benefits of this Protocol from an insurance standpoint and I would like to share it with you. The original Warsaw Convention and subsequent changes were intended to protect the airline industry, but they appear to have been written to protect THE CARRIER, i.e., the operator of the route. It does not protect other airlines that may be participating in the operation of the route with THE CARRIER.

I am referring to airlines which have entered into contracts with THE CARRIER with respect to interchange of aircraft, lease of aircraft, servicing, ground handling and lease or pooling of components. Under these types of contracts THE CARRIER, namely, the user of the equipment or the receiver of the services, agrees to hold harmless and indemnify the owner of such equipment, or the provider of said services. The liability of such owners or providers is unlimited as they are not considered as a carrier within the terms of the Convention or the Protocols.

While the new Protocol sets an absolute liability for THE CARRIER for its direct liability to its passengers, the same carrier must continue to provide for unlimited liability for those same passengers under his

insurance program for those other airlines which he has agreed to hold harmless and indemnify for claims arising out of their participation.

Over the last number of years, unfortunately there have been many cases where the plaintiffs' lawyers have been able to obtain awards higher than the specified limits due to various technicalities. This approach should not be possible once the absolute liability has been imposed — therefore, lawyers will exert maximum effort to pin the blame on those who will not be protected by the absolute liability.

Unless the term "carrier" can be more broadly defined to include other airlines assisting the carrier in the operation of its routes, these contractual commitments will lessen the advantageous effect of absolute liability and such is bound to be reflected in the rating . . .!"

### MEXICO-CUBA BILATERAL

After announcing nearly a year ago that it was cancelling its air transport agreement with Cuba, the Mexican Government announced in August 1971, that a new air treaty had been negotiated between the two countries. The agreement provides for the use of jet aircraft on the Mexico City-Havana route and differs from the previous agreement on a few technical matters. No mention is made in the treaty of aerial hijacking.

### CHARTERS

In recent years charter operations of the non-scheduled supplemental carriers have taken an increasing share of passenger traffic, particularly on flights over the North Atlantic. Officials of the International Air Transport Association have urged stricter controls on charter operations and a cessation of charter licenses in order to stop the trend. But member airlines have exhibited a desire to compete with the charter operations.

BOAC has announced that if IATA does not lower transatlantic fares at a fare conference to be held in Miami this September, that airline will begin its own charter operations through a subsidiary. And at the recent IATA meeting held in Montreal, Trans World Airways proposed various reductions in fares charged by the scheduled airlines on transatlantic flights in an effort to compete with charter operations. Under the TWA proposals, reduced rates would be given to families and persons purchasing tickets more than 90 days in advance. Also proposed: a \$200 roundtrip ticket from New York to London for those aged to 12 to 21.

## SST

Hopes for the development of two prototype supersonic transports were revived briefly. Following the original vote in Congress which terminated the project, the House voted to reinstate SST funding. Support was obtained by trading support for the Lockheed loan guarantee for support for the SST.

The victory was short-lived, however. Following an announcement by Boeing officials that it would cost \$500 million to \$1 billion to reinstate the program, the Senate quickly voted down the funding. Shortly after the second Senate vote, Fairchild Industries Inc. announced that it had terminated its Department of Transportation sponsored search to secure private financing for the SST. American development of the SST has for the time being come to an end.

Finally, the Senate passed and sent to the White House a bill allocating \$97.3 million for SST termination costs. \$85.3 million of this amount will go to Boeing Company and General Electric Company, the principal contractors for the airframe and engine respectively. The rest of the \$97.3 million will go to the DOT to cover administrative costs of cancelling the program. The Senate bill significantly does not in any way reimburse the \$58.5 million advanced by the various airlines.

Shortly after Congress decided to terminate development of an American SST, the U.S. State Department rejected a Soviet proposal for a bilateral air-worthiness agreement which would have allowed the Russian-made SST to be sold here. The official reasons for the rejection were that there is no market for U.S. planes in the Soviet Union and that if Soviet planes were sold in the United States, domestic aircraft could not compete because of the lower cost of the Soviet planes.

## AIR FARES

Because of the financial difficulties of domestic carriers, the CAB has made major concessions in the field of air fares. Effective May 7 the CAB granted domestic carriers a 6% increase in domestic coach fares. And if the carriers are successful in attaining a load factor of 55%, the CAB has tentatively agreed to a 9% increase. A significant aspect of the 6% figure is that it is only a ceiling on fare increases. Carriers are free to raise fares anywhere up to 6%, so there is a possibility of price competition not present before.

The CAB has also adopted a liberal attitude in regard to special and promotional fares. Recently the Department of Transportation asked

the CAB to eliminate special fares for families and students, arguing that such fares were "unreasonably low and discriminatory." A CAB examiner concluded, however, that family, student, and excursion fares complied with CAB standards and do not violate the Federal Aviation Act.

In keeping with the liberal attitude toward special fares, the CAB recently allowed Continental Air Lines to offer a \$9.26 promotional roundtrip fare in 25 markets. In an attempt to lure non-flyers, Eastern Airlines has filed various new promotional fares for CAB approval. Included among the proposals were special excursion and youth fares, reduced rates for those over 65 years of age, and a special family roundtrip fare of \$269 from various major east coast cities to Florida.

Further, since May 15 the CAB has allowed seven airlines a temporary increase in air fares on flights between the U.S. mainland and Hawaii. The airlines had all been losing money on the routes and the CAB allowed the temporary fare increase pending formal investigation.

## CARGO RATES

In addition to the increase in passenger fares, the CAB also approved an increase in air freight rates. Domestic northbound freight will be subject to an increase of 10% in air freight rates, while southbound cargo will incur a 16% fare increase.

International cargo rates have also been increased. IATA concluded its Composite Cargo Conference in Singapore, June 11. The new rate structure generally shows selective rate increases of about 5% but no major across-the-board increases similar to those approved for U.S. domestic cargo.

## LOCKHEED

Unable to get further financing for its troubled L1011 Tri-Star Airbus, Lockheed turned to the government for help. Lockheed maintained that without further financing to cover increased production costs, the program would be forced to fold and an estimated \$1.4 billion in previous investments would be lost. This figure included early investments by Lockheed itself, \$400 million from Lockheed's 24 banks, \$270 million from airline customers and \$350 million by L1011 subcontractors. Lockheed further maintained that if the Tri-Star program were forced to fold, 25,000 Lockheed employees and 35,000 employees of subcontractors would be out of work.

Finally the British Government indicated that it would invest an estimated \$290 million to continue operation of the nationalized Rolls

Royce, Ltd. producing the RB211 engines for the Tri-Star only if the U.S. government guaranteed further loans for Lockheed.

In response the Nixon administration asked Congress to guarantee a \$250 million loan to keep the Tri-Star program going. Following submission to Congress, that body attempted to broaden the help provided to encompass various other industries which supply essential services and are in financial difficulty. Senate Minority Whip Robert P. Griffin opposed any government guarantee to a particular corporation and suggested the creation of a body similar to the post-depression Reconstruction Finance Corporation to give aid to businesses involving the national interest. While the proposal was before Congress, the principal domestic customers for the Tri-Star — Delta, Eastern, and TWA — stipulated that if Congress guaranteed further loans for Lockheed they would buy the Airbus. In the end, the bill enabling the federal government to guarantee further loans for Lockheed was approved by Congress.

### C5A

The government and Lockheed negotiated an agreement regarding the cost over-runs in the production of the jet transport. The Pentagon announced that the final cost of 81 C5A's will be \$4.5 billion. The original contract had called for 120 of the aircraft at a total cost of \$3.4 billion.

The government has agreed to absorb all but \$100 million of the over-runs. Under terms of the settlement, Lockheed must begin to repay this \$100 million in 1974 in \$10 million yearly installments.

### SERVICE REDUCTION

As a further means of improving the aviation industry's financial situation the CAB has authorized airlines to consider capacity reduction if four criteria are met. These include substantial size of the market, service by three or more carriers, a low load factor, and the prospect of continuing excess capacity. Pursuant to this CAB authorization, United, American, and TWA (the three airlines carrying the bulk of U.S. mainland traffic) have tentatively agreed to reduce long distance routes by 38%. The agreement, which will go into effect October 1, 1971 if approved by the CAB, is designed to alleviate excessive service and unwarranted cost, and continues a trend toward service reduction in evidence throughout the current year. As early as April, 1971, the number of domestic flights offered by all airlines was 711 below the total offered one year before.

## NEW ROUTES

Despite service reduction within the continental United States, many American carriers are trying to get new international routes. United Air Lines has applied to the CAB for permission to serve three cities in mainland China. United made the application following the Nixon administration's announcement of its intent to normalize trade and commercial relations with Communist China.

Since June 5 Pan American has been servicing Madrid. The stop at the Spanish capital was added to the twice-weekly roundtrips between Miami and Rome.

Under the terms of a U.S.-Mexico Bilateral Air Treaty, National Air Lines has applied to the CAB for a daily route between Tampa, Florida, and Mexico City.

The Bahamian Air Transport Licensing Authority has authorized Northeast Airlines to expand service between Nassau and Freeport in the Bahamas.

This expansion of international service appears to have the approval of the CAB. Following Australia's refusal to allow American Airlines to serve Melbourne and the recent reduction in the number of flights which Pan American World Airways can make to Australia, the CAB has indicated that it may restrict the coverage of Australia's Qantas Airways in retaliation.

## TECHNICAL AID

The Canadian Government has agreed to provide G\$2 million worth of equipment to the Guyana Government to be used in developing the country's civil aviation. This is part of more than G\$2 million which the Canadian Government is providing in loans and grants under its Technical Assistance Programme for civil aviation in Guyana.

## V IBEROAMERICAN AIR AND SPACE LAW CONFERENCE

The V Iberoamerican Air and Space Law Conference, sponsored by the Iberoamerican Air and Space Law Institute, the University of Carabobo, and the Venezuelan Society of Air and Space Law, was held in Valencia, Venezuela June 1-3, 1971. A large number of delegates from Spain, Latin America and the United States traveled to Valencia on the above dates to hear distinguished jurists discuss: An International Statute Relating to the Aircraft Commander; Cooperation Between Airlines and Travel Agents;



Satellite Communications; the Guatemalan Protocol; and the Hague Diplomatic Conference, among others.

#### IV LATIN AMERICAN CONFERENCE ON AIR AND SPACE LAW

The IV Latin American Conference on Air and Space Law was scheduled to meet in Bogotá, Colombia, September 13 to 16, 1971. The Conference, organized by the Latin American Association of Air and Space Law (ALADA) was sponsored by the School of Law of the *Colegio Mayor de Nuestra Señora del Rosario* and by the Colombian National Air Lines (AVIANCA). Leading personalities in Latin America and Spain were scheduled to participate. Under the Chairmanship of Mariscal Hugo Da Cunha Machado of Brazil, the following were some of the topics on the Conference's agenda:

1. Revision of the Warsaw Convention
2. Latin American Air Policy
3. Space Law
4. Analysis of the Draft American Air Code