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Aviation

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AVIATION REPORT*
SUZANNE C. PINKERTON**

AIR TRANSPORTATION CONFERENCE

The University of Miami will sponsor an Air Transportation Conference in Miami Beach, April 5-7, 1978 as a sequel to its highly successful Inter-American Aviation Law Conferences which began in 1964. After a period of years in which the Conferences were held outside the United States, (specifically in Argentina, Costa Rica, Guatemala, Mexico and Panama), the Conferences return to Miami under an expanded sponsorship and broadened scope. The new approach reflects recognition by the organizers that international air transportation has, in addition to legal elements, elements which call for recognition whenever leaders in the field of aviation meet to discuss the past, present and future of international air transportation.

The Conference topics and lecturers follow:

United States International Air Transport Policy

Honorable Richard J. O'Melia
 Vice Chairman, U.S. Civil Aeronautics Board

Airline Issues and Trends: Latin America

Manuel Sosa de la Vega
 President, Mexicana de Aviación

Airline Insurance

Leroy H. Wilcox
 Executive Vice President
 Parker Aviation Division,
 Frank B. Hall & Co., Inc.

Recent Legal Developments in the Air Transport Industry

Robert D. Papkin
 Attorney, Washington, D.C.

Airline Operating Permits in Latin America

Mario O. Folchi
 Attorney and Professor, Buenos Aires

Foreign Air Carriers at the U.S. Civil Aeronautics Board

Donald Farmer
 Director, Bureau of International Affairs
 U.S. Civil Aeronautics Board

*Treaty information compiled from Department of State Bulletins (1977-1978).

**J.D. candidate, University of Miami School of Law. Associate Editor, Lawyer of the Americas.

Airline Equipment and Financing

Clarence F. Wilde

Vice President — Sales and Marketing

Boeing Commercial Airplane Company

Air Cargo: Recent Developments

Benjamin Atkins

Vice President — Cargo Sales and Advertising

Pan American World Airways, Inc.

Terrorism in the Air: The Role of the United Nations

Mario Arnello Romo

General Counsel — LAN Chile,

and Chile's Representative to the General Assembly,

United Nations

The University will be represented by the Ryder Program in Transportation, the School of Continuing Studies and the Institute for Inter-American Legal Studies. Additional co-sponsors are the Inter-American Bar Association, the Inter-American Institute of International Legal Studies, and the Latin American Association of Air and Space Law.

Information concerning the Conference may be obtained from Professor Rafael C. Benitez, University of Miami Law School, Coral Gables, Fla. 33124.

RECENT CASES

Warsaw v. Trans World Airlines, Inc., 46 U.S.L.W. 2327 (D. Pa. 1977). A passenger who suffers a permanent loss of hearing as a result of cabin repressurization of a jet as it makes its landing descent in a normal and routine fashion may not recover for an "accident" under the provisions of Article 17 of the Warsaw Convention, as modified by the Montreal Agreement. The court commented: "If the event on board an aircraft is an ordinary, expected and usual occurrence, it cannot be termed an accident."

Ward v. Maryland, 46 U.S.L.W. 2013 (Md. Ct. App. 1977), *petition for cert. filed*, 46 U.S.L.W. 3263 (U.S. Sept. 22, 1977) (No. 77-458). An airplane pilot was found guilty under a Maryland statute which made operation of an aircraft in a careless or reckless manner or while under the influence of intoxicating liquor, a criminal offense. Ward was fined \$500 and sentenced to 90 days imprisonment. The prison sentence was suspended on the condition that he refrain from operating an aircraft within the state for one year. In a civil proceeding the Federal Aviation Administration determined that Ward had violated seven FAA regulations in the operation of his aircraft, and ordered his airman certificate revoked. The FAA subsequently granted permission to reissue the license six months after it had been suspended. The

Maryland Court of Appeals found that the state statute imposing criminal sanctions was not preempted by the Federal Aviation Act of 1958 which imposes civil penalties for similar misconduct.

British Airways Board v. Port Authority of New York and New Jersey, 46 U.S.L.W. 2175 (2d Cir. 1977). The Second Circuit affirmed a lower court finding that the failure of the Port Authority of New York and New Jersey to expedite the establishment of fair, even-handed and non-discriminatory noise abatement regulations warranted a court order dissolving the Authority's ban on federally approved, limited commercial operation of supersonic aircraft at JFK Airport.¹

United States v. Fannon, 46 U.S.L.W. 2049 (9th Cir. 1977). The Air Transportation Security Act of 1974, permits delegation of the governmental function of protecting air transport from criminal violence to private carriers. The Ninth Circuit, in a 1977 decision, found fourth amendment standards of reasonableness applicable to package searches conducted by airline employees.

UNITED STATES TREATY INFORMATION

Convention on registration of objects launched into outer space. Opened for signature at New York, January 14, 1975. Entered into force: September 15, 1976. TIAS 8480. Accession deposited: Uruguay, August 18, 1977.

Protocol on the authentic quadrilingual text of the convention on international civil aviation (Chicago 1944) (TIAS 1591), with annex. Done at Montreal, September 30, 1977. Enters into force on the 30th day after 12 states have signed *without reservation* as to acceptance or have accepted the protocol and after entry into force of the amendment to the convention which provides for the addition of Russian as an authentic language of the convention.²

Protocol on the authentic trilingual text of the convention on international civil aviation (Chicago 1944) (TIAS 1591), with annex. Done at Buenos Aires, September 24, 1968. Entered into force: October 24, 1968. TIAS 6605. Acceptance deposited: Jamaica, October 5, 1977.

1. See, 10 Law. Am. 233 (1978).

2. Signatures *without* reservation as to acceptance: Argentina, Bulgaria, Czechoslovakia, Denmark, Ethiopia, France, Greece, India, Democratic People's Republic of Korea, Norway, Pakistan, Poland, Romania, Sweden, Union of Soviet Socialist Republics, September 30, 1977; Tunisia, November 9, 1977.

Signatures *with* reservation as to acceptance: Brazil, Chile, Colombia, Ecuador, Finland, Guatemala, Hungary, Israel, Mauritania, Mexico, Portugal, Senegal, Switzerland, United Kingdom, United States, Venezuela, Yugoslavia, September 30, 1977; Madagascar, October 5, 1977.

Protocol relating to an amendment to the convention on international civil aviation (TIAS 1591). Done at Montreal, October 16, 1974. Not in force. Ratification deposited: United States, October 19, 1977.

BILATERAL TREATIES WITH THE UNITED STATES

Argentina

Agreement relating to air transport services. Effected by exchange of notes at Buenos Aires, September 22, 1977. Entered into force: September 22, 1977.

Canada

Agreement extending the agreement of October 19 and November 10, 1970, as extended, concerning a cooperative project to design, develop and test an aircraft "Augmentor Wing System." Effected by exchange of notes at Ottawa, May 31 and July 18, 1977.

United Kingdom

Agreement concerning air services, with annexes and exchange of letters. Signed at Bermuda, July 23, 1977. Entered into force: July 23, 1977.

Agreement modifying the air services agreement of July 23, 1977 (TIAS 8641) to permit experimental implementation of low-cost fares. Effected by exchange of letters at Washington, September 19 and 23, 1977.

PROTOCOL ON THE AUTHENTIC QUADRILINGUAL TEXT OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION

The Protocol on the Authentic Quadrilingual Text of the Convention on International Civil Aviation (*Convention*) was opened for signature in Montreal on September 30, 1977.³ The International Conference on the Authentic Russian Text of the Convention was held in Montreal in conjunction with the International Civil Aviation Organization's (ICAO) 22nd Assembly. The Conference, in addition to adopting the Protocol, also adopted the text and amendments to the Convention which were annexed to the Protocol.⁴

The Convention, which set up the ICAO, was originally formulated in English at the International Civil Aviation Conference which was held in Chicago in 1944. Opened for signature on December 7, 1944, the Convention did not enter into force until April 4, 1947, the 30th day after deposit of the twenty-sixth instrument of ratification or adherence.⁵ The last paragraph of the Convention provided that a text of the Convention, drawn

3. 77 Dep't State Bull. 756 (1977).

4. For signature states see, note 1 *supra*.

5. 61 Stat. (2) 1180; T.I.A.S. No. 1591.

up in the English, French and Spanish languages, each of which was to be of equal authenticity, was to be open for signature at Washington D.C.

As only the English version of the text had been formulated by the time the Convention entered into force, a working group was established by the ICAO Council to prepare the French and Spanish language versions of the Convention. Completed in 1967, the two new versions were circulated by the Council among the ICAO member states for review and comment. As a result of these considerations, the Council invited the ICAO's member states to participate in an International Conference on the Authoritative Texts of the Convention to be held in conjunction with ICAO's 16th Assembly in Buenos Aires in September 1968. The Conference adopted a Protocol on the Authentic Trilingual Text of the Convention to which the French and Spanish versions of the text were annexed. The Protocol, done at Buenos Aires on September 24, 1968, provided that it would remain open for signature at Buenos Aires until September 27, 1968 and thereafter at Washington D.C. Member states of the ICAO could become parties to the Protocol in one of three ways: signature without reservation as to acceptance, signature with reservation as to acceptance followed by acceptance, or acceptance. Acceptance was effected by the deposit of an instrument of acceptance with the Government of the United States. The Protocol on the Trilingual Text came into force October 24, 1968, the 30th day after twelve states either signed the Protocol without reservation or accepted it.⁶

Unlike the English, French and Spanish texts which were provided for when the Convention was drawn up in 1944, it was necessary for the ICAO Council to pass an amendment providing for the addition of Russian as an authentic language of the Convention. If the amendment is accepted, the Protocol on the Quadrilingual Text of the Convention will enter into force on the 30th day after twelve states have signed without reservation or have accepted it.

INTERNATIONAL CIVIL AVIATION ORGANIZATION — XXII ASSEMBLY

The International Civil Aviation Organization (ICAO) held its 22nd Assembly in Montreal this past September. The Assembly, which included some 700 Delegates from ICAO's 141 member states, adopted several key resolutions. Among the resolutions adopted were:

Resolution A22-14. In an effort to ensure a high level of safety, the Assembly requested that all governments associated with the development of SST (Super Sonic Transport) civil aircraft ensure, before such aircraft are put into commercial use, that said aircraft are capable of operating at a safety level comparable to that of commercial jet aircraft now in use. In addition, the Assembly recommended that supersonic aircraft be designed so as to re-

6. 19 U.S.T. 7693; T.I.A.S. No. 6605; 740 U.N.T.S. 21.

quire a minimum amount of special ground services and to fit the existing pattern of aircraft moving in the air and on the ground at the time. In regard to noise levels, the Assembly suggested that those standards applicable to subsonic jet aircraft be considered as guiding principles until Standards and Recommended Practices for the noise certification of supersonic civil aircraft have been adopted by the ICAO.

Resolution A22-16. The Assembly requested those member states which have not previously done so, to become parties to the Convention for the Suppression of Unlawful Seizure of Aircraft (The Hague, 1970) and to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 1971). The Assembly also urged its members to take adequate measures relating to the extradition and punishment of persons involved in committing acts of unlawful seizure or terrorizing of civil aircraft.

Resolution A22-17. In a resolution aimed at preventing future acts of terrorism and seizures of aircraft, the Assembly urged its member states to implement existing security measures and to ensure the provision of facilities for inspection and screening of passengers and their hand luggage on international flights.

Resolution A22-23. The Assembly, based on the recommendations of the Economic Commission, approved both of the resolutions adopted by the Special Air Transport Conference held in April 1977. The resolutions called for (1) strict enforcement of both scheduled and non-scheduled airline tariffs and for the imposition of deterrent penalties for violations of such tariffs, and (2) for greater co-operation and exchange of information among governments, various carrier enforcement agencies and the ICAO regarding tariff violations and the publicizing of such malpractices.

Resolution A22-28. The Assembly adopted a proposal by the Legal Commission regarding the facilitation of arrangements for lease, charter and the interchange of aircraft, particularly with reference to aircraft without crew.

In addition to adopting the resolutions summarized above, the Assembly approved a revised work program for the ICAO in the legal field. It also recommended that all Contracting States ratify the amendment to the Final Clause of the Chicago Convention approved by the Assembly, to provide for the authentic text of the Convention in the Russian language.

Sixty-two Delegates and Observers spoke at length on the serious problems currently being faced by nearly all less developed countries. Among the problems being experienced by these countries are: (1) The rising cost of providing the facilities necessary to support the variety of currently operating aircraft; (2) the difficulty in securing unrestricted reciprocal traffic rights with the more highly developed aviation nations, and (3) the design of today's commercial aircraft which too often provides a capacity far exceeding the demand in some nations.⁷

7. For highlights from the speeches see, ICAO Bull., Nov., 1977 at 18, 28.