University of Miami Law School
Institutional Repository

University of Miami Inter-American Law Review

10-1-1973

Aviation

S. H. Preece

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

Recommended Citation
S. H. Preece, *Aviation*, 5 U. Miami Inter-Am. L. Rev. 646 (1973)
Available at: http://repository.law.miami.edu/umialr/vol5/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.

AVIATION

SETH H. PREECE*
Staff Vice President
Government Affairs
Pan American World Airways

AIR CARRIER REORGANIZATION INVESTIGATION

In the Civil Aeronautics Board Air Carrier Reorganization Investigation, the two government agency parties to the proceeding, the Departments of Justice and Transportation, have filed briefs supporting carrier rights to diversify.

In its brief, the Justice Department said: "It is the opinion of the Department of Justice that the record in this case does not reveal a substantial basis for denying air carriers the possible advantages of diversification. Furthermore, there is scant basis in the record to support a conclusion that diversification through a holding company form is inconsistent with the public interest.

The Board's interest in the continued well-being of the air carriers and their continued ability to perform their certificate responsibilities to the public, as well as its interest in insuring that the provisions of the nation's antitrust laws are not violated, will be adequately safeguarded if the carriers are required to file statements of policy concerning intercorporate transactions, and required to file monthly reports detailing all of the transactions carried out."

Justice Department's belief that air carriers should be allowed to diversify was reiterated by DOT's statement that "significant potential benefits to the airline industry are associated with diversification." DOT continued by stating it believes that "such benefits can be achieved whether diversification occurs through the holding company structure or directly by establishment of divisions or subsidiaries." Benefits of diversification

*The contributions of the *Lawyer's* Staff to this report are acknowledged.

"include lower operating costs, improved access to capital markets, lower costs of capital, and certain real economies resulting from production synergy, as well as pecuniary economies resulting from joint purchases," said DOT. In order to prevent "potential problems" which could adversely affect the air carrier functions of a diversified company, DOT suggested that the Board could establish reporting requirements to keep track of all intercorporate transactions.

DISCRIMINATION AGAINST U.S. CARRIERS

On August 13, 1973, the Civil Aeronautics Board made public certain unclassified sections of a Report on Restrictive Practices Used by Foreign Countries to Favor Their National Air Carriers. Generally, it cited questionable practices such as:

(1) Marketing and sales—The governments of several countries not only reserve the official travel associated with the basic or traditional functions of government, but they extend the reservation to include the officials and employees of the state-owned or controlled commercial and industrial enterprises.

(2) International currency regulations—The currency regulations of some countries were found to place U.S. carriers at a great disadvantage in doing local business. In the concerned countries, local currency cannot be accepted in the sale of transportation unless such sale is or has been approved by government authorities.

(3) Business and other taxes—The uneven application of national taxes causes problems to carriers and travellers.

(4) Airport facilities and services—U.S. carriers, in a number of countries, are obliged to utilize the services of a designated agency, usually owned and operated by the national airline, to meet their ground handling needs.

(5) User charges—U.S. carriers in at least one instance pays 14 times the landing fee charged at the Los Angeles International Airport for the same or comparable aircraft type and weight.

CAB Chairman Robert Timm, at a hearing of the House Appropriations Sub-Committee, has stated that the Board's new power will be used in countering such discriminatory practices, referring to the Board's new

authority to suspend and investigate foreign carrier traffic, to restrict flight operations and to require prior approval of all flights. Chairman Timm said, "The Board has used each of these powers and the world aviation community at large now understands that unwarranted restrictions by foreign states on the rights and opportunities of U.S. carriers will give rise to limitations in the operating rights of the carriers of the state imposing the restrictions.

The Board views its present task as sharpening all the tools and particularly those recently acquired in order to achieve parity of treatment for U.S. carriers. It is considering possible improvements in some of these tools. One area receiving close attention is how to deal with patently unreasonable capacity of foreign carriers. Should the Board decide upon appropriate remedies, it has the confidence of the support of the President and Congress . . ."

Recommending that efforts to mitigate effects of the several restrictions be undertaken on a country-by-country basis, the CAB's Bureau of International Affairs stressed that equality of opportunity for U.S. carriers to compete for the national traffic on an equal footing with the national carriers should be a prime objective. The report emphasized that "the degree to which such competitive opportunity is available by U.S. airlines should have an effect on the negotiating posture adopted by the United States in dealing with aviation problems in any given country." Copies of the unclassified section of the report are available from the Civil Aeronautics Board, Publications Services Section, Room 515, 1825 Connecticut Avenue, NW, Washington, D.C. 20428.

INCLUSIVE TOUR CHARTERS

In a release dated July 19, 1973, the Civil Aeronautics Board amended its economic regulations, effective August 22, 1973, to authorize U.S. route air carriers and, subject to conditions, foreign route air carriers, to perform flights for inclusive tour charters (ITCs). The rule as adopted closely follows the one proposed last January, 1972. It would confine the general ITC authority of foreign route airlines solely to charter trips performed between those points in the United States and the carrier's home country between which the carrier provides at least one round trip per week of authorized scheduled service. ITC trips not performed in that way will be subject to prior approval similar to that which the Board requires of

foreign route carriers for "off-route" charters. Approval to conduct additional ITCs will normally be granted only where appropriate bilateral agreement covers the carrier applying for the authority.

The Board denied a request of the National Air Carrier Association (NACA) that the Board hold the extension of ITC authority to route carriers in abeyance until after it has taken whatever action might be needed to effect an expansion of the overall ITC market. The Board reaffirmed its position that it was not prepared to undertake a broad expansion of the ITC market in light of the limited authority being granted and added that, in any event, the supplemental carriers are charter specialists who have always in the past been able to compete effectively against route carriers for charters which both classes of air carriers are authorized to perform. "There is no reason," the Board said, "to believe that the supplementals will be unable to hold their own in competition with route carriers for ITC business."

The Board also recognized "that there may be merit in a request from the American Society of Travel Agents and a number of other tour operators for rules designed to assure the independence of tour operations from direct air carriers in ITC operations." It also intends to analyze the problems raised by the tour operators in order to determine whether to institute a rule making dealing with them.

Inclusive Tour Charters were also the subject of consideration in the U.S. Congress. A bill has been introduced in the Senate to remove restrictions placed on ITC by the CAB, and a companion bill has been introduced in the House. The Air Transport Association has taken a strong stand against the legislation on the grounds that the bill would allow the charter airlines to fly "what amounts to individually-ticketed, regular service between any cities in the United States and countries abroad." The ATA also stressed the overall threat to the ability of the scheduled airlines to provide scheduled service on both profitable and nonprofitable air routes if the bill becomes law. The position of the charter airlines is that removal of the restrictions on ITC travel would benefit the charter airlines, the scheduled airlines, and the public.

In an ITC, the charterer is a tour operator who arranges a package tour consisting of air and surface transportation and ground accommodations, which in turn he sells at a fixed price to individual members of the public.

AIRPORT CURFEWS

On May 14, 1973, the U.S. Supreme Court dismissed Department of Transportation arguments and ruled that cities do not have the right to set airport curfews. In a 5-4 decision, the Court said the City of Burbank, California, in a suit against Lockheed Air Terminal Inc., could not impose the 11 p.m. to 7 a.m. curfew it had established for Hollywood-Burbank airport in 1970. In its ruling, the Court said that if the Burbank ordinance were upheld "and a significant number of municipalities followed suit, it is obvious that fractionalized control of the timing of takeoffs and landings would severely limit the flexibility of the FAA in controlling air traffic flow. . . . The difficulties of scheduling flights to avoid congestion and the concomitant decrease in safety would be compounded." Nevertheless, the Court left the door open for Congress to change the existing situation. The majority referred to a 1969 FAA decision to reject a proposed 10 p.m. to 7 a.m. curfew at Los Angeles International Airport because it would restrict domestic and foreign air commerce, and said such a decision remains peculiarly within the competence of the FAA.

TRANSATLANTIC AIR FARES

On August 22, 1972, the U.S. Court of Appeals for the District of Columbia ruled that the CAB could not bar reductions in trans-Atlantic air fares proposed by foreign carriers. Rejecting the Board's argument that an open rate situation would lead to significant passenger inconvenience, the Court ordered the Board to initiate an investigation on the North Atlantic air fare problem, allowing twenty-one days before its decision becomes effective.

SMUGGLING

Early in August, 1973 a Federal judge in New York ordered the seizure of a jet belonging to a U.S. air carrier under that provision of the U.S. Code (Title 21, Section 88) which states that the government may seize "all conveyances, including aircraft, vehicles or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation of contraband." The statute also provides that a common carrier may not be confiscated unless it can be shown that the "person in charge of such conveyance was a consenting party or privy to a violation . . ." An investigation has been ordered to determine the

last point, i.e., whether the airline concerned played a role in the smuggling of narcotics on a scheduled flight from Bogota to New York.

ANTIHIJACKING SYSTEMS

In June, the U.S. Federal Aviation Administration announced plans to test new antihijacking procedures aimed at ending the search of all carry-on luggage at airports and substituting metal detectors to screen all passengers. The plans were not made public, but apparently involved was the use of certain criteria by airline employees who would select certain passengers for detailed inspection. Although the FAA affirmed that the system would not come into operation until it had adequate testing, the public reaction was prompt, strong and effective, forcing the agency to shelve its plans. The present system of searching carry-on baggage has been deemed successful and will continue in force, at least for the time being. Nevertheless, X-ray equipment which eliminates the need for security officers to carry on the search is being installed in an increasing number of airports.

SAFETY

The head of the U.S. National Transportation Safety Board has stated that the agency was "most impatient" for a Federal rule requiring planes to carry a warning device to alert pilots when flying dangerously close to the ground. The statement came on the aftermath of a tragic crash at Boston where all but one of the eighty-nine persons on board perished. Although the Federal Aviation Administration has already set in motion a formal rule-making procedure which would require installation of "ground proximity warning" devices in aircraft, no such rule had been imposed as of August, 1973.

TICKET THEFTS AND COUNTERFEITING

In New York City federal and local authorities are investigating an increase in the number of thefts of airline tickets. Reportedly involved in the stolen tickets' operation, costing the airlines millions of dollars a year, are organized crime syndicates operating through travel agencies acquired as outlets for tickets picked up in burglaries. At one point the bulk of the thefts were perpetrated at the travel agencies, but tightened

security measures required by the airlines have shifted a major part of the burglaries to printing plants and to the transit period from the plants to airlines and agencies. A major U.S. airline lost more than 1,000 tickets in a single shipment in the recent past.

Another serious problem facing the airline industry is the counterfeiting of tickets, also sold to the passengers at a substantial reduction from the established price. The average traveller, of course, is hard put to determine if a ticket is counterfeit, but officials warn that any time a person buys a ticket for less than the amount shown on its face it is most probably a counterfeit or stolen ticket.

IATA CURRENCY

IATA members have agreed in principle to create a unit of account to take the place of the dollar and the pound sterling as a base for the calculation and compensation of international passenger and freight rates. The new unit would be known as the I.U.V. or I.A.T.A. unit of value.

The I.U.V., "founded on special drawing rights, would be used as a central negotiation value for conversions among the 168 national currencies in which tickets are sold, at agreed and realistic parities." Freight rates and passenger fares have heretofore been set in dollars or in pounds, and then converted into the local currencies at current exchange rates. With these two "reference" currencies themselves in a state of fluctuation, it has become difficult to establish stable rates for the public and fair compensation among the companies involved, thus I.U.V.

PERUVIAN INTERNATIONAL AIRLINE

Peru has returned to the field of international air transportation with the establishment of Aeroperu. The new airline will operate nationally and domestically as an arm of the Peruvian government. (*Editors Note:* Additional information on this item will be found in Report of Inter-American Legal Developments, this issue.)

JOINT VENTURE

The *Corporación Andina de Fomento* (CAF), an Andean Group financial entity, has ordered a feasibility study for the joint operation

of a wide-body aircraft. It is projected that the aircraft will be purchased by CAF and leased to the associated airlines—VIASA, AVIANCA, ECUATORIANA, LAN-CHILE and LLOYD AEREO BOLIVIANO.

ICAO ASSEMBLY

A special Assembly and Diplomatic Conference is scheduled to take place in Rome, 28 August–21 September, 1973, to deal with multilateral agreements on the subject of hijacking and other unlawful interference with international civil aviation.

The special Assembly originated in a Special Session of the Legal Committee of ICAO in January, 1973, which, among other things, recommended the submission of two proposals to the Assembly. One, submitted by the French Delegation, would incorporate the provisions of the Hague Convention of 1970 into the Chicago Convention. The other proposal, presented by Switzerland and the United Kingdom, would amend the Chicago Convention so that a State in whose territory an alleged offender is present, would be obliged to take measures relating to his detention and either prosecute or extradite him. Furthermore, the State of landing would have to facilitate the continuation of the journey of the passengers, crew and aircraft. If, in a particular case, the Council decided that the State concerned had not complied with these provisions, the penalty would be that other Contracting States of the Organization would not allow the operation of an airline of that State through their territories.

The Special Assembly is yet another attempt to curb lawlessness in the air; its success depends on the willingness of the nations concerned to take hard measures, particularly in the political field.

CUBAN AIR AGREEMENTS

Among a number of air agreements recently signed by Cuba, the hijacking accords with Barbados and Venezuela in Summer, 1973, are worthy of mention. It should be recalled that in February, 1973, Cuba also entered into a hijacking agreement with the United States (5 *Law. Am.* 426, 1973). A translation of the agreement with Venezuela follows:

> "The Government of the Republic of Venezuela, and the Government of the Republic of Cuba, in order to prevent and to sanction the illegal seizure of craft and other crimes which jeopardize the security

and normal flow of aerial and maritime navigation, and on a basis of cooperation, equality and reciprocity, agree:

ARTICLE I: The Convention shall apply to acts of seizure, removal of appropriation of aerial or maritime craft bearing one of the Parties' registry, as well as to the deviation of such craft from their regular routes or activities when, as a result of the aforementioned occurrences, the craft arrives in the territory of the other Party.

ARTICLE II: Both Parties declare that the acts set forth in Art I are in the nature of crimes, and bind themselves as follows:

a) The authorities of the Party in whose territory the perpetrator of such acts arrives, shall carry out his detention or shall take such measures as are necessary to ensure his presence. Such detention or any other measures taken shall be continued for as long as it shall be necessary to allow for the delivery of the detainee to the other Party or until the corresponding legal procedure is instituted.

b) The Party in whose territory the craft in question arrives, shall take all necessary measures to facilitate the immediate resumption of the journey of the innocent passengers and crew, with their belongings, and of the craft itself with all its equipment and accessories, as well as of all funds obtained through extortion or other illegal methods, or the return of the craft, its passengers and property referred to, to the territory of the other Party. The said Party shall also protect the aerial and maritime craft and all of their appurtenances, the named funds, and the physical well-being of the passenger and crew while they remain in its territory.

ARTICLE III: Whenever the acts contemplated in Art. I are not sanctioned by the laws of the country in which the perpetrator arrives, the Government of that country shall, in accordance with the applicable legal procedures, return such person to the territory of the other Party for prosecution under the laws of the country to which that person is delivered.

ARTICLE IV: The present Convention shall also apply to those who, within the territory of one of the Parties, promote to

conspire to promote, prepare, direct or are a part of an expedition which, from that territory or any other location, commits acts of violence or depredation against aerial or maritime craft, whatsoever their nationality or registry, originating, traveling to or which find themselves in the territory of the other Party. Whenever one of the Parties detains a person who has committed any such acts within its territory, that Party shall immediately submit the case to the competent authorities for application of the appropriate process.

ARTICLE V: Each Party shall strictly enforce its own laws with regard to any national of the other Party who, coming from the territory of the other Party, enters its territory in violation of its laws or immigation, sanitation, customs or other requirements, whether national or international.

ARTICLE VI: The Party which, in accordance with this agreement, is required to deliver or prosecute the perpetrator of the acts contemplated in Art. I, may take into consideration motives of a strictly political nature and the circumstances surrounding the commission of such acts, so as to refrain from returning or prosecuting that person, unless financial extortion has been committed or the crew, passengers or other persons have been injured.

ARTICLE VII: The Parties shall not be required to deliver their own citizens.

ARTICLE VIII: This Convention shall remain in force for a period of five years and shall be renewable for an equal period, by mutual consent of both Parties.

ARTICLE IX: At any time during the term of this Convention, and upon written notice given six months in advance, each Party may communicate to the other its decision to terminate the agreement.

The present Convention shall be subject to ratification in accordance with the constitutional provisions of the Parties and shall enter into force on the day of the Exchange of Notes, through which the Parties shall notify each other of said ratification.

Executed in duplicate, both copies equally authentic and valid, in Caracas on this sixth day of July, 1973.

For the Government of the Republic of Venezuela

ARISTIDES CALVANI
Minister of Foreign Relations of Venezuela

For the Government of the Republic of Cuba

PELEGRIN TORRAS DE LA LUZ
Vice-Minister of Foreign Relations of Cuba"