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## Aviation

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## AVIATION

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### TOKYO CONVENTION

In September, 1969 the United States ratified the Tokyo Convention.

The Official Gazette of Bahamas (No. 10, of March 6, 1969) carries the Provisions of the Tokyo Convention Act 1967 as Extended to the Territories Specified in Schedule 2. This order extends the provisions of the Tokyo Convention, subject to certain exceptions and modifications, to specified territories of the United Kingdom, including Bermuda, British Honduras, Cayman Islands, Montserrat, St. Vincent, Turks and Caicos Islands and the British Virgin Islands. The Act is intended to implement the provisions agreed upon by the United Kingdom in the Tokyo Convention and parts of the Convention on the High Seas of Geneva, 1968, relating to piracy.

### HIJACKING

President Nixon brought the problem of hijacking before the United Nations in his speech on September 19, 1969. "By any standard," the President said, "aircraft hijackings are morally, politically, and legally indefensible. The Tokyo Convention has now been brought into force, providing for the prompt release of passengers, crew and aircraft. Along with other nations, we also are working on a new convention for the punishment of hijackers. But neither of these conventions can be fairly effective without cooperation; sky piracy cannot be ended as long as the pirates receive asylum." The President urged the United Nations to give priority to this problem, adding "This is an issue that transcends politics; there is no need for it to become the subject of polemics or a focus of political differences. It involves the interests of every nation, the safety of every air passenger, and the integrity of that structure of order on which a world community depends."

The U. S. Department of State announced new efforts to extradite air pirates. The new extradition treaty with New Zealand will include air piracy as an extraditable crime and other extradition treaties will be reviewed with the same objective in view. Among extradition treaties

negotiated with Latin American countries, the one with Brazil (1961) covers air piracy; the crime is also covered in the extradition treaties with Israel and Sweden. It should be noted that failure to include air piracy as a specific crime in extradition treaties should not prevent a demand for extradition since this offense may be re-classified in terms of traditional extraditable offenses, e.g. armed robbery, kidnapping and others.

Cuba is not immune to the problems of hijacking either. Relations between that country and Mexico became strained in mid-summer when Cuba refused to extradite two Mexican citizens who hijacked a Mexican aircraft to Havana on July 26, the anniversary of the Castro revolution. Cuba not only refused extradition, but granted the hijackers political asylum. Perhaps the Mexican incident prompted Cuba in mid-September to promulgate a law on the subject of hijacking. Broadcasts over the Havana radio revealed that hijackers could be returned but limited such return to countries entering into bilateral agreements with Cuba. Significantly, the new law is not applicable to "political aircraft hijackers", i.e. Cuba reserves the right to grant asylum to air hijackers fleeing to the island for political reasons.

#### WARSAW CONVENTION

A special International Civil Aviation Organization Panel of Experts on Limits of Liability for Passengers under the Warsaw Convention and Hague Protocol has recently concluded its study and presented two suggestions for revising the Warsaw/Hague system of liability limitation.

The first proposal would retain the existing system, but increase the limits of liability to \$75,000 exclusive of costs and \$100,000 inclusive of costs. However, failure to deliver a passenger ticket or the notice of the applicability of the liability Convention would not deprive the carrier of the protection of the limited liability.

The second suggestion would hold the carrier absolutely liable for the death or injury of a passenger resulting from an accident, however it might be caused, with the exception of war or analogous situations. Contributory negligence as under Article 21 of the Convention would be the only defense available to the carrier, although that carrier would, nevertheless, have a right of recourse against a third party whose act or omission caused the damage. Under this plan the limits of the liability would be \$58,000 exclusive of costs and \$75,000 inclusive of costs.

The Panel also recommended a two level system of limits which would permit countries to choose a lower maximum limit for either of the two suggested plans above. Under the first plan, limits of \$37,000 exclusive and \$50,000 inclusive of costs could be instituted; while for the second plan, the limits would be \$33,000 exclusive and \$43,000 inclusive of costs.

The Panel and the ICAO Legal Committee have suggested that airlines should carefully assess their liability position in international air transportation, and give consideration to suggested reforms of existing agreements.

In addition, the Legal Committee has officially noted the *Lisi* case and has recommended that the notice of liability limitations be printed prominently on the tickets.

IACO meetings were held in Montreal during early September concerning revision of the 1966 Montreal Agreement and the Warsaw Convention. The United States favored:

1. A system of absolute liability with the exception of contributory negligence;
2. a single liability limitation in the amount of approximately \$125,000.00;
3. responsibility of the air carrier for payment of the plaintiff's legal costs in the event that his proven damages exceed the amount offered by the carrier in advance of litigation;
4. deletion of Article 25 of the Warsaw Convention providing for unlimited liability in the case of the carrier's willful misconduct provided items 1, 2 and 3 above go into effect; and,
5. expansion of Article 28 to include as an alternative forum the country or domicile or permanent place of residence of the claimant if the carrier has a place of business and is subject to jurisdiction in that country.

Meanwhile, the carrier participants in the Montreal Agreement continue to grow. As of July 30, 1969, 136 air carriers have become parties to the 1966 Montreal Agreement for increased liability limits and waiver of defenses.

#### AIRLINE INSURANCE COMPANY

Sir Giles Guthrie, Chairman, and Clarence Pell, Director General of Air Transport Insurance, S.A. (ATISA), in conjunction with Stuart

G. Tipton, President of Air Transport Association of America, and Knut Hammarskjold, Director General of International Air Transport Association, have recently announced the start of the operations of the airline-owned insurance company on January 1, 1971, with headquarters in Lausanne, Switzerland.

Sir Giles stated that the imaginative and constructive plan for increasing the world's aviation insurance capacity which had been put forward by the new company to the Swiss authorities in April still awaited approval. The delay is mainly due to the novelty of the concept on which the plan is based. There does not remain sufficient time in 1969 for airlines and governments and ATISA to take decisions and complete preparations which would enable the company to start operations on January 1, 1970.

Details of the new insurance plan are being forwarded to all members of ATA and IATA for study.

### JUMBO JETS

The existing and anticipated legal problems arising from the development of the jumbo jets, and the technical and physical effects they will have on international air transportation are under serious review by several aviation organizations. Both ICAO and IATA are studying the huge aircraft, and making recommendations for their members.

Pan American World Airways' first commercial flight has tentatively been scheduled for December 15, 1969, from New York to Frankfurt, Germany, via London, although as much as an eight week delay may be necessitated by a corresponding delay in delivery of the first aircraft by Boeing.

*International airports throughout the Americas are reviewing existing facilities and their readiness to handle the new aircraft and the attendant increased passenger and baggage loads. The likelihood of Jumbo Jet cargo transport in the near future must also be anticipated, and plans made to take full advantage of the new capacity.*

### FINANCING FOR AIRLINES OF SMALL NATIONS

An international airline conference sponsored by Irish International Airlines in May of 1969 in Dublin, Ireland, gave consideration to the increasing apprehension of airlines operated by small nations that they might not be able to finance future equipment purchases unless more favorable terms are made available in the United States. Nations repre-

sented also considered other economic problems, inadequate airport facilities and surface transportation.

The president of El Al, after highlighting the scarcity of capital in small nations and the high interest rates in the international market, suggested that aircraft manufacturing nations, especially the United States through its Export-Import Bank, develop a special plan for small and developing nations and finance up to 90% of the cost of the equipment through ten year loans at low interest rates. In addition, he suggested that the World Bank finance the purchase of new aircraft.

The conference also discussed a proposal to provide United States financing for jet aircraft manufactured in the United States and sold to foreign flag airlines. A private export finance corporation has been suggested, with the stock initially to be held by financial institutions and possibly even by exporters. Terms available through such an organization, however, could not be as favorable as those suggested through the Export-Import Bank.

## SPACE LAW

A new branch of international aviation law is developing as man advances in space technology and sciences. Perhaps for the first time in history, men are carefully planning rules and regulations to cover problems in a new dimension before those problems actually arise. One of the first of such actions took the form of the Outer Space Treaty of 1966, which bans nuclear weapons from space and provides for freedom of scientific investigation.

Currently, the United Nations Committee on the Peaceful Uses of Outer Space is drafting an agreement which would insure that international law would determine any liability for damage caused by a spacecraft. Such a treaty would provide a remedy in cases such as the one in *Manitowoc, Wisconsin*, in 1962 when a fourteen pound piece of a Soviet sputnik fell to the street.

The same Committee is also considering the conduct of earthlings on celestial bodies, the ownership and possession of materials returned to the earth, and jurisdiction over resources and materials.

## SUPERSONIC TRANSPORT

The supersonic transport airliner (SST), is encountering economic problems in its development.

The Soviet version, the TU-144, was recently publicly demonstrated for newsmen. However, the 130-ton aircraft was only flown at subsonic speeds, and had not yet been tested at speeds faster than the speed of sound. Although it is designed for speeds up to 1,600 miles per hour, or about twice the speed of sound, the Soviets announced that a number of tests at subsonic speeds were still required before it could be flown at its full capacity.

In the United States, the superjet program has been delayed from its estimated 1972 completion date at least six months because of financing problems. The present administration has met opposition to the projected federal investment although President Nixon's recent statement that the aircraft "will be built" reflects the position of the administration. An alternative plan has been proposed which would finance the project through the sale of government guaranteed securities on the open market to private investors. This plan has been attacked as backdoor financing and overly risky because of the economic effects on the government in the event of the failure of the project. The present plan of the Administration is to press for federal funding of an additional \$662 million for production of the prototype.

Although it is anticipated that the supersonic aircraft will enter international air service in the 1970's, it is not clear, at this point, exactly when. Nevertheless, international aviation organizations are already considering the legal problems which will arise from such service—among others, the damage occasioned by noise and sonic boom.

#### UNITED STATES AVIATION POLICY

A full review of United States international aviation policy is underway by the White House, including a possible major revision of principles governing such matters as competition, route allocation and capacity. At least portions of the final report should be available in early 1970 and will be considered in detail in the *Lawyer* when it becomes available.

#### ICAO

The twenty-seven member Council of ICAO has appointed a special committee to consider future illegal acts relating to international civil aviation. Members of the Committee are Australia, Colombia, France, Guatemala, Indonesia, Lebanon, Nigeria, Spain, the U.K. and the U.S.A.

#### IATA

During 1969, the International Air Transport Association is cele-

brating its 50th anniversary. IATA was established in 1919 as a free union of interested airlines to organize international air traffic.

Preparations are being made for the 25th annual General Meeting to be held in Amsterdam October 20-23, 1969. Dr. Gerrit van der Wal, president of KLM Royal Dutch Airlines will become the new President of IATA and will chair the meeting.

Reports will be presented by the Executive Committee and five Standing Committees, including the Legal Committee. Currently, the IATA Legal Committee has been considering:

1. Revisions of the Warsaw Convention and Hague Protocol.
2. Problems raised under the Chicago Convention concerning the joint use of aircraft and crews. The high-capacity-aircraft and the supersonic transports will create new problems in the interchange of aircraft and equipment.
3. Spare parts interchange agreements.
4. Problems involving restrictions on over-flights by supersonic aircraft, especially under the Chicago Convention.
5. The legal aspects of aircraft noise and sonic boom.

At a recent meeting held in Nassau, IATA concluded a new fare agreement concerning a small increase in passenger fares for flights within North, South and Central America. The airline delegates decided to eliminate the 5% round trip discount for trips within the Americas by October 1, 1969. This discount has already been removed from transatlantic fares. Fares for international flights between Latin America and interior United States airports were increased by 3.8% as authorized by the United States CAB.

ALITALIA has rescinded its concurrence to the vote taken at the Dallas Traffic Conference on the subject of bulk fares; the rescission becomes effective on October 19, 1969. On September 19 the airline reacted to a move by the United States Civil Aeronautics Board which, although approving fares generally through 1971, did not extend its approval of bulk fares beyond March 31, 1970. Additionally, the CAB announced an investigation of the new type of fares. ALITALIA contends that the uncertainty regarding bulk fares (a defensive device of the scheduled airlines against the supplemental's charter operations) affected its planning and reduced the effectiveness of the bulk fares. ALITALIA's action may result in an open fare situation in transatlantic operations.

## DERECHO AERONAUTICO

A valuable contribution to the law of aviation has been made by Dr. Frederico N. Videla Escalada of Argentina through his recent book *Derecho Aeronautico*. Dr. Videla Escalada's work is in two parts and volume 1, already published, deals at depth with the elements of aviation law. Volume 2, to be published in the future, will cover the legal relations arising from aeronautical activities.

## ALADA

The Latin American Association of Air and Space Law will hold its Third Annual Meeting in Buenos Aires, October 27-31, 1969. The list of lecturers and their topics follow:

International Cooperation in Air Transportation

Dr. Enrique Mapelli Lopez (Spain)

Contractual Responsibilities under the Draft Latin American Air Code

Dr. Jose C. Sampaio de Lacerda (Brazil)

Non-Contractual Responsibilities under the Draft Latin American Air Code

Dr. Oscar Fernandez Brital (Argentina)

Economic and Legal Elements for a Latin American Air Policy

Dr. Mario O. Folchi (Argentina)

Responsibilities of Multinational Air Transport Companies

Dr. Eduardo T. Cosentino (Argentina)

Management Problems in Latin American Air Transportation

Mr. Carlos Young (Venezuela)

Development and Future of Latin American Air Transportation

Dr. Alvaro Bauza Araujo (Uruguay)

Agreement for Rescue and Return of Astronauts and Return of Objects Launched into Space

Dr. Luis Ivani de Amorim Araujo (Brazil)

## VII INTER-AMERICAN AVIATION CONFERENCE

The VII Conference sponsored by the University of Miami School of Law will be held in Miami, Florida, April 15-17, 1970. Co-sponsors of this year's conference are the University of Carabobo of Venezuela and the University of Moron of Argentina.