University of Miami Law Review

Volume 21 | Number 3 Article 11

5-1-1967

Licensing of Foreign Air Carriers in Central America and Panama

R. C. Benitez

Follow this and additional works at: https://repository.law.miami.edu/umlr

Recommended Citation
R. C. Benitez, *Licensing of Foreign Air Carriers in Central America and Panama*, 21 U. Miami L. Rev. 573 (1967)
Available at: https://repository.law.miami.edu/umlr/vol21/iss3/11

This Leading Article is brought to you for free and open access by the Journals at University of Miami School of Law Institutional Repository. It has been accepted for inclusion in University of Miami Law Review by an authorized editor of University of Miami School of Law Institutional Repository. For more information, please contact library@law.miami.edu.

LICENSING OF FOREIGN AIR CARRIERS IN CENTRAL AMERICA AND PANAMA

R. C. BENITEZ*

I. INTRODUCTION 573
II. BEGINNINGS OF INTERNATIONAL AIR REGULATION IN CENTRAL AMERICA AND PANAMA 575
III. COUNTRY ANALYSIS OF THE LICENSING REQUIREMENTS 581
A. *Honduras* 581
B. *Nicaragua* 585
C. *El Salvador* 587
D. *Guatemala* 588
E. *Costa Rica* 592
F. *Panama* 595
IV. ANALYSIS OF THE PROCEDURAL REQUIREMENTS 598
V. ANALYSIS OF THE SUBSTANTIVE REQUIREMENTS 601
VI. THE CONTROLLING PROVISION IN THE CODES—COMPETITION WITH THE LOCAL AIRLINES 603
VII. RECOMMENDATIONS AND CONCLUSION 604

I. INTRODUCTION

Operating permits which define the rights under which commercial air transport companies operate to and from different countries are avidly sought by the world's commercial airlines. Once obtained, they are relied upon to determine operating patterns which, in turn, lead to the economic success or failure of an airline.

The Central American area offers a fruitful field for studying the grant of operating permits. In general, few bilateral air transport agreements have been negotiated in the area, and a foreign air carrier desiring to operate to Central America and Panama must not only observe the provisions of the aviation codes, but must also bear in mind competitive and political considerations only hinted at in the pertinent aviation statutes.

This article reviews the applicable provisions of the aviation laws of the countries of Central America and Panama and explains how the statutory provisions are affected by the competitive and political considerations mentioned above.

The airways to and from Latin America are jammed with commercial air carriers. The most recent issue of the Official Airline Guide[1] shows a total of fifty-one scheduled airlines operating in these airlanes. From an economic standpoint the market is over-saturated and the entry of a fledgling airline is fraught with grave economic hazards. But, apparently

* Rear Admiral, U.S.N. (Ret.) Vice President (Latin American Affairs) of Pan American World Airways. This article was originally a thesis submitted in partial fulfillment of the requirements for the degree of Master of Laws (in Interamerican Law).

1. OFFICIAL AIRLINE GUIDE C-3, C-515 (World Wide ed. 1965).

commercial air transportation has not lost its lure and there remain many adventurous souls who believe they can succeed in the rough and tumble of international air transportation.[2] The new comer who wants in, and also the old timers who wish to expand, help to preserve the industry's dynamic character.

Desire is not enough, however, if one is to become a member of the fraternity of international air operators. After the decision is made to begin, expand, or continue operations, all international operators must present themselves in foreign lands to obtain an operating permit,[3] or to modify their existing authority. In none of the American Republics is this gained without effort. The degree varies, but statutory requirements must be met. The purpose of this article is to review the requirements in Central America[4] and Panama.

The grant of international air transport rights is a subject of utmost importance to the nations granting these rights as well as to the individuals who seek them. That monetary returns for the commercial air operator may be quite lucrative is a fact well recognized by governments and private parties alike. This recognition is not of recent origin in the Western Hemisphere; the history of air transportation in the Americas began shortly after World War I.

In late 1919 a group of German citizens in Barranquilla joined a few enterprising Colombian citizens to establish an air traffic service between Barranquilla and Bogota.[5] The *Sociedad Colombo-Alemana de Transportes Aéreos* (SCADTA) inaugurated services in 1920 and was economically successful from the very start. In the same year the first international scheduled air service in the Hemisphere was inaugurated between Key West and Havana by Aereo-marine West Indies Airways.[6] This first commercial effort to link the United States and Latin America by regular air service was discontinued a year later because of a major accident,[7] but the route in question was later restored and was the first of Pan American World Airways' present world wide routes.[8] There-

2. "Entrepreneurs of daring and vision launched our air transport industry." Statement on International Air Transport Policy at 2 (April 1963).

3. Operating Permits are also known as Operating Certificates, but the former term will be used exclusively herein; the equivalent expression in Spanish is *Certificado de Explotación.*

4. Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua.

5. SMITH, AIRWAYS ABROAD at 10 (1950).

6. *Id.* at 8.

7. THE HISTORY AND DEVELOPMENT OF CIVIL AIR TRANSPORTATION IN LATIN AMERICA, 1919-1961, at 1 (O.A.S. Doc. UP/6.36/15, 1963) prepared for presentation at the Second Meeting of Government Experts in Civil Aviation (Santiago, Chile, July, 1963). [Hereinafter cited as CIVIL AIR TRANSPORTATION IN LATIN AMERICA.]

8. Pan American initiated Key West to Havana service in October, 1927, with a route mileage of 102 miles. See AIRWAYS ABROAD, *op. cit. supra* note 5, at 14. Pan American's present route mileage is 75,578 miles, and its service extends to 86 countries. See Pan American World Airways, Annual Report to Stockholders (1964).

after, in rapid succession, the remaining American countries, directly or indirectly, made their entry into what eventually became the air age.[9]

The first attempts to move passengers, cargo, and mail by air were primitive and incomplete by today's standards. Schedules were planned but their fulfillment was not anticipated.[10] The start, however, had been made, and from these humble beginnings grew international air transportation in the Western Hemisphere. The rudimentary ways of the past eventually gave way to the sophisticated operations of the present, and the air age, with its political, social and economic implications, became a major factor in the history of the Hemisphere.[11] It could not be otherwise. Latin America's fractured geography and natural barriers, the population explosion, and the improvement of economic conditions all increased the demand for air transportation.

In short, international air transportation in the Western Hemisphere grew, in due time, into big business.[12] Recognized from its early stages as an industry of substantial potential it could not be left unattended, subject to the vagaries of chance. If for no other reason than safety it had to be regulated, and regulated it has been in one form or another from its very beginning. It was foreseeable to the governments concerned that the newly born industry would grow into healthy maturity and eventually become an economic and political force which, if uncontrolled, could hinder rather than help the progress of their peoples.[13]

II. Beginnings of International Air Regulation in Central America and Panama

It was fortunate for those countries still in their aviation infancy in the 1920's and 1930's that their more advanced sister nations joined forces shortly after World War I to unify their individual regulatory approaches to international air transportation. This cooperative effort and its aftermath bore fruit and gave present aviation law its unmistakable international character.[14] The Paris Air Navigation Convention

9. By far the most rapid increase in route length and traffic carried took place during 1927 . . . . Prior to this time, the early lines had been previously local in nature and were not connected to form either a national or international network. From 1928 to 1938 scheduled air transport operations in Latin America grew rapidly.

Civil Air Transportation in Latin America, *op. cit. supra* note 7, at 3, 4.

10. "In those days, we knew when the departure was, but the return was always uncertain." Arturo Costa, quoted in Time, July 31, 1964, p. 36.

11. The present era is designated as the air age; the era of aviation, and it is submitted that it has already influenced the *forma mentis*, the customs and education . . . of modern man. Aviation is also, therefore, a sociological factor.

Ambrosini, Instituciones de Derecho de la Aviación 2 (1949).

12. *Informe Especial: Latinoamérica Ya Tiene Sus Alas*, Vision (U.S. ed.), April 19, 1963, p. 24.

13. In 1944, at the threshold of the modern international air age, President Roosevelt called upon all nations "to work together so that the air may be used by humanity—to serve humanity." Air Transport Policy, *op. cit. supra* note 2, at 15.

14. "The first important step with regard to such [aviation] legislation was taken in

of 1919,[15] the Havana Convention of 1928,[16] the 1929 Warsaw Convention,[17] and the Rome Conventions of 1933 and 1952[18] were, among others, not unknown in Latin America nor ignored by the drafters of the aviation laws of their respective countries.[19] Of particular significance was the Chicago Conference in 1944[20] which was attended by every Latin American nation except Argentina. The Chicago Conference produced, among other things, the Convention on International Civil Aviation[21] which was signed and ratified by all the Central American countries and adhered to by Panama. Subsequently, the increased tempo in the establishment of national airlines,[22] the influence of the International Civil Aviation Organization (ICAO),[23] and a national awakening concerning the international responsibilities assumed at Chicago in 1944 led to a series of Conferences of the Directors of Civil Aviation of Central America and Panama.[24]

The First Conference[25] was nothing more than an informal gathering of some of the Directors of Civil Aviation for the express purpose of studying the feasibility of a Civil Aviation Organization for Central America and Panama. Honduras and Costa Rica sparked this first meeting and presented a "working paper" setting forth the principal objectives of the proposed Civil Aviation Organization. These were, (1) to promulgate uniform air regulations, and (2) to establish bases for the coordination of services pertaining to meteorology, air traffic control, communica-

---

the international field . . . and the objective was worldwide uniformity." AMBROSINI, *op. cit. supra* note 11, at 19. "The most salient characteristic of Aeronautical Law is its tendency to international uniformity." BASUALDO, LA REGULACIÓN INTERNACIONAL DEL TRÁFICO AÉREO 9 (1957).

15. Paris Convention on Aerial Navigation (1919).

16. Havana Convention on Commercial Aviation (1928).

17. Warsaw Convention on the Unification of Certain Rules Relating to International Transportation by Air (1929).

18. Rome Conventions on Private Aerial Law (1933, 1952).

19. *E.g.*, LEY DE AERONÁUTICA CIVIL, *Exposición de Motivos*, 8-9 (Honduras 1957).

20. Chicago Convention on International Air Services (1944).

21. *Ibid.*

22. An airline complex known as the TACA system began operations in Central America in the early 1930's with the establishment of local airlines in Honduras, Nicaragua, Guatemala, El Salvador and Costa Rica. The holding company, TACA Airways, S.A., was incorporated in Panama. Beginning in 1944 with the organization of COPA in Panama, Pan American World Airways further organized LACSA in Costa Rica, SAHSA in Honduras, and LANICA in Nicaragua, in 1945.

23. The International Civil Aviation Organization has established international air navigation rules and eased customs formalities for passengers and airplanes in transit. In addition it has established the technical standards for an international air transportation system that covers airlines, communication, radio-telegraphic aid to navigation, airfields, ground aids, air traffic controls, etc. . . . .
CIVIL AIR TRANSPORTATION IN LATIN AMERICA, *op. cit. supra* note 7, at 3.

24. The First Conference was held at Tegucigalpa, Honduras, July 8-9, 1952; the Second Conference at San Jose, Costa Rica, Aug. 12-15, 1952; the Third Conference at Panama City, Panama, Apr. 14-17, 1953; and the Fourth Conference at Managua, Nicaragua, July 15-20, 1954.

25. Only Honduras, Costa Rica, and Nicaragua participated, although there was an observer from ICAO, *supra* note 23.

tions, and aids to navigation. The participants of the First Conference agreed to meet again (the next time officially) and to prepare the necessary documentation in order to propose to the Organization of Central American States (ODECA) the establishment of a technical entity for civil aviation in Central America. In addition, the parties agreed to study, at the next conference, a plan prepared by the *Dirección General de Aeronáutica* of Honduras for the coordination of the air services mentioned above.[26]

The Second Conference[27] followed almost immediately and, among other things, the participants concluded:

> That it is necessary to promulgate in the Central American countries uniform aviation laws which should include the following essential points: . . .
>
> b) Issue, modify, or cancel air operating permits.
>
> c) Control exclusively the grant of routes, itineraries, time schedules and tariffs in air transportation, but the assignment of routes, or the issuance of permits for international services is to be subject to the approval of the Executive Branch. . . .
>
> e) Render opinions concerning proposals from a foreign nation on the subject of air transport agreements or conventions.[28]

At the Third Conference[29] it was agreed to draft a Civil Aviation Code for Central America and Panama.[30] Honduras' *Dirección General de Aeronáutica* was placed in charge of the project and a request for assistance made to ICAO and to the United States Civil Aeronautics Administration. The participants at the Third Conference also agreed to establish a Legislative Committee to review the work of the Drafting Committee.[31]

The Legislative Committee became the Legal Committee and first met in Tegucigalpa in September 1953.[32] It included on the agenda the subject of "air transport" which it subdivided into:

a) Methods of operation.

26. Agenda and Proceedings of First Conference of Central American Directors of Civil Aviation (Tegucigalpa, Honduras, July 8-9, 1952).

27. Delegations represented Costa Rica, El Salvador, Honduras and Nicaragua.

28. Final Act of Second Conference of Central American Directors of Civil Aviation (San Jose, Costa Rica, Aug. 15, 1952).

29. Delegations represented Costa Rica, El Salvador, Honduras, Nicaragua and Panama. There were observers from ICAO and the United States Civil Aeronautics Administration.

30. Final Act of Third Conference of Directors of Civil Aviation of Central America and Panama at 3 (Panama City, Panama, Apr. 17, 1953).

31. *Ibid.*

32. Delegations represented Costa Rica, El Salvador, Honduras, Nicaragua and Panama.

b) General requirements.

c) Special requirements for national airlines.

d) Special requirements for international air transportation.

1) The principle of equitable reciprocity.

2) The protection of regional traffic.

In spite of its good intentions, the Legal Committee fell short of the mark in that it did not produce a concrete resolution with regard to the above mentioned items of the agenda. Its recommendation regarding the matter was obviously a compromise and read:

> That in view of the fact that there is pending a Fourth Conference of the Directors of Civil Aviation of Central America and Panama, the agenda includes the grant of commercial rights for the operation of national and international routes in the Central American Isthmus, the discussion of this item should be postponed until the said Conference is held.[33]

The reluctance of the Legal Committee to deal with the issue was short lived. In February 1954 it met in Managua[34] at the instance of the Nicaraguan government to review a Civil Aviation Code for Central America and Panama prepared by the Drafting Committee. Thus the Committee, acting prior to the Fourth Conference of Directors of Civil Aviation, met the issue head on.

At Managua the Committee adopted, *inter alia*, the following resolutions:

> ONE—That the Draft Civil Aviation Code for Central America and Panama forego the administrative practice of entering into concession contracts between the States and air carriers and, that in lieu thereof, there be adopted the system of OPERATING PERMITS resulting in unilateral action by the Executive Branch through which the States grant an air transport company, national or foreign, the right to operate specified international or national routes in the public interest.
>
> TWO—The Operating Permit will be a personal and nontransferable document but a State may, whenever it deems it convenient, issue provisional or temporary permits subject to the conditions imposed by the applicable laws or regulations.
>
> THREE—The Operating Permits will be granted for a maximum period of ten years, but they may be extended.

33. Final Act of the First Conference of the Legal Committee for the Study of Air Transport Problems of the Countries of the Central American Isthmus (Tegucigalpa, Honduras, Sept. 24, 1953).

34. Delegations represented Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama. There were observers from Mexico and ICAO.

FOUR—Irrespective of the internal regulations which any State may promulgate on the subject of operating permits, the Draft Code should specify that every natural or legal person wishing to engage in public air transportation will meet the following requirements:

a) prove his legal personality in compliance with the laws of the country,

b) prove he has the technical ability to perform the proposed services, and

c) prove that he has the economic means to perform the proposed service.

FIVE—The competent authority will not grant operating permits to carry out air transport services in any of the following cases:

a) when the petitioner fails to prove his technical ability and that he possesses the financial means to carry out the proposed service.

b) when the traffic demands, in the opinion of the Executive Branch are totally met, and it is clearly evident that the objective of the proposed service is—through uneconomic competition—to eliminate or prejudice airlines already established. . . .

e) when in the case of foreign airlines:

i) The State of which the petitioner is a national does not grant reciprocity to the national airlines of the country,

ii) the State of which the petitioner is a national has not granted the corresponding authorization to the petitioning airline to carry out the proposed international service, and,

iii) the grant of authority to carry out the service is contrary to the national interests, or to the international conventions to which the Central American States are parties. . . .

SEVEN—Operating Permits granted by the Executive Branch to operate international air transport services will conform to the terms of the Civil Aviation conventions and treaties which have been subscribed and ratified by the Central American governments. In the absence of treaties and conventions, the grant of such permits will conform to the principle of Equitable Reciprocity.[35]

35. Final Act of the Legal Meeting for the Revision of Draft Civil Aviation Code for Central America and Panama at 4 (Managua, Nicaragua, March 4, 1954).

The Fourth Conference of Directors of Civil Aviation[36] took place in Managua in July 1954 and the following resolution, among others, was adopted:

> It is recommended that the States of the Central American Isthmus adopt the Civil Aviation Code[37] added hereto as Annex No. 1 to this Final Act, in the manner revised by the Legal Committee, but making such adjustments as are indispensable to adapt it to the constitutional regime of each country while attempting to maintain; to the extent possible, the internal structure and the essence of the institutions of this Code so as to achieve the maximum degree of uniformity in the aviation legislation of Central America. This has been the highest goal and the constant desire of the Governments of the Isthmus during the Regional Civil Aviation Conferences which have been held since 1951.[38]

The Draft Code incorporated, *in toto*, the recommendations made by the Legal Committee in Managua in February 1954.[39]

It is necessary to consider how the Draft Aviation Code fared with respect to the provisions concerning operating permits (that is, which of the provsions of the Draft Code were adopted in Central America and Panama) in order to understand what requirements a foreign airline must meet today if it desires to operate international air transport services in the above countries.[40]

The implementing legislation of Honduras[41] and Nicaragua[42] followed the Draft Code very closely. El Salvador[43] also followed the Code, but with enough variance in substance and form (mainly the latter) to indicate independent thinking. Guatemala[44] and Costa Rica[45] did not

36. Delegations represented Costa Rica, El Salvador, Honduras, Guatemala, Nicaragua and Panama. There were observers from Mexico, ICAO and the United States Civil Aeronautics Administration.

37. See note 35 *supra*.

38. Final Act of the Fourth Conference of Directors of Civil Aviation of Central America and Panama (Managua, Nicaragua, July 20, 1954).

39. See note 34 *supra*.

40. For the purposes of this study the term "international air transportation services" is limited to regularly scheduled international air transportation services of persons, property and mail.

41. LEY DE AERONÁUTICA CIVIL, *Decreto* No. 146 (Sept. 3, 1957) as amended by *Decreto* No. 174 (Oct. 18, 1957). Text in LEY DE AERONÁUTICA CIVIL (Honduras 1957).

42. CÓDIGO DE AVIACIÓN CIVIL, *Decreto* No. 176 (Sept. 19, 1956). Text in CODIGO DE AVIACIÓN CIVIL (Nicaragua 1957).

43. LEY DE AERONÁUTICA CIVIL, *Decreto* No. 2011 (Dec. 22, 1955). Text in MINISTERIO DE DEFENSA, LEY DE AERONÁUTICA CIVIL Y REGLAMENTO DE AVIACIÓN AGRÍCOLA (El Salvador 1956).

44. LEY DE AVIACIÓN CIVIL, *Decreto* No. 563 (Oct. 28, 1948). Text in DIARIO DE CENTRO AMÉRICA No. 9 (Guatemala 1949).

45. LEY DE AVIACIÓN CIVIL, *Decreto* No. 762 (Oct. 19, 1949). Text in MINISTERIO DE GOBERNACIÓN, LEY GENERAL DE AVIACIÓN CIVIL (Costa Rica 1949).

follow the proposed Code and their pre-1954 aviation laws are still in effect.[46] Panama likewise took no action on the Draft Code and continued to regulate international air transportation through executive decrees and regulations.[47] In 1963, however, Panama promulgated its first civil aviation law.[48]

III. Country Analysis of the Licensing Requirements

A. *Honduras*

The present civil aviation law of Honduras became effective in September, 1957.[49] The overall requirement for an operating permit is unequivocally set forth in article 87 which says that before any person may engage in a public air transport service he must possess an operating permit. International air transport service is defined in preceding articles as air service to which the public has permanent accessibility and which transits the air space of two or more states.[50] The permit is issued by the Executive Branch through the medium of an Executive Decree (*Acuerdo*), and is a personal and nontransferable document. Further, operating permits granted by the Executive Branch for international air transport services are to be issued not only in accordance with the aviation law, but also in compliance with the civil aviation treaties[51] and agreements subscribed to and ratified by the government of Honduras.

The prospective foreign petitioner is not left in doubt concerning the items he should include in his request.[52] These are:

a) Name and nationality.

b) Proof of financial responsibility.

c) Type of service to be operated.

d) Routes to be operated.

e) Equipment and technical aeronautical personnel with which the service will be carried out.

f) Airports and auxiliary installations which are expected to be used.

46. Both Guatemala and Costa Rica have taken initial steps to modify their existing statutes. Drafts have been in circulation in the appropriate governmental departments for a number of years. In Guatemala the proposed legislation has not advanced past the embryonic stage, but the Costa Rican draft law is before a congressional committee for study.

47. Fábrega, Historia de la Legislación Aeronáutica Panameña 3, 4, 9, 10 (undated).

48. *Decreto Ley* No. 19 (Aug. 8, 1963). Text in Gaceta Oficial No. 14.987 (Oct. 21, 1963).

49. See note 19 *supra*. The statute is prefaced by an *Exposición de Motivos* which traces the steps leading to its enactment. This explanatory material consisting of thirty-nine pages is very helpful in understanding the objectives of the drafters and has the make up and flavor of a United States congressional committee report.

50. Ley de Aeronáutica Civil arts. 77, 78 (Honduras 1957).

51. *Id.* art. 113.

52. *Id.* arts. 89(a-f), 90(a-d).

g) Proof of legal personality (for juridical persons).

h) Proof that the petitioner's Government has authorized the proposed international service.

i) Proof that the petitioner's Government grants, or is prepared to grant reciprocity to the Honduras airlines.

j) Proof that the petitioner expressly subjects himself to the provisions of the Honduran Aviation Law and to the jurisdiction of the Honduran authorities in the event of injury to passengers, damage to freight or checked baggage, injury or damage to third parties on the surface and their property, and injury to aeronautical technical personnel.[53]

The law provides that the operating permit will be issued by the Executive Branch, but the specific governmental official to whom the application should be made is not stated.[54] In practice the request is addressed to the Director of Civil Aviation for comment. After review by the Minister of Communications it is sent to the Attorney General of Honduras who, after commenting, returns it to the Ministry of Communications. The permit is then granted or denied through an executive order signed by the President of Honduras.

No specific provision is made for a hearing when initially applying for an operating permit, nor for an extension of a permit previously granted although there is a provision for a hearing for interested parties in the case of alteration, amendment, modification, or suspension of a permit, in whole or in part.[55] The law does not specify the type of hearing but in practice a public hearing is held before the Director of Civil Aviation. In cases of intended cancellation a provision is also made for the party affected to present allegations and proof to safeguard his interests.[56] The type of proceeding which will regulate a cancellation is not spelled out.

A provision concerning competing concurrent petitions for public air transportation provides that preference will be given to the petitioner who guarantees the highest degree of safety, efficiency, and continuity of service consistent with the needs of the public. Competing concurrent petitions are defined as those which seek to establish service between points of the same route or within the same zones, and which are filed within five days after the first petition is presented.[57]

53. Honduras added aeronautical technical personnel to the type of persons to be protected under this provision. These personnel were not included in the corresponding provision of the Draft Code.

54. LEY DE AERONÁUTICA CIVIL art. 87 (Honduras 1957).

55. *Id.* art. 98.

56. *Id.* art. 100.

57. *Id.* art. 101.

The government of Honduras will not issue a foreign operating permit if:

a) The petitioner fails to prove his technical abilities to perform the proposed services,

b) the traffic demands, in the opinion of the Executive Branch, are totally met and it is clearly evident that the objective of the proposed service is—through uneconomic competition —to eliminate or prejudice airlines already established. . . .

d) in the case of foreign airlines, if:

I. the State of which the petitioner is a national does not grant reciprocity to the national airlines of Honduras,

II. the State of which the petitioner is a national has not granted the corresponding authorization [to the petitioning airline] to carry out the proposed service, and,

III. the grant of authority to operate the service is contrary to the national interest or to the international conventions to which Honduras has subscribed.[58]

The items to be included in an operating permit are set forth below:

a) The terminal points of the route as well as the intermediate points (if any) specifying which points constitute commercial stops and those which constitute technical stops only.

b) The type of service and frequency thereof.

c) The terms, conditions, and restrictions that will insure the safety of flight at the airports and airways designated in the permit.

d) An express statement that the holder subjects himself to the provisions of the Aviation Law relating to injuries to passengers, damage to freight and checked baggage, injury to third parties on the surface and damage to their goods, and injury to technical aviation personnel.

e) Such conditions and restrictions as the public interest may require.[59]

A separate article requires that a convenient period, not to exceed six months, be set forth in the permit within which the airline must commence operations. Failure to initiate services within the period specified gives the Executive Branch the right to revoke the permit.[60]

58. *Id.* art. 97.
59. *Id.* art. 91.
60. *Id.* art. 93.

Operating permits in Honduras are effective up to a maximum of ten years, but are renewable for like periods. The time for which a permit is granted is determined by the economic importance of the service proposed, the amount of the initial investment, and such subsequent investments as are required for the development and betterment of the service. Extensions are granted at the option of the Executive Branch as long as the interested party has satisfactorily fulfilled all of his obligations and as long as important improvements in the service have been made.[61]

Once an operating permit has been issued the airline cannot start service before first proving that it has:

a) Suitable aircraft to perform the service projected as well as the technical personnel properly licensed,

b) the approval of the itineraries, tariffs, and time schedules from the Ministry of Development, and,

c) adequate insurance coverage as required by the pertinent provisions of the Aviation Law.[62]

The statute makes it clear that an operating permit does not confer any property rights, nor does it grant any exclusive right to the use of any air space, airway, airport, facility or auxiliary navigation service.[63] Further, the airlines are obliged to render the authorized services safely, adequately and efficiently, and no airline may grant any advantage or unjust preference to any entity, locality, or airport, nor subject any of these to discriminatory, partial, or unjust treatment.[64]

The Executive Branch may cancel a foreign operating permit, either totally or partially, for any of the following reasons:

1) Total interruption of the air service, or an important part thereof without previous authorization.

2) Transfer of the operating permit, or any of the rights therein.

3) Non-compliance with the Aviation Law, or its Regulations, or any of the terms, conditions, or limitations of the Operating Permit.[65]

Requests to modify or to alter stops on routes already approved are subject to the same proceedings and formalities established by the aviation law for the issuance of operating permits.[66]

61. *Id.* art. 88.
62. *Id.* art. 92.
63. *Id.* art. 94.
64. *Id.* art. 95.
65. *Id.* art. 99.
66. *Id.* art. 96.

A final requirement concerning international air transport in Honduras, not directly connected with the operating permit, but of major importance to a foreign carrier seeking to operate in the country, is the provision calling for all foreign airlines to have a duly authorized representative permanently stationed in the country with sufficient power to appear before the administrative and judicial authorities to answer any complaint or claim resulting from air transportation.[67]

B. *Nicaragua*

A reading of the Nicaraguan Aviation Code shows a close parallel to the Honduran aviation law. The major differences, however, are worthy of note.

The first basic difference is found in the article setting forth the need for an operating permit before initiating air transportation.[68] Nicaragua, unlike Honduras which is silent on the subject, provides that the permit will be issued by a specified entity in the Executive Branch, the Ministry of Aviation. This entity is given broad attributes in the statute and is substituted for the Executive Branch where the latter appears in some of the corresponding articles of the Honduran law.[69]

A major difference is introduced in the requirement that a foreign airline must certify that it has authority from its own government to operate the proposed international service. Nicaragua further requires the petitioning airline to certify that it also has operating authority from the other countries it will serve on the route or routes being sought.[70] This additional demand cannot stand the test of reason and places the foreign airlines in a most untenable position in the event the other countries on the route exact a similar requirement. It is obvious that on a route involving more than two countries (for example the route from Panama to Guatemala via intermediates in Central America) negotiations for operating permits will not progress if each country requires evidence of operating authority from the others. Under these circumstances the condition precedent cannot be met.

Nicaragua's article 85 also differs from the corresponding Honduran article by excluding technical aeronautical personnel from the persons, under the Code, to whom the foreign airline is responsible for injuries. This same divergence is noted in article 86, providing for the items to be included in the operating permit, and in article 87(c), providing for insurance for the protection of certain persons and goods.

The grantee airline is given a maximum period of three months to

67. *Id.* art. 118.
68. CÓDIGO DE AVIACIÓN CIVIL art. 82 (Nicaragua 1956).
69. *Ibid.*
70. *Id.* art. 85.

initiate service and failure to start operations within the term specified in the permit may lead to revocation.[71] Revocation, as in Honduras, may also result from certain acts of the petitioner.[72]

A further important difference between the aviation legislation of the two countries is found in corresponding articles 92 and 97 of the respective laws of Nicaragua and Honduras. The former provides that permits will not be issued "if the traffic requirements are totally met." It will be recalled that Honduras amplifies this limitation by adding to the above phrase the following: "[I]t is clearly evident that the objective of the proposed service is—through uneconomic competition—to eliminate or prejudice airlines already established." The difference is significant and gives the Nicaraguan government a broader criteria upon which to base a refusal to grant an operating permit, by not interpreting the phrase "if the traffic requirements are totally met."

In Nicaragua the period within which an interested party may present allegations and proof in its behalf in the event of a threatened cancellation of its operating permit is thirty days, but it may be extended at the option of the Ministry of Aviation.[73] In Honduras such allegations and proof must be presented within a "reasonable time."[74]

The first part of article 108 of Nicaragua's Code follows verbatim the corresponding article of the Honduran legislation,[75] but the former adds a second paragraph as follows:

> In the absence of treaties and conventions the issuance of the said permits will be in conformance with the principle of equitable reciprocity.

Nicaragua does not define equitable reciprocity, but includes it as a major provision in its Code. Honduras, in the *Exposición de Motivos*[76] to its aviation law covers the subject of equitable reciprocity, but, while demanding reciprocity from foreign governments it does not qualify the term by adding the word equitable to the pertinent provision of its law.

Lastly, Nicaragua also requires a foreign airline operating in the country to have a permanent representative stationed therein who must have "most general powers."[77] Honduras does not require its corresponding representative to have such broad powers.[78]

---

71. *Id.* art. 88.

72. LEY DE AERONÁUTICA CIVIL art. 99 (Honduras 1957).

73. CÓDIGO DE AVIACIÓN CIVIL art. 95 (Nicaragua 1956).

74. LEY DE AERONÁUTICA CIVIL art. 100 (Honduras 1957).

75. *Id.* art. 113.

76. LEY DE AERONÁUTICA CIVIL, *Exposición de Motivos*, 8-9 (Honduras 1957).

77. The wording in Spanish is *poder generalisimo* which gives the grantee exceptionally broad powers such as the right to sell, mortgage, or encumber property, to enter into all kinds of contracts, etc. The rights of the *apoderado generalisimo* are normally found in the civil codes, and it is submitted that such provisions are out of step with the air age. For example, a middle management representative for a major airline if possessing a *poder generalisimo* has more legal authority than an officer of the airline.

78. LEY DE AERONÁUTICA CIVIL art. 118 (Honduras 1957).

C. *El Salvador*

El Salvador was the first of the Central American countries to promulgate local legislation implementing the Draft Aviation Code. Its law of civil aeronautics was signed by President Osorio on December 23, 1955 and published in the *Diario Oficial* on the same day.

Beginning with the first article under the general title "Operating Permits,"[79] El Salvador shows a tendency to depart, not so much from the substance, but from the language and structure of the Draft Code. In this respect the differences between the Honduran and Nicaraguan legislation are obvious. For example, the overall article requiring an operating permit states that traffic permits will be called "Operating Permits." Further, although it is made clear in the same article that the grant will be made by the Executive Branch, no mention is made in this particular article of the nature of the operating permit. This is found in a subsequent article which states that regular permits will be issued through Executive Decrees (*Acuerdos*), as is the case in Honduras and Nicaragua.[80] El Salvador expands article 112 by putting operating permits into three classes, (1) provisional, (2) temporary and (3) regular.

A substantive difference between El Salvador's article 112 and similar articles in the laws of Honduras and Nicaragua lies in the absence, from the Salvadoran legislation, of the statement that the operating permit is a personal and non-transferable document. A subsequent article, however, deals with the subject and provides for the transferability of operating permits with the approval of the Executive Branch which will only be granted if the "public interest demands it."[81]

The time for which an operating permit may be granted is the standard period of ten years with renewals permissible for like periods,[82] but El Salvador eliminates completely the criteria set up by Honduras and Nicaragua, that the initial investment and similar factors will be considered in determining the time for which the permit will be granted.

Operating permits in El Salvador which have been suspended, revoked or cancelled may not be renewed or extended.[83] Neither Honduras nor Nicaragua takes this extreme position.

The Aeronautical Code of El Salvador gives no specific guidance to the petitioner regarding the items to be included in his request for an operating permit. A provision states, however, that the petition shall contain the information and proofs of service and safety as determined by the respective regulations.[84] This provision has not been implemented and

79. LEY DE AERONÁUTICA CIVIL art. 112 (El Salvador 1955).
80. LEY DE AERONÁUTICA CIVIL art. 87 (Honduras 1957); CÓDIGO DE AVIACIÓN CIVIL art. 82 (Nicaragua 1956).
81. LEY DE AERONÁUTICA CIVIL art. 119 (El Salvador 1955).
82. *Id.* art. 112.
83. *Id.* art. 112.
84. *Id.* art. 113.

the petitioner needs, therefore, to consult the appropriate authorities before submitting his request.

In the article dealing with the items to be included in an operating permit, the Salvadoran statute follows the Draft Aviation Code with the significant omission of the provision specifically calling for the petitioner to submit to the provisions of the Code with respect to injury or damage to passengers, freight or baggage, and to third parties on the surface and their goods. In lieu of this, the pertinent article in the Salvadoran statute refers to subsequent articles in the law which treat the subjects of guarantees and insurance in extended form.[85]

The Salvadoran Code provides that services must start within three months and that failure to commence operations within the time specified may lead to revocation of the permit.[86]

El Salvador takes a more lenient attitude than either Honduras[87] or Nicaragua[88] in the matter of revocations and cancellations of operating permits by limiting permissive revocation and cancellation to the case where there has been *intentional* non-compliance with the aviation law or the terms, conditions, or limitations of the operating permit. Further, the violator is given a reasonable time in which to make amends except in the case of violation of the pertinent insurance provisions of the statute. In this latter instance the cancellation will be immediate and permanent.[89] El Salvador, however, provides[90] that operating permits will expire for those reasons for which Honduras and Nicaragua may cancel or revoke a permit.[91]

Other provisions of the Salvadoran statute concerning operating permits follow closely the Draft Aviation Code and the laws of Honduras and Nicaragua. The differences, where they exist, are mainly in language and arrangement rather than substance.

D. *Guatemala*

Guatemala's Civil Aviation Law dates from October 28, 1948. Guatemala, unlike Honduras, Nicaragua, and El Salvador, took no action on the resolution of the Fourth Conference of Directors of Civil Aviation to modernize its aviation statute through the adoption of the Draft Aviation Code.[92]

85. *Id.* art. 115.
86. *Id.* art. 116.
87. LEY DE AERONÁUTICA CIVIL art. 99 (Honduras 1957).
88. CÓDIGO DE AVIACIÓN CIVIL art. 88 (Nicaragua 1956).
89. LEY DE AERONÁUTICA CIVIL art. 123 (El Salvador 1955).
90. *Id.* art. 110.
91. See notes 87 and 88 *supra.*
92. Guatemala's failure to act is not surprising. Note that it was not represented at the First, Second or Third Conferences of Directors of Civil Aviation, nor at the First Meeting of the Legal Committee at Tegulcigalpa. See notes 25, 27, 29 and 32 *supra.*

Guatemalan law, therefore, does not present a neat package of statutory requirements to be complied with by the seeker of a foreign air carrier permit. As a matter of fact, there is no title or chapter in the statute entitled "Operating Permits" such as is found in the other codes or laws, including those of Costa Rica and Panama.

Article 52 in the Aviation Law is the basic article and takes the wide brush approach by stating that authorizations for the establishment of public air transport services will be granted by the government of the Republic through a system of contracts entered into between the interested party and the government represented by the Ministry of Communications and Public Works, subject to the prior approval, as to matters within their competence, of the Ministry of Economy and Labor, the Ministry of the Treasury and Public Credit, other governmental entities which it is deemed pertinent to consult, and the *Dirección General de Aviación Civil.* The contracts in question must conform to the provisions of the Constitution, to the law of civil aviation, to international conventions in effect, and to such other legal provisions as might be applicable. Article 52 is complemented by an additional provision which reaffirms that it is within the power of the government, through the Ministry of Communications and Public Works, to contract with air transport companies for the establishment of international public air transport services and the same article further states that these contracts will conform to the Constitution, aviation law, etc.[93] It is clear, therefore, that Guatemala has not yet abandoned the old system of contracts found so repellent by those who participated in the preparation of the Draft Aviation Code.[94]

The request for operating authority is an offer to contract and is made by the interested party to the Ministry of Communications and Public Works on government tax stamped paper. The Ministry, after proper clearance from other interested governmental entities, must submit the petitioner's offer to the *Dirección General de Aviación Civil* within

93. LEY DE AVIACIÓN CIVIL art. 68 (Guatemala 1948).

94. LEY DE AERONÁUTICA CIVIL *Exposición de Motivos* 19 (Honduras 1957).
The concession system has the following weaknesses:
(1) The varying provisions in the different contracts result in conditions of inequality between the different airlines and this in turn leads to discrimination in the case of any one airline.
(2) The State, upon contracting with a commercial concern, agrees to stipulations which are contrary to public law and places itself in situations inconsistent with the national sovereignty.
(3) The concessions made by the airline, such as the grant of free transportation to the authorities, are small compensation for the privileges and exemptions that the State grants the airline.
(4) A concession contract, upon ratification by the legislative branch, becomes contract-law resulting in a different legal regime for each airline; this is absurd and contrary to administrative law.
(5) When an airline receives a grant, the grantor State has no opportunity to demand reciprocity from a foreign State since the foreign airline can not bind its own government to comply with the obligations arising from the principle of reciprocity.

ninety days. This latter entity has thirty days in which to make its recommendations to the Ministry of Communications and Public Works.[95]

The statute provides specific guidance as to the items to be included in the offer to contract. Article 56, sub-paragraphs (1) and (2) call for the submission of the following information:

(1) Name and domicile of the petitioner, and in the case of a legal entity proof of its charter and by-laws.

(2) If passenger, or passenger and cargo service is contemplated, the description of the multi-engine aircraft which will be used as well as the communications and other essential equipment to be utilized.

Sub-paragraph (3) of the same article refers to "any other public service" and calls for information regarding the nature of the service, the means to be used in carrying it out, as well as an indication of the economic worth of the service and the benefits it is expected to bring to the community. Sub-paragraph (4) demands proof of financial responsibility, and sub-paragraph (5) provides for the submission of tariffs to be charged by the petitioner.

Article 57 infers additional data which should be included in the petitioner's offer. It states that the contract between the parties must be subject to certain essential stipulations among which is a definition of the routes together with itineraries, hours of operation, and minimum frequencies.

Essential additional stipulations to which the grantee binds himself are:

(1) Not to suspend or modify the services without authority of the *Dirección General de Aviación Civil* except in cases of *force majeure* (act of God), or of adverse weather conditions endangering flight.

(2) To carry such mail as is presented to the airline by the Guatemalan Government in accordance with the terms of subsidiary mail contracts entered into between the Government and the air operator.[96]

On the other hand, the government agrees to grant the air carrier, with minor exceptions, free importation of all items necessary for the establishment, maintenance and services of the airline.[97]

An additional stipulation binding both parties provides for revision

95. LEY DE AVIACIÓN CIVIL art. 55 (Guatemala 1948).
96. *Id.* art. 57(2), (8).
97. *Id.* art. 57(9).

of the contract at intervals of no less than five years subject to the understanding that modifications to the contract will only be carried out if these benefit the public, the contracting parties, or when called for by technical advances.[98]

Article 57 further states that the initial grant will be for a maximum period of twenty years subject to maximum ten-year extensions, but the twenty-year grant is applicable only in those cases where the airline unequivocally agrees to spend "heavy" amounts for works and installations which must be completed within five years of the date the contract is signed. At the end of the contract or its extensions, if a twenty-year period has lapsed, the works and services become the property of the State. If the contract is ended before the twenty years, the assets and services still become the property of the State, but a credit is allowed the air carrier for the time for which the contract has to run to complete the twenty years. If the work contemplated does not warrant a twenty-year grant, the Ministry of Communications and Public Works may stipulate a shorter grant which is determined by the value of the works to be undertaken by the airline.

A catchall provision in the statute states that the contract will provide for such other agreements, terms and conditions as the parties agree to, and those which the government may impose.[99]

After the contract is approved by the Executive Branch, the airline must post a bond in the amount of Q.10,000.00 (1Q = $1.00) to guarantee the performance of any obligation which it may incur.[100]

Guatemala reserves the right to cancel any contract which it has entered into with an airline. The statute clearly spells out the circumstances under which unilateral cancellation may take place and these are:

a) Transfer of the rights acquired under the contract to a foreign government; or acceptance of a foreign government or any entity controlled by a foreign government as a partner of the airline.

b) Commission of a crime against the sovereignty of Guatemala, its military security, or against the duly constituted authorities.

c) Interruption or suspension of scheduled services for fifteen consecutive days, except in cases of force majeure.

d) Abuse of free importation privileges.

e) Dissolution of the airline.

98. *Id.* art. 57(7).
99. *Id.* art 57(10).
100. *Id.* art. 59.

f) Violation of the fundamental provisions of the contract.

g) For such other reasons as agreed in the contract as a cause for cancellation or expiration of the agreement.[101]

There is no mention of a hearing in the above provision of the Guatemalen statute.

The highlight of Guatemala's relationship with a foreign air operator lies in the fact that it is based on a contract between the Guatemalan government and the foreign airline. This contractual relationship is clearly spelled out in the statute and must be, by the terms of the usual contract, approved by the Guatemalan Congress.

E. *Costa Rica*

Costa Rica, like Guatemala, took no action regarding its aviation legislation following the Fourth Conference of Directors of Civil Aviation in July 1954.[102] Its General Law of Civil Aviation which became effective on October 18, 1949 contains a section entitled "Operating Permit."[103] In this respect it follows the law of Honduras, Nicaragua and El Salvador.

The statute makes it clear that no air transport company may carry out services without an effective operating permit granted by the *Junta de Aviación Civil*.[104] International operating permits are obtained by following the same procedural steps as for local operating permits. They carry the same conditions, and confer the same benefits as local operating permits with the exception of cabotage rights.[105] Further, the operation of international air services is governed, in addition to the provisions of the law of civil aviation, by international treaties on the subject.[106]

The nature of the grant is covered in article 26 which states that the permits have "the nature of concessions for the operation of public services under the conditions established by this law."[107]

---

101. *Id.* art. 62.

102. Costa Rica's lack of action was not consistent with the interest it showed in the preliminaries leading to the promulgation of the Draft Aviation Code. Costa Rica was instrumental with Honduras in initiating the project, and it was a faithful participant at all the conferences and meetings held in the Central American Isthmus in connection with the subject of the Draft Code. Notes 25, 27, 29, 32, 34 and 36 *supra*, *but see* note 46 *supra*.

103. LEY GENERAL DE AVIACIÓN CIVIL III (Costa Rica 1949).

104. *Id.* art. 15.

105. *Id.* art. 31. This article further states that it is not necessary to include in the operating permit points other than the point immediately before, and the point immediately beyond the Costa Rican point, but this provision which would grant airlines good operating flexibility is qualified by the phrase "except, in certain cases, where the *Junta* requires more information." This limitation renders operating flexibility a myth in practice. For similar provisions see LEY DE AERONÁUTICA CIVIL arts. 133, 134 (El Salvador 1955).

106. LEY GENERAL DE AVIACIÓN CIVIL III, art. 32 (Costa Rica 1949).

107. In reality the Costa Rican "concession" is like the grants of Honduras, Nicaragua,

The Costa Rican law follows the approach of El Salvador and provides that the petition requesting an operating permit should contain the information called for by separate aeronautical regulations.[108] Petitions should be addressed to the *Junta de Aviación Civil* for action and interested parties may intervene at a public hearing.[109] Of all the aviation statutes being reviewed, the Costa Rican law is the only one that specifically provides for a public hearing. The *Junta* is required to grant the permit if it finds the petitioner fit and able to carry out the transport services effectively and safely, and that he is willing to comply with the provisions of the aviation law and its implementing regulations.[110] The service sought will be authorized if required by the public convenience and necessity; otherwise it will be denied.[111]

Operating permits must specify the final points of the routes as well as the intermediate points, if any, and the type and frequency of service.[112] Further, the permits must specify the terms, conditions and restrictions which duly guarantee the safety of the transportation at the airports and airways in use. Lastly, the conditions and limitations demanded by the public interest are also to be specified.[113]

Regular operating permits are valid for a period of ten years, but renewable for like periods of time. The services authorized must be commenced within three months from the grant of authority under penalty of revocation which may be carried out at the option of the *Junta* after notice to the interested parties.[114]

An operating permit once granted cannot be transferred without

and El Salvador. Costa Rica borrowed heavily from the United States legislation and the similarity between the wording of its aviation statute and the Civil Aeronautics Act of 1938 is readily apparent. It is worth noting that article 139 of the Costa Rican Act provides, at the option of the *Junta*, for the adoption of United States regulations and norms until the corresponding Costa Rican implementing regulations are promulgated.

108. LEY GENERAL DE AVIACIÓN CIVIL III, art. 16 (Costa Rica 1949). The implementing regulations have not been issued. *Accord*, El Salvador, *supra* note 84, where the implementing regulations have not been promulgated either.

109. *Id.* art. 17.

110. *Id.* art. 18. Compare Fed. Aviation Act § 402, 72 Stat. 756(b) (1958), 49 U.S.C. § 1372(b) (1965): "The Board is empowered to issue such a permit [foreign] if it finds such carrier [foreign] fit, willing and able . . . to conform to the provisions of this Act and the rules, regulations, and requirements hereunder . . . ." The Civil Aeronautics Act of 1938 § 402(b) contained a similar provision.

111. *Id.* art. 18; Costa Rica relied on United States aviation legislation effective in 1949 (Civil Aeronautics Act of 1938 § 401[d][1]) but used the term "public convenience and necessity" for both national and foreign carriers.

112 LEY GENERAL DE AVIACIÓN CIVIL art. 21 (Costa Rica 1949).

113. Compare Fed. Aviation Act, 72 Stat. 731 (1958), 49 U.S.C. § 1301 (1965) and its predecessor the Civil Aeronautics Act of 1938 (Act of June 23, 1938, 52 Stat. 973, as amended by Act of July 2, 1940, Pub. L. No 721) provided in §§ 402(e) and (f) respectively: "The Board [Authority] may prescribe the duration of any permit and may attach to such permit such reasonable terms, conditions, or limitations as, in its judgment, the public interest may require."

114. LEY GENERAL DE AVIACIÓN CIVIL art. 23 (Costa Rica 1949).

the approval of the *Junta* which will be governed in its ruling by the public interest.[115]

The *Junta* may after notice and hearing to the interested parties, alter, amend, modify, or suspend a permit, in whole or in part, if the public convenience and necessity so requires.[116] Also, it may revoke a permit, in whole or in part, for intentional[117] noncompliance with (1) the provisions of the aviation law, or any order or regulation based on it, or (2) any of the terms, conditions or limitations of the permit. A permit, however, will not be revoked without first giving the interested party a reasonable period of time to comply with the order, regulation, term, condition or limitation which has been violated.[118] In the case of permits authorizing international air transportation, the extension, denial, modification, suspension or revocation thereof will be subject to the approval of the Executive Branch.[119]

The grant of an operating permit in Costa Rica does not confer property rights or exclusive rights in any air space, airway, airport, or navigational facility.[120] A route granted through the medium of an operating permit cannot be altered or abandoned, totally or partially, without the authority of the *Junta* and this only after a hearing.[121] The *Junta*, however, may authorize the suspension or temporary modification of the services in the permit if such is in the public interest.[122]

All air transport companies are required to carry out the services authorized in their operating permits safely and adequately, and to provide suitable equipment and facilities to perform these services. They are further required not to discriminate or to grant undue, unreasonable or unjust advantages to persons, localities, or airports.[123]

Costa Rica takes a very positive view regarding renunciation of diplomatic protection by a foreign airline.[124] The renunciation is absolute and is not, as is normally the case, limited to "matters arising under the contract."

---

115. *Id.* art. 24. Compare Fed. Aviation Act § 402(g), 72 Stat. 756(g) (1958), 49 U.S.C. § 1372(g) (1965): "No permit may be transferred unless such transfer is approved by the Board as being in the public interest."

116. *Id.* art. 25. Compare Fed. Aviation Act § 402(f), 72 Stat. 756(f) (1958), 49 U.S.C. § 1372(f) (1965). Note, however, the use of the term "public convenience and necessity" in lieu of the term "public interest" used in the United States statute.

117. *Id.* art. 25.

118. LEY GENERAL DE AVIACIÓN CIVIL art. 25 (Costa Rica 1949). See similar provision in El Salvador, note 89 *supra*.

119. *Id.* art. 33.

120. *Id.* art. 26.

121. *Id.* art. 28.

122. *Id.* art. 28.

123. *Id.* art. 29.

124. *Id.* art. 13.

F. *Panama*

This country's aviation law is of recent origin and it represents the successful efforts of a competent group of Panamanian and foreign legal aviation experts.[125] It is thus the most up-to-date statute of the countries being studied.

Like every other country reviewed, Panama clearly sets forth the need for an operating permit or certificate prior to the commencement of public air transportation.[126] Article 102 amplifies the broad provision of article 94 and states that the authorization is issued by the Executive Branch through the Ministry of Government and Justice in accordance with the provisions of the aviation law and its regulations. The statute further provides that permits issued to foreign airlines are to conform to existing treaties and conventions between Panama and the States of which the airlines are nationals, and that in the absence of such treaties and conventions the principle of equitable reciprocity will prevail.[127] Article 116 reaffirms this by stating that in the absence of international treaties, conventions and agreements, international air transport will be governed by the principles set forth in the aviation law.

A novel approach is taken by Panama in the matter of transfer of operating permits. The law states that a permit may not be transferred to another airline unless the airline desiring to effect the transfer has been operating at least two years and the transferee fulfills the requirements that must be met to obtain the particular operating permit.[128] A subsequent article states that a transfer of operating permits must have the approval of the Executive Branch. Approval of the Executive Branch is also necessary in the event an airline desires to dispose of, cede or in any other manner encumber the operating permit, or any of the rights granted by it.[129]

Panama, in spite of the newness of its aviation law, approaches the subject of the request for an operating permit in an oblique manner, *i.e.*, its statute does not set out, as do the statutes of certain of the other countries,[130] the specific items which the petitioner should include in his communication to the *Junta Nacional de Aeronáutica Civil.* Article 105 is entitled "Petitions for Operating Permits," but it provides scant guidance to the petitioner for it merely states that a bond of 10,000 Balboas (one Balboa equals one dollar), returnable when services are inaugurated, must be posted in the case of international services in order

125. FÁBREGA, HISTORIA DE LA LEGISLACIÓN AERONÁUTICA PANAMEÑA 11 (undated).
126. *Decreto Ley* No. 19, art. 94(1) (Panama 1963).
127. *Id.* art. 104(3).
128. *Id.* art. 94(2).
129. *Id.* art. 107(1)(b).
130. LEY DE AERONÁUTICA CIVIL arts. 89, 90 (Honduras 1957); CÓDIGO DE AVIACIÓN CIVIL arts. 84, 85 (Nicaragua 1956); LEY DE AVIACIÓN CIVIL art. 56 (Guatemala 1948).

to obtain an operating permit. Sub-paragraph 2 of the above article sets out two conditions which, if existing, preclude the issuance of the operating permit, but these are criteria for evaluation by the governmental authorities rather than guides for the seeker of a foreign air permit.[131]

A foreign petitioner, however, is not without positive guidance concerning the information he must submit in his request for an operating permit. A decree issued in 1961[132] sets out the required data plus additional information concerning the issuance of foreign air carrier permits. Provisions of the above decree not in conflict with the aviation statute remain in effect,[133] and obviously the petitioner should consult both the statute and Decree 203 when seeking operating authority in Panama.

Article 106 sets forth the items which must be included in the operating permits. These are:

1. The terminal points of the route as well as the intermediates (if any) indicating which of these will be commercial stops and those which will serve as technical stops only.
2. The number (frequencies) of flights authorized.
3. Such terms, conditions, and limitations as will ensure the safety of flight at the airports and airways designated in the certificate.
4. Such conditions and restrictions as the public interest may require.[134]

The application for a foreign air carrier permit must be addressed to the *Junta Nacional de Aeronáutica Civil* which is required to make appropriate recommendations to the Ministry of Government and Justice. The permits are issued through a Resolution signed by the President of the Republic and the Minister of Government and Justice.

A duration of three years is fixed for the effectiveness of the operating permits, but these are renewable for successive three-year periods provided the request for renewal is submitted sixty days prior to the date on which the permit lapses; a permit once suspended, cancelled, or revoked cannot be renewed nor extended.[135] Service must be initiated within six months following the grant of the permit but a sixty-day extension to the six-month period may be obtained from the *Dirección General de Aviación Civil.* If service is not started within the time period

131. "(a) [T]he service can not be against the national interest or international agreements; (b) if the traffic demands are satisfied so that the grant of the permit would result in ruinous competition."

132. *Decreto* No. 203 of April 25, 1961, approving regulations for the *Junta Nacional de Aeronáutica Civil.*

133. *Decreto Ley* No. 19, art. 221 (Panama 1963).

134. *Id.* art. 106(1).

135. *Id.* art. 102(4). See also El Salvador, note 74 *supra.*

prescribed, the permit will be considered without effect and the airline will forfeit its bond.[136]

The provision concerning the non-grant of property and exclusive rights in air routes, airways, etc., by virtue of the issuance of a permit is also found in Panama's aviation law.[137]

Foreign operating permits will not be granted by the Panamanian government if:

1. The grant thereof will jeopardize the security of Panama.
2. The pertinent Government does not guarantee due reciprocity.[138]
3. The service would be contrary to the national interest, or the international conventions to which Panama is a party.
4. The traffic needs between determined points—when the petition is made—are met so that the grant of the operating permit would result in ruinous competition.[139]

Public transport companies are forbidden to render services other than those authorized in their operating permits and violation of this provision calls for the suspension or cancellation of the permit depending on the gravity of the violation.[140] Permits are also subject to cancellation if the airline interrupts service between two or more points in a route for six consecutive flights without the prior authority of the *Dirección General de Aviación Civil* or, if the interruption is due to a voluntary act on the part of the airline, or its legal representative. Exemptions are made for interruptions due to force majeure, strikes, civil commotion, riots, or public disorders.[141] Similar exemptions apply to variations from time schedules which, once approved by the *Dirección General de Aviación Civil*, cannot be altered or suspended.[142] Further, an airline performing regular services in public air transportation cannot change its itinerary or any part thereof without the prior permission of the *Dirección*.[143] It is unexplainable why departures from this last provision do not carry the exemptions arising from force majeure, strikes, etc.

An unusual provision found in the Panamanian law requires each operator of international services to ensure that:

1. Its employees, agents or their employees comply—while in a foreign country—with the laws, regulations, and procedures of the States in which the aircraft operates.

136. *Id.* art. 106(3).
137. *Id.* art. 102(5).
138. *Id.* art. 104(4)(a), (b).
139. *Id.* art. 105(2)(a), (b).
140. *Id.* art. 107.
141. *Id.* art. 108(a).
142. *Id.* art. 111.
143. *Id.* art. 110.

2. Its pilots know and comply with the applicable rules and regulations for the zones they will transit, as well as for the airports to be used and the services and facilities used in said airports.

3. Other members of the flight crew know and comply with the regulations and procedures applicable to their respective functions.[144]

Public transport airlines are required to render the services authorized by their operating permits safely, adequately, and efficiently and to have available the equipment and aeronautical facilities required by these services.[145]

Panama takes a strong position regarding the legal representatives of foreign airlines engaged in international air transport. Such representatives are required to be permanently stationed in Panama to answer all claims or complaints arising directly or indirectly from air transportation. Proven failure to comply with this provision calls for cancellation of the operating permit by the Executive Branch.[146]

Panama not only streamlined its substantive Aviation Law in 1963, it also modernized some of the corresponding procedures. The operating permit is now issued on a pre-printed form on which blanks are filled in conformance with the request of the petitioner. A second page contains a set of standard conditions some of which are required by the Aviation Law; others of which are not. Prominent among the latter is a provision requiring the airline to renounce diplomatic protection and to agree that all differences arising in connection with the Operating Permit will be resolved by Panamanian officials and tribunals in accordance with the laws and regulations of the country.

IV. ANALYSIS OF THE PROCEDURAL REQUIREMENTS

Viewed objectively there are no basic deficiencies in the administrative procedures which a foreign air carrier must follow in order to obtain an operating permit in any of the countries considered.

Both El Salvador and Costa Rica have broad provisions which relegate to subsidiary regulations the information to be submitted by the petitioner.[147] Honduras and Nicaragua set forth specifically what should be included in the petition. The Guatemalan legislation wanders a bit

144. *Id.* art. 131.

145. *Id.* art. 124(2).

146. *Id.* art. 93.

147. LEY DE AERONÁUTICA CIVIL art. 113 (El Salvador 1955); LEY GENERAL DE AVIACIÓN CIVIL art. 16 (Costa Rica 1949). Compare Fed. Aviation Act § 402(c), 72 Stat. 756(c) (1958), 49 U.S.C. § 1372(c) (1965) "Application . . . shall be in such form . . . as the Board shall by regulation require." The implementing regulations are found in the Board's Economic Regulations, Para. 211, (Applications for Permits to Foreign Air Carriers).

but the necessary information is found within the framework of the statute, and the same is true of Panama. A more concise arrangement in the cases of Guatemala and Panama plus the issuance of implementing regulations in El Salvador and Costa Rica would make it easier for the foreign air carrier to prepare his petition for an operating permit, but no prospective foreign air operator will find much difficulty in determining the basic information required by the Central American governments and Panama. Governmental aviation authorities in all of the countries are approachable, willing to assist, and, if the first submission is incorrect or insufficient, the petition can normally be resubmitted or amended without difficulty.

Guatemala presents an unusual case because of its contract system, and a petitioner should be prepared to bargain with the Guatemalan government.[148] What concessions the new foreign air carrier will have to make and what conditions will be imposed at any particular time by the government will not be known in advance, but in general the petitioner should expect to enter into a contract similar to those now existing between the Guatemalan government and other foreign airlines. Therefore, a study of previous foreign operating permits issued by Guatemala is a must for new foreign petitioners.

The provisions in both the Honduran and Nicaraguan laws which demand the fulfillment of certain requirements before the service may be initiated, but after the operating permit is issued,[149] are somewhat confusing but not necessarily fatal to the efforts of the petitioner. These added requirements are considered basic, and the alert petitioner will include them in his initial request rather than wait until the operating permit is issued before indicating compliance. Considering the slowness of the governmental machinery in these countries, this is advisable tactically, as well as from the administrative viewpoint.

The provisions concerning hearings[150] are unclear as to the type of hearing, but normally a public hearing can be had upon request. In general, the foreign petitioner is assured of his day in court if he is alert and knowledgeable of the local conditions. The statutes reviewed do not provide for judicial review of the decisions of the Executive Branch, but this is the standard procedure.[151]

148. The foreign petition can expect the bargaining to be heavily weighted in favor of Guatemala due to the relative status of the contracting parties. If this inherent relative strength is discounted, Guatemala still can resort to the provision in the statute under which it can "impose" contractual conditions on the airline. See LEY DE AVIACIÓN CIVIL art. 57(10) (Guatemala 1948).

149. LEY DE AERONÁUTICA CIVIL art. 92 (Honduras 1957); CÓDIGO DE AERONÁUTICA CIVIL art. 87 (Nicaragua 1956).

150. LEY DE AERONÁUTICA CIVIL arts. 98, 100 (Honduras 1957); CÓDIGO DE AVIACIÓN CIVIL arts. 93, 95 (Nicaragua 1956); LEY DE AERONÁUTICA CIVIL art. 122 (El Salvador 1955).

151. This practice is consistent with that of the United States. See Civil Aeronautics Board v. Waterman Steamship Corp., 333 U.S. 103 (1948), where the United States Su-

The requirement that the foreign petitioner have authority from his own government[152] before applying for a permit is not unreasonable and should present no problem to a foreign air operator who has taken timely steps in his own country.

The added requirements that the foreign air carrier subject itself to the laws of the country in which it is seeking a permit,[153] and that the foreign permits issued conform to applicable international conventions and agreements[154] are in the class of standard provisions and should present no hardship to the foreign petitioner.[155]

Unquestionably, some of the provisions are dated and should be stricken or modified, but a foreign petitioner need not fear that he will be made to follow the letter of the law where the provisions in question have been overtaken by the rapid changes in the industry. Amendments to codes in the civil law system are not easily made, and the lack of currency in some of the aviation codes and laws is therefore understandable. In any event, the civil aviation authorities of the countries in question are understanding of the changes that have taken place in air transportation in the last two decades and, where necessary, act accordingly.

In summary, a petitioner for a foreign air carrier permit in the Central American countries and Panama will find enough guidance in the aviation legislation of these countries to allow him to comply with the necessary procedural requirements which govern the issuance of the permit. The stumbling block, if any, will be found in the so-called substantive requirements. These will be considered next.

---

preme Court held that a court has no jurisdiction to review an order of the Board relating to a certificate issued for foreign air transportation and approved by the President because the President is the ultimate arbiter in matters concerning foreign relations.

152. LEY DE AERONÁUTICA CIVIL art. 97(d) II (Honduras 1957); CÓDIGO DE AVIACIÓN CIVIL art. 92(d) (Nicaragua 1956); LEY DE AERONÁUTICA CIVIL art. 124(I) (El Salvador 1956).

153. LEY DE AERONÁUTICA CIVIL art. 90(c) (Honduras 1957); CÓDIGO DE AVIACIÓN CIVIL art. 86(d) (Nicaragua 1956); LEY GENERAL DE AVIACIÓN CIVIL art. 13 (Costa Rica 1949).

154. LEY DE AERONÁUTICA CIVIL art. 113 (Honduras 1957); CÓDIGO DE AVIACIÓN CIVIL art. 108 (Nicaragua 1956); LEY DE AERONÁUTICA CIVIL art. 132 (El Salvador 1956); LEY DE AVIACIÓN CIVIL art. 68 (Guatemala 1948); LEY GENERAL DE AVIACIÓN CIVIL art. 32 (Costa Rica 1949); *Decreto Ley* No. 19, art. 104(3) (Panama 1963).

155. Compare Fed. Aviation Act § 102, 72 Stat. 732 (1958), 49 U.S.C. § 1302 (1965):

> In exercising and performing their powers and duties under this Act, the Board . . . shall do so consistently with any obligation assumed by the United States in any treaty, convention, or agreement that may be in force between the United States and any foreign country or foreign countries . . . .

See also Civil Aeronautics Board General Policy Statement No. 399.13:

> *Standard provisions in foreign air carrier permits.* It is the policy of the Board that permits issued to foreign air carriers shall provide:
> (a) That the permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period the permit remains in effect, to which the United States and the foreign government concerned are parties.

V. Analysis of the Substantive Requirements

The provisions in the majority of the aviation statutes reviewed, concerning (1) the national or public interest, (2) reciprocity, and (3) traffic demands,[156] are considered substantive criteria whose existence in the respective laws gives the countries concerned the leverage necessary to deny or grant an operating permit for other than procedural and technical reasons. In short, it is the evaluation of these statutory standards that ultimately determines whether the permit or a modification thereto will be issued. Further, it is the limitations and restrictions which find their way into the operating permits under the mantle of these substantive requirements that dictate the conditions under which a foreign air carrier will operate in the Central American countries and Panama.

In Latin America a variety of terms are used to express the concept of the public interest as for example "*interés público*," "*utilidad pública*," and "*interés social*." Regardless of the term used the connotation is clear —the common benefit.[157]

Reciprocity means different things in the United States than it does in some of the Latin American countries. This difference is explained in the *Exposición de Motivos* of the Honduras Civil Aeronautics Law:

> The . . . [United States] . . . view, that is the one which holds that commercial rights in international air transportation are indivisible is based on the economic doctrine of free competition. This theory advocates the grant of *equal and equitable opportunity* to all international air operators so that they may compete on the same basis and over the same routes for the international traffic of any State. The advocates of this doctrine advocate that free competition is beneficial, not only for the development of international civil aviation, but also for the public who, as a result of competition, is favored through cheaper and more efficient transportation.
>
> The Civil Aeronautics Bill . . . [of Honduras] . . . , without failing to recognize the importance that free competition plays in the development of world commerce, proposes the adoption of legal principles which tend to achieve the Aristotelian idea of justice, *i.e.*, corrective or bilateral justice whose objective is to guarantee that each one of the parties . . . be on a par with the

156. The three criteria are found in the Draft Code; and Honduras, Nicaragua, and El Salvador include them in their respective statutes. Panama's aviation law also includes them, thus showing that at least insofar as that country is concerned the criteria of 1954 were still valid nine years later. The Costa Rican aviation law calls for a finding that the service proposed will be for the public convenience and necessity but is silent on the subject of reciprocity and traffic demands. Guatemala has no specific statutory provisions in its aviation legislation concerning the three criteria being considered.

157. Cabanellas, II Diccionario de Derecho Usual (1962): "*Interés Público—La utilidad, conveniencia o bien de los más ante los menos, de la sociedad ante los particulares, del Estado sobre los súbditos.*"

other, so that neither party gives nor receives, more nor less than the other one.

This principle is known in International Aviation Law as the principle of equitable reciprocity and has already been consecrated in various laws and international agreements relating to air transportation. Our Government recognizes the convenience of strengthening international bonds through the execution of bilateral agreements for the exchange of rights over air routes, but it also believes that such agreements should conform to the needs of our aerial transportation and to the public convenience promoting thereby the development of Honduras' civil aviation. Such has been the case with regard to the bilateral agreements concluded by our country with Ecuador and Peru.

That is why this bill demands that the permits for the operation of international routes conform to the principle of equitable reciprocity which has been defined as "equality before the law" since it is indispensable that it be regulated by justice so that the latter may bring into balance the inequality between the parties. The principle of equality—which is a pillar stone of justice would be violated according to Aristotle—if equal treatment were given to unequal merits or persons. Therefore, the corrective factor—equity—should temper justice to the facts of any particular case. Accordingly, the principle of reciprocity which has been internationally accepted in Aviation Law is tempered by the principle of equity, thus becoming equitable reciprocity.[158]

The so-called capacity provision of the United States bilateral air transport agreements has been the subject of bitter controversy between the United States and some of the Latin American nations. This basic philosophical conflict, where existing, is deep-seated and beyond the scope of the present study, but suffice to say that the word "capacity" also means different things in the United States and in Latin America. But despite these differences, all parties are basically against ruinous and uneconomic competition.[159]

It is advanced that the above brief comparative review puts in bold relief two major schools of thought concerning international air transport existing in the Western Hemisphere today. The first, of which the United States is the leading exponent, can be called the liberalist point of view; the other, subscribed to by the overwhelming majority of the Latin American nations, the restrictionist position. That these different

158. LEY DE AERONÁUTICA CIVIL, *Exposición de Motivos* 25-6. (Honduras 1957). (Emphasis added.)

159. "Neither the interests of a sound transportation system nor of the countries involved are served when a route with little traffic is burdened by a number of carriers greater than is economically justifiable." Presidential Statement on International Air Transport Policy at 8.

points of view exist is an unfortunate fact of life in international civil aviation in the Americas.

The restrictionist policy is economically harmful, prejudicial to the traveling public, annoying, and frustrating; but these potential hardships are, or should be known, to prospective air carriers. The petitioner seeking authority in a restrictionist area (and the Central American Isthmus is considered such an area) seeks authority with advance notice of the basic principles that will regulate his future services. In the last analysis he can choose not to operate, or he may even suspend operations if he finds the balance too heavily weighted against him. Present air operations in the Americas indicate that the burden has not been insurmountable.

VI. The Controlling Provision in the Codes—Competition with the Local Airlines

Is there then a real difficulty concerning the issuance of foreign air carrier permits in the Central American Isthmus, *i.e.*, can a foreign air carrier seeking an initial permit, a renewal, or modification of an existing permit predict with reasonable certainty the result of its efforts? The answer is in the negative, and the fault does not lie in the procedural or substantive law, but in the lack of uniformity of application of the latter.

The root of the problem is not buried too deeply. It lies primarily in the economic competition generated by the foreign air carriers *vis-à-vis* the national carriers of the geographic area under consideration. Once the hue and cry is raised, protection of the local carrier or carriers becomes the major if not the controlling factor in the issuance, renewal, or modification of foreign air carrier permits. The extent of the protection varies, of course, with the petitioner and the circumstances existing at the time the petition is made. The fact that the new petition will greatly benefit the traveling public is often of little import; the local airline must be protected and the criteria established by the law are thus ignored or even contorted in order to safeguard the local air carriers. The protectionist measures employed are varied. They may consist of limitations on the frequency of operations, on the days of operations, the seats that may be sold, equipment to be used, or restrictions on the routes to be operated. Regardless of their nature the objective is clear—restrict the competition for the protection of the local airline.

In countries where the local carrier does not play a leading role in international operations, the grant of a foreign air permit is often used as a bargaining weapon to obtain concessions from the foreign carriers themselves, or from their parent States. Under the theory that commercial air travel to and from a country is a national asset to be disposed of by the nation in the exercise of its national sovereignty, the grant of a

foreign air carrier permit becomes a trading tool for comparable air traffic rights abroad,[160] or to obtain concessions from the petitioning airline.

Add to this unhealthy situation an unavoidably weak administrative machinery[161] and the stage is set for decisions in the field of international air transportation far removed from the statutory provisions and contrary to the intent of the law.

Statutory criteria such as the public interest, reciprocity, and traffic demands which, at best, are difficult to define are thus seldom given substance and the result is that years after the statutory enactments have been promulgated there is neither jurisprudence nor norms to which a foreign petitioner may turn to predict the result of his efforts. The matter is strictly a hit or miss proposition, with each case fought under different rules and standards. In short, the situation in those countries with clear cut statutory criteria for the issuance of foreign air carrier permits is no different from that encountered in the countries where no such specific criteria exist, such as Guatemala. Under these circumstances the usefulness of the legal standards set forth in the aviation codes and laws is conjectural at best. Certainly, the standards are of little use to the petitioner seeking guidelines for new operating rights, or to the foreign operator seeking modification or renewal of an existing permit.

VII. RECOMMENDATIONS AND CONCLUSION

Unfortunately, there is scant hope for improvement on a short range basis. If anything, the problem will become more acute in the immediate future for the foreign air carriers desiring to operate or now operating in Central America and Panama. Several factors now existing, or just beyond the horizon tend to intensify the bent for protection of the local airlines.

One of these is the intensified competition for the suddenly lucrative international air transportation market.[162] Another is the ever widening

160. See BASUALDO, LA REGULACIÓN INTERNACIONAL DEL TRÁFICO AÉREO 44-5 (1957), quoting the well known Argentine writer, Enrique A. Ferreira:

> The traffic from nation to nation is a unity, an all, a synthesis of its mutual commerce. And, since at the root of all commerce is the presumption of a mutual benefit, but without the possibility to fix beforehand its relative measures, it cannot be said that with it one nation may benefit more than the others no matter how different are its respective populations or riches.

Compare this to the United States point of view:

> On the other hand, this framework [of bilateral air transport agreements] rejects the concept that agreements should divide the market or allocate to the carriers of a particular country a certain share of the traffic.

Presidential Statement on International Air Transport Policy at 7.

161. It is common knowledge that the *Juntas de Aviación* in the Central American Isthmus are understaffed and operate under serious budgetary limitations.

162. At the present rate of growth, barring some unforeseen reversal, the world airlines will move well into the $9 billion plus range in revenue and during 1966 will become a $10 billion-a-year business. In 1963 the operating profit of the world's airlines was $326 million.

economic and equipment disparity between the major foreign air operators and those of the underdeveloped nations;[163] still another, the regional nationalistic feeling brought about by joint efforts such as the Central American Common Market; and, lastly, the continued mistaken view that local efforts must be protected *ad infinitum* regardless of the uneconomic or unproductive manner in which such efforts are being carried out.

Under these adverse conditions what can foreign air carriers do to protect their present interests or to achieve better treatment when they seek new rights in the future in Central America and Panama? It is submitted that first they must recognize and accept the underlying causes of the present difficulties. This understanding will lead to the important conclusion that the grant, modification, or renewal of a foreign air carrier permit is a highly sensitive matter not necessarily controlled by the substantive criteria of the aviation codes and laws, but by the impact which the proposed operation will have on the local carriers. To the extent possible, and consistent with the policies of his parent government, a petitioner in Central America and Panama should therefore present a request which impinges as little as possible on the operations and economic well being of the local carrier. This is a pragmatic step and should be followed under present circumstances.

What about the future? As a long range objective, foreign air carriers operating in the Central American Isthmus should encourage (1) the growth of healthy local air carriers under the premise that strong competitors are able to fight their own battles and seek less protection from their own governments;[164] (2) the education of local civil aviation authorities and local airline management so they may become more knowledgeable in the intricacies of international air transportation and thus avoid provincial thinking in an area truly international in scope;[165] (3) the establishment of an efficient and knowledgeable civil aviation administration to avoid the "personalismo" that often creeps into the issuance of foreign air carrier permits or their modification. All the above are long range measures, but a judicious combination of these and the pragmatic measure previously suggested should bear fruit. An

---

Murphy, *The World's Airlines*, Air Transport World, May, 1965, p. 17.

163. In Central America and Panama none of the local airlines operate jet equipment, while most foreign air carriers to those countries do so.

164. Avianca of Colombia is a good example of a Latin American carrier which has largely broken away from the governmental apron strings and is holding its own in international air transportation. A similar road can be followed by the less developed Latin American airlines.

165. Recent efforts by the University of Miami School of Law to achieve this objective are laudable. Its First and Second Interamerican Aviation Law Conferences brought together the leading figures in Latin American Aviation in 1963 and 1964. Latin American and United States airlines operating to Latin America gave strong support to these conferences.

understanding between the two parties (airlines and governments) is the objective sought, and this can best be achieved when both parties are willing and capable of understanding their respective problems and points of view.

Should foreign air carriers seek the protection of their governments when seeking authority to operate, modify, or extend their operations in the Central American Isthmus? The answer lies in the policies of the parent governments. The United States adheres to the bilateral approach[166] and remains rather aloof in the absence of bilateral agreements or clear cut violations of the principle of reciprocity.[167] Other countries play a more active role regardless of the existence of an air transport agreement.[168]

Air transport is in its infancy in Central America and Panama. As their airlines grow into full manhood, the regulatory difficulties encountered today should lessen, or at least become more clearly defined. It is expected that these difficulties will give way to others, perhaps of a more complex nature, but the uncertainty and confusion that exists today in the matter of licensing foreign air carriers in the Central American Isthmus should, in due time, abate. Once maturity is reached, those sections of the aviation codes and laws pertaining to the licensing of foreign air carriers will no longer be "show cases of learning"[169] or "merely compilations,"[170] but clearly defined standards by which a petitioner for a foreign air carrier permit can be guided.

---

166. (a) It is the policy of the Board (jointly with the Department of State) that, as a general rule, landing rights abroad for the United States flag air carriers will be acquired through negotiations by the United States Government with foreign governments rather than by direct negotiations between an air carrier and a foreign government.

14 C.F.R. § 339.12 (1965) (Statements of General Policy Relating to Operating Authority by the Civil Aeronautics Board).

167. In countries with which the United States has no bilateral air transport agreements, the United States carriers (if duly certified by the United States Civil Aeronautics Board) normally seek permits or modifications without the direct assistance of the United States government, although as a rule the local United States Embassy is kept fully informed.

168. It is common knowledge that many foreign governments give strong backing to their nationals engaged in commercial ventures abroad. The United States does not follow this policy.

169. Bayitch, *The Aviation Code of Paraguay*, 3 INTER-AM. L. REV. 235 (1961).

170. *Id.* at 256.