9-1-1978

Aviation

Suzanne Pinkerton

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Recommended Citation
Suzanne Pinkerton, Aviation, 10 U. Miami Inter-Am. L. Rev. 530 (1978)
Available at: http://repository.law.miami.edu/umialr/vol10/iss2/11
In September 1977, the International Civil Aviation Organization (ICAO) held its Twenty-second Assembly. Among the resolutions adopted was Resolution A 22-16, in which the Assembly requested those member states which had not previously done so, to become parties to the Convention for the Suppression of Unlawful Seizure of Aircraft (Hague, 1970) and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 1971). On November 3, 1977, the United Nations General Assembly, in response to the concern voiced by the ICAO, adopted by consensus Resolution 32/8 on the safety of international civil aviation. In adopting the resolution the General Assembly reaffirmed its condemnation of aerial hijacking and other interference with civil air travel. Two days earlier the Special Political Committee had approved, by consensus, the resolution in draft form.

In its final form, Resolution 32/8 is divided into five paragraphs. In it, the General Assembly called upon all States to take all necessary steps to prevent acts of aerial hijacking and terrorism subject to (1) respect for the purposes and principles of the United Nations Charter, and for relevant United Nations declarations, covenants and resolutions and (2) without prejudice to the sovereignty or territorial integrity of any State, in cooperation with the United Nations and the ICAO, to ensure that passengers, crew and aircraft engaged in civil aviation are not used as a means of extorting advantage of any kind. The General Assembly appealed to all States which had not previously done so to become parties to the Tokyo, Hague, and Montreal conventions. The General Assembly went on to request that the ICAO undertake further efforts to ensure the security of civil air travel and to prevent further occurrence of aerial hijacking and terrorist acts. An additional
appeal was made to all Governments urging them to undertake serious studies of the abnormal situation related to hijacking.9

Congressman Wolff, a United States Representative to the thirty-second General Assembly, in a statement made following the adoption of the resolution said, in part, "[O]n balance, this resolution represents a major step forward in the collective fight against hijacking, because it embodies a unanimous and categoric determination by the international community to take further steps to prevent the use of terror, for whatever purpose, against those involved in international civil aviation."10 El Salvador considered the resolution an important step forward in the joint efforts of States to put an end to aerial hijacking and said that terrorism in all its forms was an abominable crime which could not be justified in any circumstances.11 The Representative from Chile declared that hijacking was, by its very nature, an international crime which was and always would be a crime regardless of the motives adduced.12

Cuba, which did not participate in the decision made by the Assembly, stated that prior to consideration of the matter in international forums it had participated in various bilateral agreements with Canada, Mexico, Colombia, Venezuela and, before it was denounced by Cuba, with the United States. The Cuban representatives said that their country could not agree that the problem should be dealt with on the basis of an unilateral and selective criterion and that Cuba could not associate itself with unjust, discriminatory attitudes which disregarded the principle of the equality of States and the most sacred of all principles, that of the equality of all human beings.13

International Civil Aviation Organization

The International Civil Aviation Organization (ICAO) Council, acting on a draft resolution presented by the Federal Republic of Germany and Japan, adopted by consensus late last year, a resolution urging its member states to carry out recommended security measures at all international airports.14 Recent related resolutions adopted by ICAO (September 1977) and the United Nations General Assembly (November 1977), were considered by the Council in adopting the December 2, 1977 resolution as well as existing ICAO standards, recommended practices, procedures and guidance material on aviation security.

The Council urged its Member States to: (1) Implement Resolution A22-1615 and paragraphs 2 and 3 of Resolution A22-1716; (2) pursue the implementation of, inter alia, the following security measures at all international airports within their territories:

10. Id.
12. Id.
13. Id. at 23.
16. Id.
(a) Inspect/screen all passengers and their cabin baggage prior to departure on all scheduled and non-scheduled flights;

(b) reduce the number of allowable pieces of cabin baggage;

(c) ensure that there is no possibility of mixing or contact between controlled passengers and uncontrolled persons after security-control gates of an airport have been passed prior to embarkation;

(d) guard or lock all entry points to the air side of an airport and ensure strict control of all persons and vehicles requiring access to the air side;

(e) have armed guards readily available at, or in the immediate vicinity of, each security-control gate in an airport;

(f) carry out, at irregular intervals, frequent security patrols at airports;

3 render maximum possible cooperation to all airline companies in the enforcement of security measures applied by them and which are compatible with the security program of each airport; (4) transmit to the governments concerned, all important information related to activities likely to lead to acts of unlawful interference with civil aviation; (5) assist and support each other in measures to safeguard international civil aviation against acts of unlawful interference; and (6) consider the possibility of using technical assistance for the protection of international civil aviation, as outlined in Resolution A17-13.17

Despite the resolutions recently passed by both the U.N. General Assembly and ICAO, there is continued concern about the security measures being taken in the field of international civil aviation. It has been pointed out that the Tokyo, Hague and Montreal Conventions can only offer advice and education and that signature and ratification of any or all of the Conventions, in and of itself, will not ensure adequate security either in the air or on the ground.18

At this writing, ICAO's All-Weather Operations Division (AWOD) has not yet held its Montreal meeting. The AWOD is expected to take a final vote on which one of several competing microwave landing systems (MLS) will be adopted to replace the instrument landing system (ILS) now generally in use at international airports worldwide. Four countries — Australia, West Germany, the United Kingdom and the United States — are promoting systems which meet ICAO's operational requirements. Of these four, the systems promoted by the United Kingdom and the United States seem to be the two systems most heavily favored for acceptance by the AWOD. In March 1977 the United States MLS gained preliminary acceptance by a narrow vote at an ICAO All-Weather-Operations Panel (AWOP) meeting but the ICAO air navigation commission subsequently declined to endorse the working group's recommendation and called for a world-wide meeting to select the new system.

17. Id.
Development of the currently used ILS reached technological limits in the late 1960's. The ICAO air navigation commission, in 1972, proposed a new microwave landing system which would overcome some of the drawbacks found in the ILS. Developed some thirty years ago, the ILS utilizes a narrow beam projecting from the airport runway. An incoming airplane homes in on the beam, following its glidepath before intercepting the actual runway, thus overcoming problems of weather and darkness. The ILS has, however, certain shortcomings: (1) Approaches are confined to a single narrow path; (2) the number of available frequency channels is limited; (3) transmissions are subject to interference; (4) equipment requires careful and constant checks for accuracy; (5) because of the frequencies used, the elevation signals depend upon the terrain to form their beam and are subject to distortion by surrounding buildings and topography.

The new MLS would allow a flexible approach path by generating a wedge-shaped signal with a very wide sweep and greater flexibility in elevation in front of the runway. The time reference scanning beam (TRSB) developed in the United States by the Federal Aviation Administration is described as an air derived system in which ground based equipment transmits position information to a receiver in the aircraft about to land. The information is provided as angle coordinates and a range coordinate. Angle information is obtained by measuring the time difference between successive passes of two narrow electronic fan-shaped beams giving altitude and direction. Britain's Doppler Microwave Landing Guidance System (DMIS) makes use of doppler techniques to pinpoint the aircraft's position based on its own speed. It is based on the concept of providing a distinct frequency coding at every angle within the coverage sector. The Australian system, called Interscan, is considered basically and technically the same as the United States system. West Germany is proposing a ground-based data system called DME-derived landing system (DLS).

In a recent supplementary working paper the British declared outright that their DMIS was, "greatly superior to TRSB in satisfying the requirement for a low cost system needed for most applications." The paper went on to state that attempts to develop a less costly version of TRSB have resulted in unsatisfactory reductions in system performance whereas the use of simpler and less costly versions of DMIS have not shown any significant reductions in accuracy.

No matter which system wins ultimate approval by ICAO's AWOD, no one will have a worldwide monopoly on the design. Under ICAO rules the company whose design is chosen is obliged to license manufacturers in foreign countries to make the device.

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21. Id.
22. Id.
23. Id.
24. Id. at col. 2.
Several countries, including Australia and Canada, have expressed concern that arguments could continue indefinitely with no decision on a new landing guidance system being reached. However, Australia says that if a decision is reached now, standards for MLS can be developed by 1980.\textsuperscript{25}

The governing council of the ICAO will hold an International Conference on Air Law at Montreal from September 6 through 22, 1978. The purpose of the conference is to consider draft articles for amending the 1952 Rome Convention on damages to third parties on the ground. The ICAO legal committee which drafted the articles has made no decision on the question of limits of liability; the issue has been left for decision by the diplomatic conference.

\textit{Bermuda II Agreement}

After an almost continuous seven months of disagreement the United States and United Kingdom reached agreement on the two items which had blocked final resolution of the Bermuda II Agreement, originally signed by the two States on July 23, 1977. The two major obstacles which had prevented final resolution were British resistance to the United States low fare policies and the issue of charter regulations.

An initial agreement modifying the Bermuda II Agreement to permit experimental implementation of low cost fares was accomplished by exchange of letters at Washington, D.C. on September 19 and 23, 1977. However, not until March 1978 were low-cost fares, together with the new charter rules made a permanent part of the agreement. A few days prior to the announcement of the agreement, after the fifth unsuccessful round of talks between the two countries, United States Secretary of Transportation Brock Adams had stated, "we face the unpleasant but nevertheless real possibility that U.S. support of the Bermuda II Agreement may be withdrawn if the differences that frustrated negotiations thus far are not resolved when the present charter agreement expires."\textsuperscript{26} The charter agreement referred to was actually a memorandum of understanding, due to expire March 31, 1978, which was expressly excluded from the final Bermuda II Agreement made last Summer. He had indicated earlier that the issue of low cost fares had been settled.

A joint statement, issued after agreement on the charter rules was reached said, in reference to the low-cost fares agreement which was announced March 17, 1977, "Each country will consider favorably other innovative air fare proposals based on the mutual understanding that there is reciprocity in the treatment of each other's airlines."\textsuperscript{27} Under the new agreement, carriers operating scheduled service between fourteen United States cities\textsuperscript{28} and United Kingdom gateways will be able to offer a variety of low

\textsuperscript{25} Id. at col. 3.
\textsuperscript{26} J. Com., Mar. 16, 1978, at 1, col. 2.
\textsuperscript{27} J. Com., Mar. 20, 1978, at 1, col. 1.
fares which would include standby, budget and advance purchase rates. These types of fares had previously been available only on the London-New York routes.

The air charter agreement replaces the memorandum which was scheduled to expire March 31, 1977. Major provisions of the agreement (1) reduce the number of days required for advanced ticket booking from forty-five to twenty-one days; (2) reduce minimum charter group size from forty-five to twenty persons; (3) eliminate price controls on fares; and (4) authorize both countries to designate as many airlines to operate charter flights as they deem appropriate.29

Insurance

Major airlines, aircraft manufacturers and aviation underwriters have voiced concern about the large number of air crash cases in the United States which have gone to the jury instead of being settled out-of-court. The high levels of compensation awarded air crash victims by juries has also drawn considerable criticism.

Speakers at an American Trial Lawyers Association (ATLA) conference, held in Monte Carlo early in February 1978, indicated that the level of compensation awarded in United States air crash cases has roused expectations of European, Asian and African crash victims to a height "far from reality."30 As a result, litigation is becoming more time consuming and victims are attempting to bring their claims in United States courts.

A British aviation underwriter criticized the length of time and high costs involved in litigation saying that it "makes little or no difference to the amount received by the claimant in the end."31 Mr. Hewitt noted that in the majority of cases there should be only one reason for going to court for crash compensation; when there is an accident causing death or injury to a large number of people it must be determined what law applies, what contracts of carriage are applicable and what forums are appropriate.32

Despite rising damage awards, recent major air disasters and a fairly uniform number of fatalities and accidents,33 aviation premiums have continued to decline. Airline insurance rates are currently about twenty to thirty percent of the rates that were in effect eight years ago, and aircraft manufacturers can purchase product liability insurance for less than .5 percent of their gross annual sales.34 Mr. L.H. Wilcox, speaking on Aviation Insurance at the 1978 Air Transportation Conference in Miami this past April, cited a continuing improvement in the safety record of the industry, reflecting advanced technologies in aircraft, air traffic control, air navigation, communications, ground handling facilities and, the introduction of the Boeing

31. Id. at col. 8.
32. Id. at 4A, col. 4.
33. Id. at 1A, col. 7. There are about 1,300 to 1,400 United States general aviation fatalities per year, produced by 600 to 700 accidents.
34. Id.
747, as being responsible for the drastic reduction in premiums from 1968 to 1977.\footnote{35} The introduction of the wide-bodied jets, with their now proven safety record, has been a major factor contributing to the reduction of premiums. However, many of the airlines utilizing the wide-bodied jets as a primary unit in their fleets are now grossly underinsured. This problem of underinsurance is due to several factors including, the cost of the aircraft, their passenger/cargo capacity and the problem of spiraling inflation. Mr. Wilcox stressed the need for air carriers, many of which now have $200 million liability insurance programs, to increase their protection to a minimum of $400 million.\footnote{36} In arguing the need for such increased protection Mr. Wilcox pointed out that while most international air carriers are protected by international conventions and laws, at least as to the extent of their own liability to their own passengers, their liability to others, such as persons on the ground and passengers in other aircraft, as well as for various kinds of property damage, remains unlimited.\footnote{37}

\textit{Cargo}

In late 1977, Congress passed Public Law 95-163\footnote{38} which provided for cargo deregulation. As proposed, the original “All-Cargo Air Deregulation Bill,” H.R. 6010, would have had a very narrow sphere of influence, affecting only all-cargo carriers and leaving undisturbed the power of the Civil Aeronautics Board (CAB) to oversee rules, regulations and practices. The bill ultimately signed into law by President Carter on November 9, 1977 had a far more wide-sweeping effect. First, the cargo deregulation bill, H.R. 6010, incorporated a part of a second bill, H.R. 8813, which stripped the CAB of its power to rule on the reasonableness of liability, rules, regulations or practices, or to suspend any related proposed changes.\footnote{39} As a result of the incorporation of H.R. 8813 into the original bill Congress invalidated the freight loss and damage regulations prescribed by the CAB in July 1977. Second, section 1002(g) of the Federal Aviation Act was amended and limits the Board’s authority to regulate rates for the transportation of property, whether by all-cargo aircraft or combination aircraft, to those cases where the CAB finds, after notice and hearing, that the rates are prejudicial, discriminatory, preferential or predatory.\footnote{40} Third, the Board is, in addition, under the amended section 1002(g), precluded from suspending any proposed cargo rates pending a hearing.\footnote{41}

\footnote{35. Address by Mr. L.H. Wilcox, Executive Vice President, Frank B. Hall & Co., 1978 Air Transportation Conference (Apr. 5, 1978), at 25.}
\footnote{36. \textit{Id.} at 2.}
\footnote{37. \textit{Id.} at 4.}
\footnote{38. 91 Stat. 1278.}
\footnote{40. [1977] U.S. Code Cong. & Ad. News S175, S191.}
\footnote{41. \textit{Id.}}
A bill that would include the supplemental air cargo airlines in the cargo deregulation law is currently before the Congress and is expected to pass without much opposition.\textsuperscript{42}

Since the passage of the cargo deregulation bill, cargo rates have climbed (in one case 300 per cent)\textsuperscript{43} and, liability limits, which were increased by the CAB in July 1977 from $0.50 per pound to $9.07 per pound, have dropped.\textsuperscript{44} Shippers, who have been adversely affected by the CAB's divestiture of authority, are preparing to fight the air cargo carriers both in Congress and in the courts. The shippers are essentially asking Congress for two things: (1) Reinstate CAB's jurisdiction over the reasonableness of liability rules, and (2) resurrect the suspension power removed when the deregulation bill was passed.\textsuperscript{45} In court, shippers are expected to attempt to obtain temporary restraining orders blocking proposed increases in excess value charges and to ask the court to enforce the loss and damage rules prescribed by the CAB.\textsuperscript{46}

In another air cargo-related area, the CAB adopted new regulations which allow domestic and international air freight forwarders to use the services of other freight forwarders to ship air cargo. The regulations which went into effect April 28, 1978, also allow shipper associations to operate in international air transportation and to use air freight forwarders. The CAB cited several advantages to the new regulations; first, shippers and indirect carriers will have greater flexibility and availability of service. Second, it will be easier for smaller freight forwarders to enter a market, hopefully resulting in an increased geographic scope of operations for these forwarders.\textsuperscript{47}

\textit{Passenger}

The new United States aviation policies have been severely criticized in recent months, both here and abroad. Many airlines flying the North Atlantic route, which has suffered losses of $2.5 billion in the last seven years, feel the United States arguments that low rates would eliminate those losses by generating better utilization of the available seat capacities "is wholly unrealistic."\textsuperscript{48}

As several airline officials have pointed out, the new fares have been helpful in filling seats that would otherwise go empty but, they do not generate the revenue which is required to replace aging fleets and maintain profits. An Aer Lingus official stated: "[T]hese fares on the whole are good but only on the short term. If they continue into the 1980s when we will have to buy new aircraft at 1980 prices, they will be far too low."\textsuperscript{49} Frank Bor-
man, president of Eastern Airlines, told the CAB: "Frankly, it is questionable if these deep discount fares will be economically sustainable."

The airlines said the Super-No Frills fares have increased the number of no-show passengers as much as seventy percent. Travel agents have also expressed dislike of the new fares because they have meant smaller commissions. The airlines have also discovered that many of their steady clients, such as businessmen on expense accounts, are using the cheaper, "no frills" fares.

Many of the discount fares, which cut between thirty and fifty percent off regular fares also have certain built-in restrictions such as required advanced booking and a minimum-maximum length stay.

The House version of the passenger airline deregulation bill, at this writing, is still in the House Public Works and Transportation subcommittee. In mid March the automatic entry features of the proposed bill, H.R. 1145, were sharply curtailed. Scheduled airlines had argued that automatic entry could lead to price wars and competition so destructive that it could drive some of the smaller certified carriers out of business. The airlines still support either large scale freedom to price their seats, or at least a "zone of reasonableness" within which they could raise or lower their fares at will. The Senate version of the bill provides that airlines could enter a limited number of new markets each year.

Both bills are expected to aid the charter-only supplemental airlines by permitting entry into the scheduled airline markets while allowing them to retain some of the advantages of their charter service business.

UNITED STATES TREATY INFORMATION**


51. Id.
53. Id.
BILATERAL TREATIES WITH THE UNITED STATES

Colombia


Mexico


Agreement amending and extending the air transport agreement of August 15, 1960, as amended and extended (TIAS 4675, 7167). Signed at Mexico, January 20, 1978. Entered into force provisionally, January 20, 1978; definitively, upon receipt by the United States of notification from Mexico that the formalities required by national legislation have been completed.