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S. A. Bayitch

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INTERNATIONAL LAW*

S. A. BAYITCH**

The purpose of this article is to present significant developments in international law and foreign relations that are of interest to Florida or of importance to interamerican problems. Rather than taking a critical approach, this survey is prepared as a summary of useful information for the benefit of the bench and bar.

The main topics to be included are determined by the geopolitical situation of Florida. Contacts with Latin America have made Florida sensitive to developments there, particularly to occurrences in the nearby Caribbean. Its long coastline accounts for Florida’s involvement in questions concerning territorial waters and the continental shelf, and the large volume of foreign air transportation makes international aviation law a matter of practical importance. Finally, the ever expanding space program in the state has brought extra-terrestrial legal problems to our attention.

I. GENERAL PROBLEMS

Latin America

In interamerican relations the activities of the Organization of American States¹ as a regional agency of the United Nations² have become increasingly significant. The aim of the Organization is to establish more coherent and effective coordination in matters of intercontinental interest and to promote a cooperative effort to cope with internal political and socio-economic

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* This article does not include developments subsequent to February 1962.
** Professor of Law, University of Miami.

problems. The Inter-American Conference, the "supreme organ" in which all member states are equally represented, is authorized to "consider any matter relating to friendly relations among the American States." It convenes every five years, but there is a provision for calling special Inter-American Conferences. Matters of an urgent nature are considered by the Meeting of Consultation of Ministers of Foreign Affairs, whose decisions, except for those involving the use of armed force, are binding upon member states. These meetings are aided by the Advisory Defense Committee. The Inter-American Defense Board, a permanent body, is charged with preparation for collective self-defense against aggression. Another organ of the OAS is the Council, assisted by three technical organs, the Inter-American Economic and Social Council, the Inter-American Council of Jurists, and the Inter-American Cultural Council. The General Secretariat of the Organization is the Pan American Union. There are also a number of specialized agencies created within the framework of the Organization. Included among the Organization's committees are the Inter-American Peace Committee, the Inter-American Commission on Human Rights, the Inter-American Nuclear Energy Commission, and an autonomous agency, the Inter-American Development Bank. This elaborate yet flexible system has been used extensively to meet the objectives of the Organization.


4. Article 33 of the Charter of Bogota. The ninth conference took place in Bogota (see MINISTERIO DE RELACIONES EXTERIORES, NOVENA CONFERENCIA INTERNACIONAL AMERICANA (Bogota, 1948)), the tenth in Caracas (PAN AMERICAN UNION, Décima Conferencia Interamericana, Caracas, 1954, Actas y Documentos (1956)). The eleventh conference intended for Quito was postponed.


7. Article 57 of the Charter of Bogota.


10. Articles 73-77 of the Charter of Bogota.


12. These institutions are the Pan American Institute of Geography and History (established in 1929, with headquarters in Mexico); the Inter-American Institute of Agricultural Sciences (1944, San Jose, C.R.); the Inter-American Children's Institute (1927, Montevideo); the Inter-American Commission of Women (1928, Washington); the Pan American Health Organization (1902, Washington); the Inter-American Indian Institute (1940, Mexico). The Inter-American Statistical Institute and the Inter-American Defense Board are additional agencies which serve specific purposes. See generally Kelbaugh, The Present Status of Official and Unofficial Inter-American Organizations, 1948 INTER-AMERICAN JURIDICAL YEARBOOK 101.

The founding Charter of Bogota also articulates the Organization’s guiding principles, legal, political, socio-economic and cultural. The Charter expresses the principles that “International law is the standard of conduct of States in their reciprocal relations” based on “respect for the personality, sovereignty and independence of States,” and that “Good faith shall govern the relations between States.”

War of aggression is condemned, and controversies are to be settled by peaceful means. The principle of non-intervention is emphasized, and the fundamental rights of and duties imposed upon member states are enumerated.

With regard to internal political problems, the Charter demands an “effective exercise of representative democracy,” a principle repeatedly affirmed since its formulation in 1948. The Declaration of Santiago de Chile (1959) requires that the rule of law be based upon separation of powers within every government combined with means to test the legality of governmental acts, free elections and no perpetuation in office, freedom for the individual without political proscription, and freedom of the press and other mass media. The subsequent Declaration of San José (1960) reiterated the principle of non-intervention with reference to extracontinental as well as continental powers; the latter are specifically prohibited.


21. The text of this declaration may be found in 43 DEP’T STATE BULL. 407 (1960). See also Rippy & Tischendorf, The San Jose Conference of American Foreign Ministers, 14 INTER-AMERICAN ECONOMIC AFFAIRS 39 (Issue 3, 1960).
from intervening in the internal or external affairs of the other American states. Furthermore, the Declaration unequivocally states that any form of totalitarianism is incompatible with the interamerican system.

Equally strong concern was demonstrated by the Organization toward socio-economic problems. The Charter of Bogota demands social justice and certain fundamental economic as well as social standards for all the inhabitants of the Americas. These principles have been further elaborated in the Act of Bogota (1960)\textsuperscript{22} which advocates measures of social improvement and economic development within the framework of what became known as Operation Pan-America.\textsuperscript{23}

Recently, the Charter of Punta del Este (1961),\textsuperscript{24} prefaced by a Declaration of the Peoples of America, formulated a comprehensive working plan to deal with all facets of interamerican cooperation. The emerging plan, labeled the Alliance for Progress, takes its fundamental tenets from the Declaration which provides that "free men working through the institutions of representative democracy can best satisfy man's aspirations . . . ," and that the dignity of the individual is the foundation of our civilization. To further these basic principles, the following programs were proposed: improving and strengthening of democratic institutions; acceleration of economic and social development; encouragement of programs for comprehensive agrarian reform; establishment of fair wages and satisfactory working conditions; elimination of illiteracy; improvement of health and sanitation; reformulation of tax laws; avoidance of inflation and deflation; stimulation of private enterprise; prevention of excessive price fluctuations; and acceleration of the economic integration of Latin America, a process already under way. The Declaration recognizes that these profound changes can come about only through self-help on the part of each country. The United States promised financial and technical cooperation, while the Latin American countries agreed to "devote a steadily increasing share of their own resources to their own development," i.e., to reinvest profits instead of exporting them, and to formulate comprehensive national programs for economic development. A number of annexed resolutions deal with the related problems of education, health and taxation, as well as organizational questions.

As indicated in the Charter of Punta del Este, some of the economic ideas have already found expression in regional arrangements, the Central American and Montevideo groups. Following the political trends under-
lying the Charter of Central American States (1955), some of these republics have initiated an ambitious program aimed at the economic integration of their area. At Tegucigalpa in 1958, Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua signed the Multilateral Treaty of Free Trade and Economic Integration. This agreement aims first at a customs union as a start toward economic integration and guarantees non-discriminatory economic intercourse, freedom of inter-member commercial transit and control of export subsidies and unfair trade practices. In important matters such as investments, equal national treatment is assured. The way toward industrial integration was agreed upon in the Convention Regarding the Regime of Central American Industries (1958), followed recently by the General Treaty of Economic Integration (1960). Additional agreements have been negotiated and some of them implemented by bilateral arrangements.

Encouraged by European as well as Central American experiences and actively supported by the United Nations, a number of leading South American republics (Argentina, Brazil, Chile, Paraguay, Peru, Uruguay, Mexico and Colombia) have adopted the Treaty Establishing a Free Trade Zone and Instituting the Latin American Free Trade Association (Montevideo, 1960). The agreement provides for a gradual elimination of duties, charges and restrictions imposed upon imports originating in the territories of member countries. These reductions are to be achieved through agreed upon national schedules specifying annual reductions, and through similar


27. 77 RECOPILACION DE LAS LEYES DE LA REPUBLICA DE GUATEMALA, 1958-1959, at 1028 (1961). This treaty was ratified by El Salvador, Guatemala, Honduras and Nicaragua.

28. MINISTERIO DE RELACIONES EXTERIORES, TRATADOS, CONVENCIONES Y ACUERDOS INTERNACIONALES VICENTES EN EL SALVADOR 635 (1960).


30. Other conventions concern uniform traffic signs (1958); traffic of vehicles (1958); equalizing of import charges (1959); Central American Bank for Economic Integration (1960); (text for these provisions found in material cited in notes 28, 29 supra).


32. See generally STEIN & NICHOLSON, AMERICAN ENTERPRISE IN THE EUROPEAN COMMON MARKET, A LEGAL PROFILE (1960); symposium on European Regional Communities, 26 LAW & CONTEMP. PROB. 347 (1961).

33. Text in 5 ECONOMIC BULL. FOR LATIN AMERICA 7 (March 1960); see also Dosik, The Montevideo Treaty and 'New Trade', 14 INTER-AMERICAN ECONOMIC AFFAIRS 117 (Issue 3, 1960); Sumberg, Free Trade Zone in Latin America, 14 INTER-AMERICAN ECONOMIC AFFAIRS 51 (Issue 1, 1960); Tordes, Latin-America Free Trade Zone, 2 J. INTER-AMERICAN STUDIES 421 (1960); CNAZZO LIMA, INTEGRACION ECONOMICA DE AMERICA LATINA (Montevideo, 1960).
common schedules listing products on which charges and restrictions have been eliminated by all members.\textsuperscript{34}

The concern with vital economic and social problems of Latin America is shared by a number of other international organizations. The United Nations acts on these problems through the Economic Commission for Latin America and its subsidiary body, the Central American Cooperation Committee, or through its specialized agencies. The International Labor Organization for some time has sponsored regional conferences of American states and initiated or coordinated valuable programs in critical areas, among them the recent Andean Program.\textsuperscript{35}

\textit{The Caribbean}

During recent years political and economic pressures have increased greatly in the Latin American area closest to Florida — the Caribbean.\textsuperscript{36} Important changes, both peaceful and revolutionary, are under way within colonial territories as well as within the independent nations. Some of the British possessions in the Caribbean have achieved a self-governing status within the West Indian Federation;\textsuperscript{37} others, including British Guiana\textsuperscript{38}

\textsuperscript{34} See generally Bases for the Formation of the Latin American Regional Market, 3 Economic Bull. for Latin America 9 (March 1958); Dell, Problemas de un Mercado Comun en America Latina (Mexico, 1959); Ferraris, El Mercado Comun Latino Americano como Exigencia del Desarrollo Economico, 81 Boletin Biblioteca Congreso de la Nacion 13 (Buches Aires, 1960); Process Toward the Latin American Common Market, 4 Economic Bull. for Latin America 1 (March 1959); United Nations, The Latin American Common Market (1959); also Foreign Private Investments in the Latin American Free-Trade Area (1961); Urquidi, Trayectoria del Mercado Comun Latinoamericano (Mexico, 1960); and his forthcoming book: Free Trade and Economic Integration in Latin America (1962). For a complete collection of documentation, see (344) Mercurio, Revista de la Cámara Argentina de Comercio 43-204 (1962).

\textsuperscript{35} Discussed in Rens, The Andean Programme, 84 International Labour Rev. 423 (1961).

\textsuperscript{36} For recent developments see MeCham, The United States and Inter-American Security, 1889-1960, at 389 (1961); Menendez, Los Paises del Caribe y los Estados Unidos, 1956-1957 Revista de Politica Internacional 345 (Madrid, 1961).


and British Honduras, are striving in that direction. On the other hand, a stabilizing force based on intergovernmental cooperation for dependent areas in the Caribbean, the Caribbean Commission, has been partly reorganized into the Caribbean Organization; it deals with “social, cultural and economic matters of common interest to the Caribbean area, particularly agriculture, communications, education, fisheries, health, housing, industry, labor, music and the arts, social welfare and trade.” The governing body, the Caribbean Council, with functions previously held by the Research Council, assisted by a Central Secretariat, retains its power to “make recommendations to the Members for carrying into effect action in regard to social, cultural and economic problems.”

The United States has vital economic and military interests in the Caribbean, the latter evidenced by a system of military bases throughout the area, including the West Indian Federation, Panama and Cuba. Alarming tensions have been building up in relation to Cuba since the overthrow of Batista by Castro, finally resulting in a break of diplomatic

46. See generally Poore, American Rights in the Panama Canal, 34 Am. J. Int’l L. 416 (1940); Wright, Defense Sites Negotiations Between the United States and Panama, 1936-1948, 27 Dep’t State Bull. 212 (1952); Minger, Panama, the Canal Zone, and Titular Sovereignty, 14 Western Political Quarterly 544 (1961). For the Panamanian position see Fabrega, La Cuestion de Soberania en la Zona del Canal, 2 Anuario de Derecho 205 (Panama, 1956-57) King, Panama Debe Denunciar la Nulidad de la Convencion de 1903 y Concertar un Nuevo Tratado, 4 Anuario de Derecho 277 (Panama, 1959-60). Documents are collected in Ministerio de Relaciones Exteriores, Compilacion de Varios Tratados y Convenciones Relacionados a la Zona del Canal 1903-1950 (Panama, 1952).
47. Agreements for the Lease of Lands for Coaling and Naval Stations, 1903 (1 Malloy, Treaties, Conventions, International Acts, Protocols and Agreements 358, 360 (1910)). For the United States position on Guantanamo see 43 Dep’t State Bull. 780 (1960); 44 Dep’t State Bull. 103 (1961).
48. See Responsibility of Cuban Government for Increased International Tensions in the Hemisphere 43 Dep’t State Bull. 317 (1960), and U. S. Submits Supplement to Document on Cuba to OAS Ministerial Meeting, 43 Dep’t State Bull. 409 (1960) (the memoranda contained within these articles were submitted to the Inter-American Peace Committee). See “Facts Concerning Relations Between Cuba and the United States” in 43 Dep’t State Bull. 690 (1960) (submitted to the United Nations); Department of State, Cuba (1961).
relations. A number of legal questions arose, among them problems concerning intervention, foreign expropriation and the status of the Cuban refugees pouring into Florida.

Outer Space

It is understandable that Florida’s interest in the law controlling high altitude as well as space flight is more than academic. The launching site at Cape Canaveral has created an awareness of legal as well as technical problems. The challenging questions of the law to govern earthlings’ first steps into space have generated a feverish rush to explore the legal implications of space flight; the field is crowded with writers and abounding with ideas. However, the results appear much less encouraging in terms of legal principles acceptable to the community of nations, both those nations actively engaged in space exploration as well as those only observing. Is it proper simply to project traditional principles of international law into outer space? Or must accustomed ways of thinking rooted deeply in the concept of territorial sovereignty be abandoned altogether and new solutions found? Judging from the resolution adopted recently by the United Nations, the former alternative, politically the most expedient and emotionally the least disturbing, has won the first skirmish. The General Assembly has recommended the observance of the following principles: “International law, including the Charter of the United Nations, applies to outer space and celestial bodies”; both outer space and celestial bodies are “free for exploration and use by all states in conformity with international law . . .”, except that they are not “subject to national appropriation,” thus eliminating the doctrine of occupation from outer space.


51. Discussed in section VI infra.

52. See section VII infra.


A bibliography may be found in Teclaff, Review of Space Law Literature and Activities, 54 L. Library J. 208 (1961).

II. TREATIES

Criss-crossing the world like a complicated web, international conventions remain the traditional means of dealing with many diverse problems. From the endless list of many different types of treaties, only a few can be mentioned here.

Multilateral treaties dealing with economic (particularly financial) matters occupy a significant place in view of the number of less developed countries joining the international community as active, or at least as demanding partners. The international financial structure originating with the two Bretton Woods Agreements (1944), one establishing the International Monetary Fund, and the other the International Bank for Reconstruction and Development, has been supplemented by the Agreement of the International Finance Corporation (1955), which according to article I is planned to “further economic development by encouraging the growth of productive private enterprise . . . particularly in the less developed areas.” The Inter-American Development Bank (1959) was created to “contribute to the acceleration of the process of economic development of member countries, individually and collectively.”

Recently, the number of these institutions has been augmented by the International Development Association (1960), an affiliate of the International Bank for Reconstruction and Development; its purpose is to “promote economic development,
increase productivity and thus raise standards of living in the less-developed areas . . ., in particular by providing finance . . . on terms which are more flexible and bear less heavily on the balance of payments than those of conventional loans . . ." To complete the list, the Special United Nations Fund must be mentioned.

The United States cooperates in these efforts not only through its membership in the various institutions, but also by providing a large part of their financial means. The international organizations are paralleled within the United States by an equally complicated scheme of independent agencies, as well as by operations under special acts. The Export-Import Bank of Washington and the International Cooperation Administration (after demise of the Development Loan Fund) are aided in their activities by acts like the Agricultural Trade Development and Assistance Act, the act to provide for assistance to Latin America and the recent Act for International Development, the last one regulates private foreign investment guarantees as well as other matters affecting interamerican affairs, for example, housing, agrarian economies, military aid, economic assistance. Governmental guarantees for private foreign investment in Latin America, as in many other countries, are made part of bilateral international agreements.

Another area in which important developments have occurred is the law of the sea. The four Conventions on the Law of the Sea (Geneva,
1958)72 — the Convention on the Territorial Sea and the Contiguous Zone, the Convention on the High Seas, the Convention on Fishing and Conservation of the Living Resources of the High Seas, and the Convention on the Continental Shelf — have been ratified by the United States,73 but are not yet in force since the required number of ratifications has not been reached.74 The problems of the breadth of the territorial waters and fishing in the adjacent sea were not resolved at the 1958 Geneva Conference. The second international conference75 convened in Geneva in 1959 to deal with these questions, but adjourned without results.

Both the peaceful and military uses of atomic energy have posed difficult questions to the community of nations. Valuable progress has been made with reference to the peaceful use of this power source.76 The International Atomic Agency77 was created in 1958, and implemented by the European Atomic Energy Community78 as well as by the United States through a number of bilateral agreements, many with Latin American countries.79 The problem of international control of Antarctica was settled surprisingly well by treaty;80 territorial claims of two Latin American republics, Argentina and Chile, as well as interests of the United States were involved.

Two bilateral treaties with Latin American countries should also be mentioned. The extradition treaty with Brazil (1961) was ratified by the

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73. Dean, Department Seeks Senate Approval of Conventions on Law of Sea, 42 DEP'T STATE BULL. 251 (1960). On March 24, 1961, the President signed instruments of ratification, 44 DEP'T STATE BULL. 609 (1961).
74. According to a personal letter from the United Nations Office of Legal Affairs, Dec. 20, 1961, the first convention was ratified by 5, the second by 18, the third by 7, and the fourth by 13 countries.
United States, but not by Brazil and, consequently, is not yet in force;\textsuperscript{81} the other agreement was with Colombia and concerned taxation of earnings from operation of vessels and aircraft (1961).\textsuperscript{82} In relation to countries outside of the Americas, the Convention of Establishment with France (1959)\textsuperscript{83} and similar treaties of friendship and commerce with Denmark (1951),\textsuperscript{84} Pakistan (1959),\textsuperscript{85} and Viet Nam (1961)\textsuperscript{86} are noteworthy. The supplemental agreement to the Treaty of Friendship and Commerce with Italy (1948), signed in 1951, was ratified in 1961.\textsuperscript{87} In addition, the United States has signed the Vienna Convention on Diplomatic Relations (1961).\textsuperscript{88}

Efforts continue to codify international law by having drafts prepared by international commissions to be adopted in the form of treaties. The Inter-American Council of Jurists convened recently in Mexico (1956)\textsuperscript{89} and in Santiago (1959).\textsuperscript{90} The meeting in Santiago prepared drafts on diplomatic asylum, extradition and human rights. The United Nations International Law Commission has prepared drafts for conventions regarding consular intercourse and immunities, and the law of treaties. Work on international conflict law was continued in The Hague. Primarily sponsored by European powers, the last two Hague conferences (in 1956 and 1960) were attended by observers from the United States.\textsuperscript{91}

III. LAW OF THE SEA

The Geneva Conventions

For the most part the Geneva Conventions on the Law of the Sea\textsuperscript{92}

\textsuperscript{81} Text in 44 \textit{Dep’t State Bull.} 164 (1961). Letter from the Assistant Legal Adviser, Department of State, Jan. 2, 1962.


\textsuperscript{84} Oct. 1, 1951, T.I.A.S. No. 4797 (effective July 30, 1961).

\textsuperscript{85} Nov. 12, 1959, T.I.A.S. No. 4683.


\textsuperscript{89} Secretaria de Relaciones Exteriores, Consejo Interamericano de Jurisconsultos, Tercera Reunion, 1956 (Mexico, 1956).

\textsuperscript{90} Pan American Union, Cuarta Reunion del Consejo Interamericano de Jurisconsultos, Santiago de Chile, 1959, Actas y Documentos (1960).


\textsuperscript{92} For texts see 38 \textit{Dep’t State Bull.} 1111 (1958); 52 Am. J. Int’l L. 842 (1958).
represent a restatement of international law in force. Thus the Convention on the Territorial Sea and the Contiguous Zone designates as territorial sea the inland waters as well as the belt of sea adjacent to the coast, without specifying the breadth of the latter; this may be assumed, taking into consideration the proceedings of the conference and article 24(2) of the convention, to be no less than three miles and no more than twelve miles from the baseline into the open sea. The convention contains, among others, rules concerning the innocent passage and the exercise of criminal jurisdiction by the coastal states. In the adjacent contiguous zone, coastal states may not claim sovereignty, but may exercise certain controls. The Convention on the High Seas proclaims the four freedoms of navigation, fishing, laying submarine cables and pipelines, and flying over the high seas; it also deals with questions of nationality of vessels, piracy, hot pursuit, pollution and submarine cables. The Convention on Fishing and Conservation of Living Resources of the High Seas contains original rules providing for conservation and establishes elaborate machinery for settling disputes. Finally, the Convention on the Continental Shelf acknowledges sovereign rights of coastal states in regard to natural resources in the continental shelf; this area includes the seabed and subsoil adjacent to the coast, but outside of the territorial waters to a depth of 200 meters, or more where the depth of the superjacent waters admits the exploitation of the shelf without changing the regime of the superjacent waters (the epicontinental sea) as high seas. The convention contains detailed provisions regarding constructions erected on the shelf and necessary safety measures.

94. The claim by Peru for a 200 miles fishing zone was not recognized by the United States, Souza v. Commissioner, 33 T.C. 817 (1960).
95. According to article 5 there must be a "genuine link between the state granting nationality to a ship and the ship; in particular, the state must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag." The doctrine of genuineness expounded in the Nottebohm Case, [1955] I.C.J. Rep. 4, spilled over into maritime law. Boczek, Flags of Convenience, An International Study (1962).
96. The rule established in the case of the S.S. "Lotus," P.C.I.J., Ser. A, No. 10 (1927) was abandoned and exclusive jurisdiction given to the "flag state or... to the state of which such person [i.e., master or any other person in the service of the ship] is a national." Convention on the High Seas, art. 11, para. 1, in 38 Dep't State Bull. 1115, 1116 (1958). Claims arising out of a collision on the high seas in the Gulf of Campeche were decided in La Interamericana, S.A. v. The Narco, 146 F. Supp. 270 (S.D. Fla. 1956).
Territorial Waters

According to section 4 of the Submerged Lands Act of 1953, the seaward boundary of a state is a “line three geographical miles distant from its coast line,” with the proviso that “nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State’s seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress.” In no event may such boundary extend from the coast line “more than three geographical miles into the Atlantic Ocean . . . or more than three marine leagues into the Gulf of Mexico.” Within this area the United States retained all its “navigational servitude and rights in and powers of regulation and control . . . for the constitutional purposes of commerce, navigation, national defense, and international affairs . . .,” as well as rights to resources beyond this line seaward within the continental shelf. Thus not only the seaward boundaries of the states were determined, and the states given control over these waters, but the states also received title to and ownership of the lands beneath these waters and “the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law . . .”

Pursuant to this act the 1955 Florida Legislature passed an Act Fixing and Establishing the Boundary of the State of Florida along the Atlantic Ocean and the Florida Straits, providing that the “Atlantic boundary of the State, as set out in the present article I of the state constitution, is indefinite and not clearly defined, and should be redefined and extended in accordance with the authority granted.” The line was drawn three geographical miles from the east coast of Florida and along the Florida Keys where this coast is in direct contact with the Atlantic Ocean or the Florida Straits, the latter being “an arm of the Atlantic Ocean.”

In November 1957 the Solicitor General filed an amended complaint in the Supreme Court against Louisiana, Texas, Mississippi, Alabama and Florida praying for a decree to declare

the rights of the United States as against said States in the lands, minerals and other things underlying the Gulf of Mexico, Straits of Florida and Atlantic Ocean, lying more than three geographic miles seaward from the ordinary low-mark ... and extending seawards to the edge of the continental shelf, enjoining said States ... from interfering with the rights of the United States therein, and requiring said States to account for all sums of money derived therefrom after June 5, 1960.108

Despite the efforts of the government to inject issues of international law, the case against Florida was decided strictly on the interpretation of the crucial provisions of the Submerged Lands Act of 1953 already quoted. Florida relied on both grounds, the existence of the claimed three marine league boundary in the Gulf of Mexico at the time Florida became a member of the Union as well as the approval by Congress of this provision in its constitution of 1868.110 The Court found that the 1868 constitution was “examined and approved [by Congress] as a whole, regardless of how thorough that examination may have been . . . .”111 This is all that was required under the Submerged Lands Act, particularly since the language of the act was “at least in part designed to give Florida an opportunity to prove its right to adjacent submerged land so as to remedy what the Congress evidently felt had been an injustice to Florida.”112 The final decree provided that the United States is entitled to the natural resources “more than three leagues seaward from the coast lines [of Florida into the

(Salt Waters of Broward County - Jurisdiction); [1957-58] FLA. ATT’Y GEN. BIENNIAL Rep. 261 (Jurisdiction of Sheriff of Monroe County among the islands and keys, particularly in regard to boats).

108. The date is based on adjudications in United States v. Texas, 339 U.S. 707 (1950); United States v. Louisiana, 339 U.S. 699 (1950). However, an adjudication was never obtained against Florida. See generally Parker, Problems in Florida and Other Coastal States Caused by the California Tidelands Decision, 1 U. FLA. L. REV. 44 (1948).
110. The five or three marine league line appeared first in the constitutional draft of Jan. 20, 1868 (H.R. Doc. No. 109, 40th Cong., 2d Sess. 27 (1868)) setting the line from a point “five leagues from the mainland; thence northwesterly five leagues from the shore including all the islands, to a point five leagues due south from the middle of Perdido River” (art. II); it may be noted that this text is erroneously given as the constitution adopted Feb. 25, 1868, in 2 THORPE, THE FEDERAL AND STATE CONSTITUTIONS, COLONIAL CHARTERS, AND OTHER ORGANIC LAWS OF THE STATES, TERRITORIES, AND COLONIES NOW OR HERETOFORE FORMING THE UNITED STATES OF AMERICA 706 (1909). The other draft of Feb. 8, 1868, also contains the five leagues line into the Gulf. The finally adopted constitution of 1868, and the present constitution of 1885, draw the line at three marine leagues.
Gulf of Mexico] . . . and extending seaward to the edge of the Continental Shelf" and enjoined the state from interfering with these rights. The Court held that Florida is entitled to all natural resources in the Gulf "extending seaward from . . . [its] coast lines for a distance of three leagues . . . "

**Outer Continental Shelf**

The Outer Continental Shelf Act of 1953 defines this term as "all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act . . . , and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control . . . ." This area includes the seabed and subsoil beyond three geographical miles from the Atlantic coast of Florida and beyond three marine leagues (nine geographical miles) from the coastline into the Gulf of Mexico. The continental shelf is made subject to the Constitution and laws, as well as the civil and political jurisdiction of the United States. In addition, state law, civil as well as criminal, in force in the adjacent state is declared to be "the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon . . . ." Certain aspects of this act have recently been interpreted in other jurisdictions.

By Presidential Proclamation of March 15, 1960, an area lying three geographical miles off Key Largo (Monroe County) on the seabed of the outer continental shelf outside the seaward boundary of Florida and appertaining to the United States under the Outer Continental Shelf Lands Act of 1953, has been designated as the Key Largo Coral Reef Preserve, and withdrawn from disposition. The Secretary of the Interior has prescribed Initial Regulations for this area prohibiting dredging, filling, excavating, building, polluting and removal or destruction of natural features and marine life. Wrecks in the preserve shall not be handled so as to injure or destroy

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120. 43 C.F.R. §§ 15.1-.14 (Supp. 1961).
any coral formation. Spear fishing and the use of poisons, electric charges and similar devices are prohibited, as is the carrying or use of explosives and dangerous weapons. Persons who "knowingly and willfully" violate the regulations will be guilty of a misdemeanor under the Outer Continental Shelf Lands Act. In general, the regulations provide for the application of all federal acts within the preserve as well as the laws of the State of Florida, in accordance with the controlling statute.\textsuperscript{121}

Adjoining the federal preserve shoreward, Florida has established a similar coral reef park called the John Pennekamp Coral Reef State Park. On August 15, 1960, the Florida Board of Parks and Historic Memorials issued a set of rules and regulations\textsuperscript{122} for the use of this area, patterned closely after the federal regulations for the preserve. Additional statutes regarding the park were enacted by the 1961 legislature.\textsuperscript{123}

\textit{Fisheries}

As already explained, Florida has jurisdiction over its territorial waters subject to paramount federal control, including treaties.\textsuperscript{124} Within this area Florida regulates fishing,\textsuperscript{125} sponging,\textsuperscript{126} shrimping\textsuperscript{127} and other forms of exploitation of marine resources. After the decline of sponging, the importance of shrimping to the economy of the state caused the legislature to enact conservation measures for the Tortugas shrimp beds, applicable not only within Florida territorial waters, but also within the area of the high seas designated by statute, although not binding on "foreign vessels or any vessel not flying the American flag."\textsuperscript{128}

In order to promote and coordinate research and to devise and enforce necessary conservation measures in the Tortugas shrimp grounds,\textsuperscript{129} the

\begin{itemize}
\item \textsuperscript{121} 62 Stat. 686, 18 U.S.C. § 13 (1958) provides that acts although not punishable under federal statutes may be prosecuted provided they are punishable "if committed or omitted within the jurisdiction of the State . . . in which such place is situated, by the laws thereof . . . ."
\item \textsuperscript{123} One act prohibits the taking of coral or other material from the Park, Fla. Laws 1961, ch. 61-454. Another act provides an appropriation for the Park, Fla. Laws 1961, ch. 61-539. For a description and map of the Park see Brookfield, \textit{Key Largo Coral Reef: America's First Undersea Park}, 121 \textit{National Geographic Magazine} 58 (1962).
\item \textsuperscript{124} BAYITCH, \textit{INTERAMERICAN LAW OF FISHERIES, AN INTRODUCTION WITH DOCUMENTS} (1957).
\item \textsuperscript{125} Fla. Stat. ch. 370 (1961). Florida has joined the Atlantic States Marine Fisheries Compact (Fla. Stat. § 370.19 (1961)) as well as the Gulf States Fisheries Compact (Fla. Stat. § 370.20 (1961)).
\item \textsuperscript{126} Fla. Stat. §§ 370.17(2), (4)(a) (1961).
\item \textsuperscript{128} Fla. Stat. § 370.151(10) (1961).
\item \textsuperscript{129} The area is not specifically defined in the Convention; however, it is considered to be situated north of the line drawn from Key West to Loggerhead in the Tortugas, comprising an area about 70 miles long and 20-25 miles wide.
\end{itemize}
United States and Cuba negotiated the Convention for the Conservation of Shrimp.\(^{130}\) Without exactly defining the area to which the convention applies and only describing it as “the waters of the Gulf of Mexico off the coast of Cuba and the Florida coast of the United States, including territorial waters, in which are found stock of shrimp of common concern,”\(^{131}\) the convention provided for the establishment of a Commission authorized to adopt “such regulations, based on scientific findings, as are necessary to achieve the objectives of this Convention.”\(^{132}\) The regulations “shall become effective . . . sixty days following notification of the regulation by the Commission to each of the Contracting Parties, except that either of the Contracting Parties may prevent entry into force of a regulation by lodging objection thereto with the Commission before the expiration of such sixty-day period.”\(^{133}\) Each of the contracting countries will, of course, enforce the convention and regulations adopted thereunder “in the portion of its waters covered thereby.”\(^{134}\) In the high seas portion of the area, the convention provides for seizure and detention of “any national or vessel of a contracting Party [which] engages in operations . . . in violation of regulations in force pursuant to Article III”\(^{135}\) of the convention, by officers of the other contracting country, to be delivered “as soon as practicable to an authorized official of the country to which such person or vessel belongs.”\(^{136}\) The authorities of the latter country “alone shall have jurisdiction to conduct prosecutions . . . and impose penalties for such violations.”\(^{137}\) The convention also contains a savings clause in favor of legislation of both contracting countries, stating with reference to the United States that the convention does not prevent “any of the States, from making or enforcing laws or regulations which in the absence of the Convention would be valid relative to any fisheries of the Convention area so far as such laws or regulations do not preclude the discharge of the Commission’s responsibilities.”\(^{138}\)

The impact of this convention on the Florida statute penalizing shrimping within the prohibited area was in issue in \textit{Milliken v. State}.\(^{139}\) The defendants urged that as a consequence of the convention the subject matter was pre-empted by the federal government and that the Florida statute\(^{140}\) covering the same subject was no longer operative. The court rejected


\(^{131}\) Convention for Conservation of Shrimp, art. I.

\(^{132}\) Convention for Conservation of Shrimp, art. III.

\(^{133}\) Convention for Conservation of Shrimp, art. III(2).

\(^{134}\) Convention for Conservation of Shrimp, art. V(3).

\(^{135}\) Convention for Conservation of Shrimp, art. V(1).

\(^{136}\) Ibid.

\(^{137}\) Convention for Conservation of Shrimp, arts. V(1), (2).

\(^{138}\) Convention for Conservation of Shrimp, art. VII.

\(^{139}\) 131 So.2d 889 (Fla. 1961).

\(^{140}\) FLA. STAT. § 370.151 (1961).
this position pointing out that the provision of the convention for the establishment of the Commission is not self-executing, adding that even if a regulation were passed by the Commission, it would not supersede state law or prevent its enforcement in view of the savings clause.

In concluding this part of the survey, mention should be made of the provisions of the Geneva Conventions on the Law of the Sea relative to fishing. As already stated, the Convention on the High Seas proclaims fishing to be one of the freedoms of the sea, in favor of coastal as well as non-coastal states. However, far reaching conservation measures for this area are envisaged by the Convention on Fishing and Conservation of the Living Resources of the High Seas, which guarantees nationals of all states the right to engage in fishing on the high seas subject to treaty obligations, interests and rights of coastal states and conservation measures. The Convention on the Continental Shelf deals specifically with the question of living organisms of the sedentary kind, i.e., "organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil." According to the convention, these organisms belong to the natural resources of the continental shelf.

IV. Aviation

Treaties

United States treaty law concerning international aviation is to be found mainly in the two Chicago conventions — the Convention on International Civil Aviation (1944) and the International Air Services Transit Agreement (1944) —, the Warsaw Convention for the Unification of Certain Rules Relating to International Transportation by Air (1929), the Convention on the International Recognition of Rights in Aircraft (Geneva, 1948) and in a number of bilateral aviation agreements between the

141. Convention for Conservation of Shrimp, art. XX.
144. 61 Stat. 1180, T.I.A.S. No. 1591.
United States and foreign countries.  

The Chicago Convention on International Civil Aviation and specific bilateral air transportation agreements were involved in *Aerovias Interamericanas de Panama v. Board of County Comm'nrs.* Plaintiffs, all foreign air carriers using the Miami International Airport, alleged that discriminatory charges had been imposed on their operations, in violation of the national treatment guaranteed under the controlling agreements. The defendant Port Authority contended that these treaty provisions were not self-executing, that the plaintiffs did not exhaust their administrative remedies, and that the claims were barred by laches, estoppel and the statute of limitations. The court found these defenses without merit, issued an injunction and ordered a refund. Without attempting a thorough evaluation of the decision, presently on appeal, it may be noted that the opinion seems to have sidestepped the real issue in the case. Discriminatory treatment of domestic air carriers may, of course, present a constitutional issue. However, it is to be kept in mind that non-resident foreign corporations do not share the benefit of the equal protection clause and, consequently, cannot attack a rule of a state agency, in this case of the Port Authority, on this constitutional ground. It would follow that the effect of an administrative rule providing for different classes of charges on domestic carriers on the position of foreign carriers invoking national treatment depends on whether or not the foreign carriers must accept local law as they find it, including discriminatory provisions applicable to domestic carriers. The other alternative would be to treat the foreign carriers as belonging to the most favored class of domestic carriers automatically, despite the fact that under local law they might not fit in this class.

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150. Article 15 of the Convention on International Civil Aviation, 61 Stat. 1184, T.I.A.S. No. 1591 provides: "Any charges that may be imposed or permitted to be imposed by a contracting State for the use of such airports and air navigation facilities by the aircraft of any other contracting State shall not be higher . . . (b) As to aircraft engaged in scheduled international air services, than those that would be paid by its national aircraft engaged in similar international air services." On national and most-favored-nation treatment see *Bayitch, Conflict Law in United States Treaties* 22, 25 (1955). For a recent case which discusses both standards see *Kolovrat v. Oregon,* 366 U.S. 187 (1961).

In international criminal conflict law, as in internal law, the lex loci delicti rule prevails, meaning that the substantive criminal law in force at the place where the crime was committed will control. However, this rule becomes difficult to apply in air transportation due to difficulties in ascertaining the exact locus delecti and also because in many situations there is no local law to control, as in flights over the high seas. Modern legislation has attempted a solution by replacing the otherwise prevailing territorial contact with an idea of maritime law, the “floating part of national territory,” resulting in the concept of the nationality of vessels or the law of the flag. Thus the concept of the nationality of aircraft would make an airplane a “flying part of national territory” for purposes of criminal conflict law. This quasi-territorial contact was, in many jurisdictions, supplemented or combined with other contacts, for example, the nationality of the victim or the criminal, the territorial location of the interest affected by the crime, or the place of first landing after the crime. International agreements have established patterns for handling crimes on board aircraft; various recommendations and a great mass of writing deal expertly with this intriguing legal question.

In the United States this problem arose as an aftermath of a series of spectacular airborne hijackings having strong political and emotional
overtones. As the result of rather hasty congressional action, an amend-
ment\(^{157}\) was passed to the Federal Aviation Act of 1958,\(^{158}\) designed to cope 
with certain crimes on board aircraft in interstate as well as international 
flights.

Before discussing the international phase of the amendment, an attempt 
must be made to summarize the international aspects of federal enactments 
regarding crimes committed on board aircraft or in relation to aircraft.\(^{159}\) 
Stowaways are punishable not only if they enter aircraft without authoriza-
tion "within the jurisdiction of the United States," but also whenever they 
"having boarded . . . [an] aircraft at any place within or without the 
jurisdiction of the United States" remain aboard and are "thereon at any 
place" within this jurisdiction;\(^{160}\) in cases involving aircraft owned or 
operated by the United States, their criminal responsibility exists without 
these qualifications. The problem of crimes involving aircraft was approached 
on a broader front in the Act to Confer Federal Jurisdiction to Prosecute 
Certain Common Law Crimes of Violence,\(^{161}\) passed in 1952 and occasioned 
by the unfortunate situation disclosed in \textit{United States v. Cordova}.\(^{162}\) To 
fill this gap, the special maritime and territorial jurisdiction of the United 
States was extended to aircraft

belonging in whole or in part to the United States, or any citizen 
thereof, or to any corporation created under the laws of the United 
States, or any state . . . thereof, while such aircraft is in flight over 
the high seas, or over any other waters within the admiralty and 
maritime jurisdiction of the United States and out of the juris-
diction of any particular State.\(^{163}\)

It is to be noted that the contact making certain crimes of common law 
origin federal offenses is not the nationality (\textit{i.e.}, United States registration) 
of the aircraft, but the ownership in the United States, or by an American 
corporation, or citizen. Of course, in most cases this ownership will coincide 
with American registration. Nevertheless, there may be situations in which 
a foreign registered aircraft is American owned.\(^{164}\)

\(^{157}\) An Act to amend the Federal Aviation Act of 1958, to provide for the application 
of Federal criminal law to certain events occurring on board aircraft in air commerce, 75 
\(^{162}\) 89 F. Supp. 298 (E.D.N.Y. 1950). It was held that the defendant could not be 
prosecuted under 18 U.S.C. § 7 (1958) for assault on board an American aircraft flying 
over the high seas, as though committed on board a vessel. See generally Cooper, \textit{Crimes 
Aboard American Aircraft}, 37 A.B.A.J. 257 (1951); Meyer, \textit{Jurisdiction Over Crimes Com-
mitted in Aircraft While Flying Over the High Seas}, 18 J. AIR L. & COM. 115 (1951); 
\(^{164}\) In some jurisdictions aircraft may be registered and acquire nationality even if 
they are owned by aliens, \textit{e.g.}, \textit{Paraguay, Aviation Code}, art. 14 (1957); see Bayitch, 
\textit{supra} note 155.
The Act to Punish the Willful Damaging or Destroying of Aircraft of 1956 is equally unsatisfactory in regard to international criminal conflict rules. It applies to "any civil aircraft used . . . in interstate, overseas, or foreign air commerce," as defined by the Federal Aviation Act. Only the term "foreign air commerce" involves flights between "a place in the United States and any place outside thereof." It leaves unanswered, however, the question whether these provisions also apply to foreign registered aircraft. It would seem that the term "civil aircraft," meaning "any aircraft other than a public aircraft" as distinguished from "civil aircraft of the United States," would include only aircraft registered in accordance with the Federal Aviation Act. In view of this it seems rather difficult to predict what law would apply if explosives were placed on a foreign aircraft headed for the United States and the explosion caused loss of American lives prior to the aircraft's arrival within the territorial jurisdiction of this country.

Despite the fact that it was preceded by these inept federal statutory attempts to punish airborne crimes, the recent "skyjacking" statute (so labelled by mass communication media) could have taken advantage of solutions already commonplace throughout the world. This, unfortunately, did not happen and the new statute consistently follows the clumsy path of its predecessors. The act provides that air piracy as well as interference with the crew is punishable, provided it occurred on an "aircraft in flight in air commerce." The interpretation of this qualification presents serious difficulties. First, the act applies without reference to the

171. According to Restatement, The Foreign Relations Law of the United States § 17(b) (Tent. Draft No. 2, 1958) jurisdiction to prescribe rules is vested in a country in regard to the "conduct of all persons aboard national aircraft while such aircraft are operating"; this rule is not followed by federal statutory law. (Emphasis added.) Federal law is equally inconsistent with the rule contained in § 18 of the Restatement, op. cit. supra, as to the right to enforce such rules while persons are "aboard its national aircraft while such aircraft are operating . . . ."
contacts of ownership, used in the 1952 act, or nationality, used in the Federal Aviation Act which this act amends. It would follow that the substantive criminal provisions of the act apply to all aircraft, foreign as well as domestic, provided they are in what the act terms "air commerce."

This term is defined in the Federal Aviation Act as

interstate, overseas, or foreign air commerce or the transportation of mail by aircraft or any operation or navigation of aircraft within the limits of any Federal airway or any operation or navigation of aircraft which directly affects, or which may endanger safety in interstate, overseas, or foreign air commerce.\(^{174}\)

Limiting the discussion to international situations, the meaning of "foreign air commerce" combined with "within limits of any Federal airway" becomes crucial, particularly since "federal airway" is defined as "a portion of the navigable airspace of the United States designated by the Administrator as a Federal airway."\(^{175}\) This, of course, puts into question the applicability of the act to occurrences on domestic aircraft outside the air sovereignty of the United States, and even more so to occurrences on foreign aircraft flying outside of what is defined as a federal airway. There can be no doubt of the intent of Congress to have this and other parts of the act applied to international situations;\(^{176}\) however, it remains doubtful whether courts will be willing to read this intent into the statutory language.\(^{177}\)

To make matters worse, the same act changes its position in regard to conflict provisions when it deals with crimes on board aircraft in flight.\(^{178}\) Here, the criterion of "flight in air commerce" is combined with the ownership contact used in the 1952 enactment. The new section provides punishment for the crimes defined in a number of sections in title 18 of the United States Code, when committed "aboard an aircraft in flight in air commerce," provided the acts would be in violation of these substantive


\(^{176}\) Representative Harris stated: "In view of the broad definition of 'air commerce' in the Federal Aviation Act, certain provisions of the reported bill will be applicable not only to acts committed on American-flag aircraft in flight in air commerce over foreign countries but on foreign aircraft in flight in air commerce over foreign countries . . . . To limit this legislation to the territorial space of the United States and rely on the 'special maritime and territorial jurisdiction of the United States,' as defined in title 18 of the United States Code, might leave a serious loophole whereby a crime against an American citizen over foreign territory could go unpunished." 107 Cong. Rec. 15458 (daily ed. Aug. 21, 1961). For a discussion of factors determining extraterritorial applicability of federal statutes, see Air Line Stewards Ass'n v. Trans World Airlines, 173 F. Supp. 369, 377 (S.D.N.Y. 1957), aff'd, 273 F.2d 69 (1959).

\(^{177}\) Serious objections were expressed by the Department of State in a letter of August 7, 1961, U.S. Code, Cong. & Admin. News 3605 (1961), but were not heeded.

criminal provisions "if committed within the special maritime and territorial jurisdiction of the United States . . . ."179 Since these crimes would only be punishable under section 7 of title 18 when committed on American owned aircraft in flight outside of the territorial jurisdiction of a state,180 the new provision has achieved one objective: it extends the applicability of federal substantive criminal law to crimes on board American owned aircraft in flight within the United States. Outside of this it seems to repeat the rule, already contained in the 1952 enactment, that federal substantive criminal law applies to crimes on American aircraft in flight "over the high seas, or over any other waters within the admiralty and maritime jurisdiction of the United States and out of this jurisdiction of any particular State."181 Since the coverage provision of this part of the 1961 act relies on the contact of American ownership of the aircraft involved, it cannot apply to crimes committed on foreign owned aircraft even if in flight over the United States. In this respect, the criminal jurisdiction of the particular state in the airspace of which the act occurred remains unchanged.

In the same act still another conflict approach is adopted in regard to the unauthorized carrying of weapons aboard aircraft.182 This violation may be committed aboard aircraft "being operated by an air carrier in air transportation"; the latter term is defined in the Federal Aviation Act as "interstate, overseas, or foreign air transportation or the transportation of mail by aircraft."183 There is no indication why the criterion of "air commerce" was abandoned in this section; the resulting difference in statutory language may add to difficulties in interpretation.

Finally, the subsection dealing with imparting false information184 combines various conflict provisions of the four preceding subsections (i, j, k and l),185 also inheriting the interpretation problems of each. It remains to be seen how the cumulative effect will work out in practice.186

In the Geneva Convention on the High Seas (1958) piracy involving aircraft is dealt with only in its original, i.e. restricted, sense, completely different from that used in the 1961 enactment just discussed. While the

180. See note 163 supra and accompanying text.
186. Further difficulties could arise under the Extradition Convention with Brazil (1961) (see note 81 supra) which lists among extraditable crimes "malicious and unlawful damaging of . . . aircraft . . . when the act committed shall endanger human life" and "piracy, by the law of nations, mutiny on board . . . an aircraft for the purpose of rebelling against the authority of the Captain or Commander of such . . . aircraft." The requirement of territorial jurisdiction under the convention will be met if these acts have been committed, among others, in the airspace over the national territory, and on "aircraft belonging to one of the Contracting States or to a citizen or corporation thereof when . . . such aircraft is over the high seas." (art. IV).
federal act terms “air piracy” the taking over of control of an aircraft, the convention maintains the traditional notion of piracy as acts of the crew or passengers in control of an aircraft against another aircraft or persons or property upon the other aircraft. It is apparent that these provisions deal with completely different situations, particularly since the Geneva Convention does not even cover the act of taking over an aircraft by the crew or passengers, but only “any illegal act of violence . . . by the crew or passengers of a . . . private aircraft, and directed: (a) on the high seas against another ship or aircraft, or against persons or property on board such ship or aircraft; (b) against a ship, aircraft, persons or property in a place outside the jurisdiction of any state.” Thus an aircraft becomes a pirate aircraft “if it is intended by the persons in dominant control to be used for the purpose[s]” just listed.

Taxation

Treaties to prevent double taxation, as a rule, also contain provisions applicable to taxation of earnings derived from the operation of ships and aircraft. A treaty of this nature is in force with Argentina; another was recently concluded with Colombia. Provisions of this kind are contained in the Convention with Honduras for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes. Recently, some of the applicable provisions of the Internal Revenue Code were amended.

Labor Law

International aspects of aviation labor law are attracting increasing attention. In Florida, the unemployment compensation statutes were amended and coverage extended to

all service performed by an officer or member of the crew of an American aircraft . . . provided that the operating office, from which the operations of such aircraft operating within or without the United States is ordinarily and regularly supervised, managed, directed and controlled, is within this state.

188. Article 15 in 38 DEP'T STATE BULL. 1116 (1958).
189. Ibid.
190. Article 17, in 38 DEP'T STATE BULL. 1116 (1958).
192. See 46 DEP'T STATE BULL. 77 (1958) (no text); for text see T.I.A.S. No. 4916.
196. FLA. STAT. § 443.03(5)(f) (1961).
The term "American aircraft" is defined here as "an aircraft registered under the laws of the United States."

V. SOVEREIGN IMMUNITY

The immunity from judicial jurisdiction to be granted foreign governments and their various agencies has recently experienced considerable change: the traditional doctrine of absolute immunity has been abandoned for a functional approach limiting immunity to acts jure imperii, thus denying it to acts jure gestionis. The now well known Tate Letter has adopted this distinction in dealing with requests for immunity by foreign governments involved in local litigation. The impact of foreign state-owned or state-controlled economic activities, sometimes resulting from complete nationalization, appears to have produced the new attitude that the monarchic principle of the government as legibus solutus is incompatible with the democratic idea of government.

Once the dogma of absolute sovereign immunity has been abandoned, courts must face both the jurisdictional and substantive issues involved; the former concerns the jurisdictional requirements to be met in actions now available against foreign governments, while the latter imposes upon the courts the decision as to whether the litigation arose from governmental or non-governmental activity. Actions against foreign governments or their agencies can hardly be instituted in personam, i.e., by service upon the defendant as being present or domiciled within the jurisdiction. The other possibilities of bringing an uncooperative foreign government into court are proceedings

202. The principle was branded in Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682, 703 (1949) as an "archaic hangover not consonant with modern morality."
in rem or quasi-in-rem. Since in rem proceedings are used mainly in actions involving vessels owned or operated by foreign governments, the quasi-in-rem jurisdiction founded on attachment or garnishment of assets located within the jurisdiction, coupled with notice in accordance with the lex fori, remains the only practical method. Even with this procedure, however, a question as to the immunity of the attached or garnished assets may arise. Prior to the Tate Letter the doctrine of absolute immunity was applied to all assets belonging to a foreign government.\(^{204}\) Subsequent to this letter in *Harris & Co. Advertising, Inc. v. Republic of Cuba*,\(^{205}\) a Florida court took the opposite position holding that the assets garnished,

until it is shown by preponderance of the evidence that they are directly related to activities *jure imperii*, cannot be deemed immune from the powers of the courts within territories of which they are kept by the decision of the foreign government itself. It would not be compatible with the principle of judicial powers of a sovereign nation if funds deposited as private funds in a private bank in this country, particularly if derived, used, or intended to be used in business type of activities here, would be clothed in a veil radiating foreign sovereignty.\(^{206}\)

Once a court has acquired jurisdiction, it will have the power to rule on the plea of sovereign immunity whether or not immunity should be finally granted. In other words, a court of competent jurisdiction will dispose of the plea of sovereign immunity, provided it is properly raised in accordance with the lex fori. This may be done through a suggestion to the court from the Department of State\(^ {207}\) or by a demand directly from the foreign government involved, presented to the court by its diplomatic officials.\(^ {208}\) A consul represented by local attorneys has been held to lack authority to enter the plea.\(^ {209}\) Furthermore, this plea must be raised at the correct time and in proper form; a simple motion to dismiss urging immunity of the sovereign defendant was held improper in *Banco Nacional de Cuba v. Stecke*.\(^ {210}\) The plea also must be sufficiently substantiated

206. Id. at 693.
in view of the functional criterion propounded in the Tate Letter; if necessary, the contention must be proved by evidence. It would appear that the plea of immunity alone is no longer sufficient.

Once the plea is properly raised, the court may find that immunity exists on the suggestion of the Department of State, or on the strength of specific findings of fact. In the Harris case the court found that the activity involved was non-governmental in nature because it was evident that the functions of promoting tourism in Cuba have been, at least within this country, simply subcontracted to a local private corporation, which could not have been a governmental function; furthermore, governmental functions as contrasted with commercial activities, could not have been exercised within this country without an express consent of the Government of the United States. Just because it is purely commercial in nature, it was possible to have it performed in this country.\footnote{211}

This decision abandoned a rule of long standing that the characterization of foreign governmental activity as \textit{jure imperii} or \textit{jure gestionis} is to be made in accordance with the law in force in that country.\footnote{212} Instead, the court decided the question following the lex fori.

It is generally accepted that the privilege of sovereign immunity may be waived\footnote{213} and that waiver may be agreed upon between two countries by treaty.\footnote{214} A number of recent treaties of friendship and commerce contain an express provision similar to the one found in the treaty with Nicaragua:

\begin{quote}
No enterprise of either Party, including corporations, associations, and government agencies and instrumentalities, which is publicly owned or controlled shall, if it engages in commercial, industrial, shipping or other business activities within the territories of the
\end{quote}

\footnotesize
\begin{itemize}
\item Oliver Am. Trading Co. v. United States of Mexico, 5 F.2d 659 (2d Cir.), cert. denied, 267 U.S. 596 (1924); The Maipo, 259 Fed. 367 (S.D.N.Y. 1919); Molina v. Comision Reguladora del Mercado de Henequen, 91 N.J.L. 382, 103 Atl. 397 (Sup. Ct. 1918).
\item The property of the International Monetary Fund is immune unless waived by contract (art. IX, 3, Agreement, note 58 \textit{supra}). The International Bank for Reconstruction and Development (art. VII, 3, Agreement, note 59 \textit{supra}), the International Finance Corporation (art. VI, 3, Agreement, note 60 \textit{supra}), the Interamerican Development Bank (art. XI, 3, Agreement, note 61 \textit{supra}) and the International Development Association (art. VIII, 3, Agreement, note 63 \textit{supra}) are available to judicial action in territories of member states provided they have an office there and an agent to accept service, or they have issued or guaranteed securities. The property is available for execution only after final judgment against the institution.
\end{itemize}
other Party, claim or enjoy, either for itself or for its property, immunity therein from taxation, suit, execution of judgment or other liability to which privately owned and controlled enterprises are subject therein.\textsuperscript{216}

A foreign government may also waive the privilege with reference to a particular contract by an express provision in the contract.\textsuperscript{216} Finally, immunity may be waived by accepting a license from another country to engage in business type activity. The routine clause to this effect inserted in foreign air carrier permits provides:

By accepting this permit, the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States . . . based upon any claim arising out of operations by the holder under this permit.\textsuperscript{217}

Whether or not a foreign government has waived immunity is generally considered a matter to be determined by the court\textsuperscript{218} and not by the executive branch of the government. However, this rule was sidestepped in a recent case.\textsuperscript{219}

Once it is settled that a foreign government has been properly brought into court as a party defendant, the problem of the court's power to enforce its judgment arises.\textsuperscript{220} It appears that courts have been rather reluctant to take this final step, reasoning that the Tate Letter applies only to immunity from jurisdiction rather than to immunity from execution.\textsuperscript{221}

\begin{itemize}
  \item \textsuperscript{216} Pacific Molasses Co. v. Comite de Ventas de Miel d la Republica Dominicana, 30 Misc. 2d 560, 219 N.Y.S.2d 1018 (Sup. Ct. 1961).
  \item \textsuperscript{217} E.g., Aerovias Venezolanas, S.A., 20 C.A.B. 746 (1955). When there is an international agreement on waiver such as with the Netherlands, June 19, 1953 [1953] 2 U.S.T. & O.I.A. 1610, T.I.A.S. No. 2828, the clause need not to be included, K.L.M. Royal Dutch Airlines, 25 C.A.B. 438 (1957).
  \item \textsuperscript{218} United States of Mexico v. Schmuck, 293 N.Y. 264, 56 N.E.2d 577 (1944), modified, 294 N.Y. 265, 62 N.E.2d 64 (1945).
  \item \textsuperscript{219} Rich v. Naviera Vacuba, S.A., 197 F. Supp. 710 (E.D. Va.), aff'd, 295 F.2d 24 (4th Cir. 1961) held that grant of sovereign immunity by the Department of State should be accepted by the court without further inquiry, and that the refusal on the part of the Department to consider Cuba's prior waiver of immunity was within the authority of the Department: the plaintiff was not deprived of property without due process of law. Note, The Sovereign's Immunity and Private Property: a Due Process Problem, 50 GEO. L.J. 284 (1961).
  \item \textsuperscript{220} On this problem generally see Lalive, L'Imunité de Jurisdiction des Etats et des Organisations Internationales, 84 RECUEIL DES COURS (Hague) 209, 272 (1953); Griffin, Execution against the Foreign Sovereign's Property: the Current Scene, 55TH ANNUAL PROCEEDINGS OF THE AMERICAN SOC'Y OF INTERNATIONAL L. 105 (1961); Delson, Applicability of Restrictive Theory of Sovereign Immunity to Actions to Perfect Attachment, 55TH ANNUAL PROCEEDINGS OF THE AMERICAN SOC'Y OF INTERNATIONAL L. 121, 130 (1961).
  \item \textsuperscript{221} The practice presently followed by the Department of State seems to limit suggestions regarding sovereign immunity to execution and to abstain completely in regard to acts, including attachment, serving jurisdictional purposes. The Secretary of State
This attitude finds support in the traditional rule that even consent on the part of a foreign government to accept jurisdiction does not necessarily include consent to execute upon its property.\textsuperscript{222} On the other hand, it is quite clear that a mere adjudication of a case without a reasonable opportunity to have a judgment for the plaintiff enforced not only deprives the Tate Letter of any significance, but also puts the court in the untenable position of “stultify[ing] itself by entering a judgment which it knows cannot be enforced against protest.”\textsuperscript{223}

It would seem that the doctrine of functional jurisdictional immunity imposes the need for a parallel distinction between assets used for governmental and non-governmental purposes with reference to enforcement proceedings. Whether this distinction will be utilized in the enforcement phase of a civil suit has not yet been clearly decided. The courts still obediently follow suggestions of immunity from execution by the Department of State. If this should remain the rule, then it would have been better had the Tate Letter never been written.

\textsuperscript{stated that “property owned by the Cuban Government can be released from attachment for purposes of execution to satisfy a judgment if a timely plea of sovereign immunity is interposed .... [T]he Department of State ... has always informed the court in which such a case is pending of the Department’s views as to the immunity from execution of property attached by the claimant. This we are obligated to do under international law as we understand it. Likewise if any Cuban airplane enters the United States and an effort is made by some claimant to have the airplane attached and sold, and if it is determined that the airplane is owned by an individual or an entity against whom no judgment has been issued, by due process of law the United States Government will likewise exert prompt effort to arrange for the return of such airplanes to their rightful owners.’’ “Cuba and the Question of Aircraft Seizures,” 45 Dep’t State Bull. 277, 278 (1961). The former position was reiterated by the Secretary stating that Cuban property “can be protected from sale to satisfy a judgment against the Cuban government if a timely request is made through diplomatic channels for recognition of immunity of the aircraft. ... In this connection it should be noted that no request for recognition of sovereign immunity was received by the Department of State with respect to any of the Cuban aircraft which were attached in the United States and sold at public auction.’’ 45 Dep’t State Bull. 335-36 (1961).

The position taken by the Department of State was adopted in State ex rel. National Institute of Agrarian Reform v. Dekle, 137 So.2d 581 (Fla. App. 1962) in an original proceeding in prohibition and mandamus against a judge who declined to recognize or give effect to the suggestion of the United States in the matter being litigated and denied the defendant’s (National Institute of Agrarian Reform) motion to release property from the sheriff’s levy. The court held, relying on Rich v. Naviera Vacuba, S.A., 295 F.2d 24 (4th Cir. 1961), that “once the Department of State urges sovereign immunity as to jurisdiction over the person or property of a foreign nation, a court should cease to assert a jurisdiction. ... The Department of State having recognized the sovereign immunity of the property from execution and the claim of sovereign immunity having been appropriately made, the court had no power to continue to assert its jurisdiction over the property and should have ordered its release from the sheriff’s levy.’’ State ex rel. National Institute of Agrarian Reform v. Dekle, supra at 583. The court concluded that the determination of immunity by the Department and the filing of the suggestion “effectively terminated the power and jurisdiction of the trial court with reference to matters contained in the suggestion. The respondent circuit judge was under a clear legal duty to enter an order recognizing the suggestion of sovereign immunity accorded to the property in question, and to grant petitioner’s motion for an order releasing the property from sheriff’s sale.’’ \textit{Ibid}.

The issue was not raised in Cuban Air Force, F.A.R. v. Bergstresser, 135 So.2d 752 (Fla. App. 1961).


VI. Acts of State

The axiom that a tribunal should not sit in judgment on a foreign sovereign's acts still impresses courts by its picturesque oversimplification. The very origin of the doctrine sheds doubt on its value: it started by granting immunity to persons who exercised authority under the cloak of sovereignty of another country with reference to the acts performed. Later the doctrine was inexplicably expanded to include the acts themselves. Thus, older cases considered foreign acts to be binding as "rules of decision" in the case.

On closer scrutiny, however, it becomes apparent that the rule never applied to the totality of acts originating from foreign sovereigns. In the first place, foreign judgments have never been considered legally untouchable because they were acts of a foreign government or, more precisely, of its judicial branch. Courts, without hesitation, have tested the acts against their own jurisdictional standards and public policy and, it may be added, without embarrassing anybody. If the adjudications involved foreign legislative acts, courts have felt no reluctance to delve freely into the legal bases of the judgments whenever the acts were to be given effect within the court's jurisdiction. However, when presented with the immediate application of a foreign legislative enactment, courts become timid and beg for advice or blindly accept the acts of the foreign sovereign as the rule for their decision.

It is not surprising to notice that the act of state doctrine is rapidly losing its glamor. Courts not only realize that the doctrine never applied to all types of foreign governmental acts, but also that they are bound primarily by the lex fori. Recently, even the International Court of Justice decided that an administrative act (naturalization) of one country is not necessarily to be accepted by another.

The act of state doctrine was involved in Kane v. National Institute of Agrarian Reform. The defendant Institute moved for summary judgment

224. 1 Ops. Att'y Gen. 45 (1794); 1 Ops. Att'y Gen. 81 (1797).
invoking the doctrine in regard to the expropriation\textsuperscript{230} of the plaintiff's property, for which the latter demanded payment. Without attacking the doctrine in principle, the court realized the non-existence of the remedies indicated in \textit{Ricaud v. American Metal Co.}\textsuperscript{231} as available to parties in the plaintiff's situation in lieu of an action in a domestic court against a foreign government. The \textit{Ricaud} case suggested resort to the courts of the foreign country or action through the political department of the plaintiff's own country. The expropriation was held in violation of international law and, according to \textit{Banco Nacional de Cuba v. Sabbatino},\textsuperscript{232} not qualified to be recognized as a binding act of a foreign state. The court was apparently encouraged in its critical attitude toward the acts of the foreign sovereign by a telegram received from the Department of State stating that: "Effect in United States of decrees, etc. of Castro regime is question for court in which case heard."\textsuperscript{233} With this telegram in hand, the court could have completely ignored the act of state doctrine and followed the two Bernstein\textsuperscript{234} cases.


Department of State memoranda on Cuban exchange controls, on debts owed to American nationals, and on filing claims for Cuban nationalizations are found in 56 AM. J. INT'L L. 165 (1962).


\textsuperscript{234} Bernstein v. N. V. Nederlandsche Amerikaansche Stoomvaart-Maatschappij, 210 F.2d 375 (2d Cir. 1954); Bernstein v. Van Heyghen Freres S.A., 163 F.2d 246 (2d Cir.), cert. denied, 332 U.S. 772 (1947).
VII. MISCELLANEOUS

Consular Immunity

In City of Miami v. Hidalgo the court dismissed the charge of inciting a riot brought against the defendant Cuban consul, interpreting the term "crime" in the interamerican Convention on Consular Immunities (Habana, 1928), which denies immunity in cases of "acts classified as a crime by local law") as not including the acts charged to the defendant. The court disregarded the consular convention between the United States and Cuba of 1926 and also omitted to classify the crime under local statute in relation to either convention.

Extradition

"The foundation for international extradition lies within a short statutory framework, 18 U.S.C.A. § 3184-3195, and whatever treaty is applicable to the foreign country seeking delivery." In Ramos v. Diaz, the Republic of Cuba requested extradition of the defendants convicted of murder in Cuba. The defendants invoked the political character of the alleged crimes under article VI of the Treaty of Extradition with Cuba (1904). The court agreed with the defendants and denied extradition, finding that the defendants were members of a revolutionary movement, that the crime allegedly committed by them took place in the early days of the victory of the revolutionary forces, and as a part of a political uprising and disturbance. The Defendants bore no ill will or malice toward their victim, who was just one of the many political prisoners captured in the furtherance of the political rising.

237. April 22, 1926, 44 Stat. 2471, T.S. No. 750.
241. 33 Stat. 2265, 2273. An additional extradition treaty between Cuba and the United States is found in 44 Stat. 2392. It is interesting to note that Cuba agreed to extradite A. Ch. Cadon involved in the hijacking of the Pan American World Airways jet-liner over Mexico on August 9, 1961, to Mexico, under the extradition treaty between Cuba and Mexico, May 25, 1925 (text in 131 British & Foreign State Papers 765 (1929)). The treaty refers only to piracy as defined by international law (art. 2, para. (10) (a)) and to mutiny against the captain of a ship (art. 2, para. (10) (c)) adding also kidnapping of persons (art. 2, para. (5)); however, the act constitutes a statutory crime of piracy under articles 146(1) and (III) of the Mexican Federal Criminal Code (1931).
The protracted litigation in connection with the demand for extradition of the former President of Venezuela has resulted in no reported cases other than a few marginal decisions.\(^{243}\)

**Aliens**

Events in Cuba have brought considerable numbers of Cuban nationals to Florida. Their status is regulated by both international as well as local, state and federal law.\(^{244}\) The homestead exemption was denied to these refugees in an opinion of the Florida Attorney General because of their temporary presence here.\(^{245}\) Problems also arise in regard to their revolutionary activities in this country.\(^{246}\)

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244. Bayitch, Aliens in Florida, 12 U. MIAMI L. REV. 129 (1958). In Estrada v. Ahrens, 296 F.2d 690 (5th Cir. 1961) the fact that the Venezuelan plaintiff was not a resident nor present in the country did not deprive him of standing to seek judicial review of denial of a hearing by immigration authorities. Conviction for bringing aliens into the United States (anti-Castro Cubans) presupposes knowledge and intent, Bland v. United States, 299 F.2d 105 (5th Cir. 1962).
