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Book Review: The International Legal Status of the Aircraft Commander, by Nicolas Mateesco Matte

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Book Review

THE INTERNATIONAL LEGAL STATUS OF THE AIRCRAFT COMMANDER. LE STATUT JURIDIQUE INTERNATIONAL DU COMMANDANT D'AÉRONEF. By Nicolas Mateesco Matte. Toronto: The Carswell Co. Ltd.; Paris: Pedone. 120 pp. Summary. Bibliography. Appendix.

In 1926 the Comité International Technique d'Experts Juridiques Aériens (CITEJA) began its study of the legal status of the aircraft commander. In 1947 CITEJA adopted a draft Convention on the Legal Status of the Aircraft Commander but no further action was taken. The subject has continued to be of concern to such interest groups as the International Federation of Air Line Pilots Associations, and it has had a place on the agenda of the Legal Committee of the International Civil Aviation Organization; so it has not been lost to view across the past thirty years, but neither has it been a matter of pressing importance. In this monograph, Nicolas Mateesco Matte, Director of the Institute of Air and Space Law at McGill University, has described the nature of the problem and urged its clarification by international convention.

After reviewing the principal provisions of the 1947 draft and pointing out the limited treatment of the subject in such conventions as the 1944 Convention on International Civil Aviation (Chicago Convention) and the 1963 Convention on Offenses and Certain Other Acts Committed on Board Aircraft (Tokyo Convention), the author has examined in detail the rights and responsibilities of the aircraft commander in public and private law. On the public side, the commander has final authority in preparing flight plans and determining that flight conditions have been met before take-off. He may refuse to take-off, if he is not satisfied with these conditions, without liability to the carrier for breach of contract. In flight, the commander is in full control of crew, passengers, and cargo. His authority over passengers is discharged on landing, but is retained as to the crew until their duties have been completed.

He has no responsibility for cargo after it has been turned over to customs authorities or to the carrier's representatives. The commander's authority respecting in-flight security has been delineated in the Tokyo Convention. His final responsibility for decisions as to navigation and landing under Visual Flight Rules or Instrument Flight Rules and as to changes in route has been upheld in courts in several countries. The commander's legal responsibility with regard to attesting to births or deaths on board or to the execution of wills on board is not clear. In the author's opinion, the commander should be authorized to execute documents which will be of probative value in establishing the legal rights of the interested parties subsequent to the flight. Another area of responsibility which is unclear concerns the jettisoning of cargo and mail in order to save an endangered flight; again, the author would make this a matter for the commander's control. Reporting on health conditions on board is a responsibility of the commander under the International Sanitary Convention for Aerial Navigation. His duties respecting assistance to aircraft in distress and to salvage are governed by Annex 12 to the Chicago Convention which, in the opinion of the author, should be revised.

The rights and responsibilities of the commander under private law are less clear than is his situation under public law. Although the Warsaw Convention exempts the carrier from liability for pilot error where the carrier has sought to avoid damage (Art. 20), the commander's liability is uncertain. Publicists disagree as to whether the Warsaw limits on liability apply to all of the carrier's servants or agents or whether the servants or agents are directly liable to passengers and shippers. The latter view would put the commander in a difficult position; however, the former view might make him liable for acts or omissions before take-off. No liability accrues to the commander from delay in arrival except where such delay arose from his wilful misconduct. In the opinion of the author, the commander's rights should be clarified when he is acting in his capacity as agent of the carrier in such matters as incurring debts for repairs to the aircraft or refusing to load certain cargo.

This monograph is a paperback with the text in English and French on opposite pages. It contains the text of the 1947 draft convention. Within limited space the author has provided a concise

review of the dimensions of the commander's rights and responsibilities together with suggestions for new international legislation. The study should be of interest to anyone concerned with the development of international air law.

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