

1978

Air Transport in Latin America: The Expanding Role of the Latin American Civil Aviation Commission

Jose C. Bogolasky

Recommended Citation

Jose C. Bogolasky, *Air Transport in Latin America: The Expanding Role of the Latin American Civil Aviation Commission*, 44 J. AIR L. & COM. 75 (1978)
<https://scholar.smu.edu/jalc/vol44/iss1/4>

This Article is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in Journal of Air Law and Commerce by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

AIR TRANSPORT IN LATIN AMERICA: THE EXPANDING ROLE OF THE LATIN AMERICAN CIVIL AVIATION COMMISSION

JOSÉ C. BOGOLASKY*

I. INTRODUCTION

Common traditions, common political and economic problems, and most important, a common legal background are found in Latin America. Perhaps in Latin America, more than anywhere else in the world, the ideal conditions exist for unification.¹ Beginning with the creation of the Organization of American States in 1948, a number of international bodies have been established consisting of most of the States of Latin America and the Caribbean.² Economic and commercial integration of the countries of Latin America have been fostered through the efforts of these organizations. This common background was taken into account when the Second Latin American Civil Aviation Authorities Conference founded the Latin American Civil Aviation Commission (LACAC).³

The importance of civil air transportation was recognized by the Latin American States at an early date. A Pan American Aeronau-

* DC.L. Candidate, McGill University; LL.M., McGill University; Diploma in International and Comparative Air and Space Law, Institute of World Affairs, London; Egresado, Carrera de Abogado, University of Chile. Delegate of Chile to ICAO and Legal Advisor of the Delegation of Chile. The views expressed in this article are the opinions of the individual author. They do not purport to express the views of the LACAC or the government of Chile.

¹ A. LAMAISSON, *CONSIDERACIONES PRELIMINARES SOBRE LA COMISION LATINO-AMERICANA DE AVIACION CIVIL* 7 (1975) [hereinafter cited as LAMAISSON].

² These organizations include the Alliance for Progress (1961), Organization of Central American States/Central American Common Market (1951), Economic Commission for Latin America (1948), Latin American Free Trade Association (1960), The Cartagena Agreement or Andean Pact (1966), and Caribbean Free Trade Association (1967).

³ Payen, *A New International and Regional Air Transport Organization: The Latin American Civil Aviation Commission*. 13 ITA BULLETIN 313 (1974).

tic Conference, sponsored by the Aero-Club of Chile, was held at Santiago in 1916.⁴ A Permanent American Aeronautic Commission (CAPA) was formed at the Inter-American Technical Aviation Conference at Lima in 1931.⁵ CAPA's purpose was to codify international public and private air law, coordinate and develop mutual interests in technical aviation subjects, and organize and map inter-American air routes.⁶ In 1922, Argentina and Uruguay signed the first Latin American bilateral aviation agreement which granted reciprocal air transportation rights to both countries.⁷ In 1944, the Chicago Conference (1944), which drafted the International Civil Aviation Convention, was attended by all but one of the Latin American States.⁸ The Latin American countries have closely adhered to the principles approved at Chicago when they later drafted their own aviation laws.

The need for standardization and integration of divergent government regulations and policies in Latin America has been recognized for many years. Various organizations have taken steps in this direction.⁹ For example, the Latin American Free Trade Association created a Transport Commission in the early sixties.¹⁰ The Organization of American States (OAS) convened two meetings of

⁴ The meeting recommended that the American Republics should make their national aviation legislation uniform with a view to the formation of an International Air Code. Sand, Sousa-Freitas, and Pratt, *An Historical Survey of International Air Law Before the Second World War*, 7 MCGILL L.J. 29 (1960).

⁵ The Conference was held in Lima, Perú, from the 15th to the 25th of September, 1937. Eleven States of the region were present: Argentina, Brazil, Bolivia, Colombia, Chile, Ecuador, Mexico, Panama, Peru, Uruguay and Venezuela. The U.S. also participated as a member of the Conference. See Pepin, *Un Nouvel Organe Internationale Aéronautique: La Commission Américaine Permanente d'Aéronautique (CAPA)*, 7 REVUE AÉRONAUTIQUE INTERNATIONALE 368 (1937).

⁶ Bauzá-Araujo, *La Unificación legislativa doctrinal y jurisprudencial Iberoamericana en Derecho Aereo*, SEGUNDAS JORNADAS IBEROAMERICANAS DE DERECHO AERONAUTICO Y DEL ESPACIO 15 (1964).

⁷ The agreement was signed November 18, 1922. See York, *International Air Law in the American Republics*, 3 J. AIR L. & COM. 413 (1932).

⁸ The only Latin American State absent was Argentina. UNITED NATIONS INFORMATION ORGANIZATION, REPORT OF THE CHICAGO CONFERENCE ON INTERNATIONAL CIVIL AVIATION 3 (1944).

⁹ For a comprehensive analysis of government regulation in Latin America see J. C. Bogolasky, *Government Regulation of Aircraft and Air Navigation Facilities in Latin America* (1976) (LL.M. Thesis, IASL, McGill University).

¹⁰ The Transport Commission held two important meetings in 1963 and 1964. It was acknowledged that the formulation and execution of a policy on air transportation was of basic importance in order to strengthen and accelerate the processes of economic integration.

the Civil Aviation Governmental Experts: in Washington, D.C. in 1963, and in Santiago de Chile in 1964.¹¹ Three Civil Aviation Regional Conferences took place between 1959 and 1962, in Rio de Janeiro, Montevideo, and Bogota.¹² Finally, the Inter-American Confederation of Air Transport (CITA) held thirteen meetings between 1960 and 1969.¹³

The purpose of this article is to introduce the reader to LACAC and demonstrate the importance of the organization in solving regional civil aviation problems. This will be done by briefly outlining: (1) the current status of Latin American civil aviation; (2) the actual LACAC organization and its envisioned role in Latin American civil aviation and; (3) the work of the First and Second LACAC Assemblies. The article will also attempt to demonstrate the growing influence of LACAC on international civil aviation. This will be done by briefly discussing the organization's impact on the International Civil Aviation Organization (ICAO) Special Air Transport Conference and the Twenty-second ICAO Assembly, both held in Montreal in 1977. A final function of the article will be to outline the 1978 working program of LACAC.

II. GENERAL COMMENTS REGARDING AIR TRANSPORT IN LATIN AMERICA

In the six year period between 1971 and 1976 air transport in

¹¹ The Technical Secretariat of the OAS considered a study of the problems affecting air transportation in the Americas in response to a request presented to the Council of the OAS by the government of Chile in 1961. In view of the nature of the matters to be included in the study, the OAS Secretary General convened the 1963 and 1964 meetings of experts on civil aviation. See [Vol. I-IV] Secretary General, Pan American Union, *STUDY OF AIR TRANSPORT IN THE AMERICAS* (1968).

¹² The Regional Conferences were governmental meetings in which the aeronautical authorities of American States facilitated the orderly development of air transport in the region. Among the subjects tackled were air tariffs, air services, protection of regional traffic, non-scheduled traffic, uniformity in the principles of granting operating permits, and complementation and coordination within air navigation companies in the region. See 2 BAUZÁ-ARAUJO, *TRATADO DE DERECHO AERONAUTICO*, 94 (1977).

¹³ Although CITA no longer exists, its ten years of work were a major contribution to the internationalization of air transport through a series of meetings and studies. The main objective of CITA was to protect the rights of its airline members by looking for formulas that would allow a fair and orderly distribution of air traffic in America, based on adequate legal principles and a strong aviation policy. See MAPELLI, *COOPERACION E INTEGRACION INTERNACIONAL EN EL TRANSPORTE AEREO Y ALGUNAS DE SUS FORMULAS CONTRACTUALES PRACTICAS* 27 (1974).

the Latin American region grew tremendously. In 1976, the international scheduled airlines registered in the Latin American and Caribbean region logged some 20,339 million passenger-kilometers in international scheduled services, about seven percent of the world total.¹⁴ During the 1968-1976 period, this traffic increased at the average annual rate of 14.5 percent, compared to the world average of 12.6 percent.¹⁵ As a consequence of their relatively higher than average growth rate, the Latin American and Caribbean airlines' share of total international scheduled passenger-kilometers increased from about six to seven percent.¹⁶ However, the scheduled airlines and charter operators registered in the Latin American and Caribbean region in 1976 logged only 930 million passenger-kilometers in international non-scheduled operations, less than one percent of the world total.¹⁷

In 1976, the scheduled airlines registered in the region logged some 778 million freight ton-kilometers in scheduled international services. During the 1968-1976 period, this traffic increased at the average annual rate of 18.7 percent compared to the world average of 14.7 percent. As a result of this higher than average growth rate, the Latin American and Caribbean airlines' share of the total international scheduled ton-kilometers of freight increased from 4.5 percent in 1968 to six percent in 1976.¹⁸ Airlines registered in the region accounted for 5.4 percent of the total world air traffic.¹⁹

The economic health of the air transport industry depends, among various elements, on the extent to which airlines are matching capacity with current market demand (load factors).²⁰ In 1976,

¹⁴ ICAO, *Digest of Statistics No. 218-B, Series T-No. 36, 2 AIRLINE TRAFFIC* (1977); ICAO, *Digest of Statistics No. 178-B, Series T-No. 32, 2 AIRLINE TRAFFIC* (1973).

¹⁵ *Id.*

¹⁶ *Draft Study of Air Passenger and Freight Transport—Latin America and the Caribbean*, ICAO Doc. AT-WP/1262 (1978).

¹⁷ *Annual Report of the Council 1976*, ICAO Doc. 9188 (1976); *Special Digests of Statistics on Non-Scheduled Air Transport*, ICAO Doc. 8849-C/990/3 (1975).

¹⁸ See note 14 *supra*.

¹⁹ *Annual Report of the Council 1976*, ICAO Doc. 9188 (1976).

²⁰ The relationship of what the air carrier produces, available seat miles (ASM) to what it sells, revenue passenger miles (RPM), is expressed in a percentage known as the load factor. The load factor is a very important guide for air carrier management. Unless it can keep its production (ASM) in balance with its sales (RPM), earnings will suffer.

Latin American and Caribbean airlines reached a weight-load factor in international scheduled services of fifty-four percent, which is identical to the world average.²¹ The passenger load factor in 1976 in international scheduled services for Latin America and the Caribbean was fifty-four percent, while the world average was fifty-seven percent.²² These load factors normally would be considered acceptable, however, in a developing region, such as Latin America, in order to provide efficient services and maintain economical operating costs, higher load factors must be achieved. The effects of seasonal variations and the elasticity of demand in travel are important problems which also affect the profitability of airlines in the region.

Although accounting for only 5.5 percent of world revenues and traffic in 1976, the airlines of the region are estimated to have made 8.8 percent of the world scheduled airline operating profit.²³ The financial performance of the airlines of the region has been slightly better than that of the world airline industry as a whole during the period 1972-1976; nevertheless, eleven of fifteen carriers of the region that reported data to the ICAO for this period reported operating losses in at least one of the five years.²⁴

In recent years the Latin American airlines have experienced significant economic improvements due to aircraft equipment replacement, better airline management, and airline pooling agreements undertaken by Latin American airlines with long-haul services.²⁵ However, the financial position of carriers in the region has been negatively influenced by the generally high rate of inflation prevailing in Latin America and by successive currency devaluations in many countries. In addition, the ability of airlines to control costs is limited by external factors such as the price of fuel, the rapidly increasing charges for the use of airports and air navigation facilities, and labor contracts. The airline industry in Latin America

²¹ See note 14 *supra*.

²² *Id.*

²³ See note 16 *supra*.

²⁴ *Id.*

²⁵ Airline pooling agreements are normally between two airlines and may cover such matters as the division of capacity, frequencies, revenues and costs. The main advantage for airlines of the region to follow these agreements is that they are able to provide a better service to the customer and allows greater financial stability to the airlines through coordination of service.

has reached a point of dependence on the general world economic situation for its profitability and must rely increasingly upon structural changes within the industry to achieve even limited improvements in profitability.

The economic problems which Latin American air transport face today are similar to those of the world-wide air transport industry; i.e., problems related to airline capacity regulation, regulation of non-scheduled operations, tariff enforcement, high operating costs, and passenger and cargo rates. Questions of airline cooperation, facilitation in international air transport,²⁶ the economic problems of many international airports, air transport planning, seasonal variations in traffic level, taxes, and other factors also influence Latin American air transport.²⁷ A solution to these problems will require cooperation by, and coordination of, the civil aviation administrations of the Latin American States. An effective regional international air transport system will also require uniform regulations and a strong regional organization. The aforementioned problems indicate that there are important areas within which LACAC can make significant contributions to the economic and orderly development of air transport in the region.

III. THE ORGANIZATION: ROLE AND OBJECTIVES

In 1973, the Second Conference of Aeronautical Authorities of Latin America, held in Mexico City, followed a recommendation of its First Conference and established the LACAC.²⁸ The agreement establishing the LACAC was embodied in a treaty which was opened for the signature of all Latin American States.²⁹ After rati-

²⁶ An important element of meeting the world's needs for air transport is to make use of air transport facilities as easy as possible. It is for that purpose that ICAO has taken the action to facilitate air transport and to simplify the formalities (including documentary obligations) involved with international flights. See ICAO, *INTERNATIONAL STANDARDS AND RECOMMENDED PRACTICES: FACILITATION*, Chicago Convention, Annex 9 (7th ed. 1974).

²⁷ On the matter of world-wide air transport problems see the *ANNUAL REPORT OF IATA: THE STATE OF THE AIR TRANSPORT INDUSTRY* (1977). See also *A Review of the Economic Situation of Air Transport 1966-1976*, ICAO Cir. 133-AT/40 (1977).

²⁸ See Bogolasky, *The Latin American Civil Aviation Commission*, 2 *ANNALS OF AIR SPACE LAW* 465 (1977).

²⁹ The State Department of Mexico is the official repository of the treaty which was signed on December 14, 1973, in Mexico City. Copies of the treaty are also on file at ICAO headquarters in Montreal and Regional ICAO Head-

fication by twelve out of the twenty-seven Latin American countries the treaty became effective on October 12, 1975.³⁰

LACAC is only an advisory body, thus its recommendations are subject to the approval of each member government. The objectives of the Commission are defined in Clause 4 of its articles of association: "The main purpose of the Commission is to provide the civil aviation authorities of member States with an adequate structure which will enable them to examine and plan any measures required for cooperation and the coordination of civil aviation activities."³¹

The main instruments of LACAC are the Assembly and the Executive Committee. The Assembly, consisting of representatives of member States, holds a general session at least once every two years. To date, two assemblies have been held, the first at Buenos Aires in 1974, and the second at Montevideo in 1976.³² The Assembly may adopt conclusions, recommendations, and resolutions.³³

Until 1978, the Executive Committee will be composed of representatives from Uruguay (President), Brazil, Chile, and Honduras (Vice-Presidents).³⁴ This Committee administers the working program of the Assembly. The Executive Committee is empowered to

quarters at Lima, Peru. The only copy of the text of the treaty in print appears in BAUJA-ARAUJO, *NUEVOS DESARROLLOS EN LA POLITICA DE LA AVIACION INTERNACIONAL* 26-30 (1975) [hereinafter cited as the LACAC Treaty].

³⁰ The Latin American Region for LACAC purposes comprises Mexico, the Caribbean, Central and South America, and consists of the following States: Argentina, Bahamas, Barbados, Bolivia, Brazil, Colombia, Costa Rica, Cuba, Chile, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Surinam, Trinidad and Tobago, Uruguay and Venezuela.

The following 17 States have approved the Treaty: Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Dominican Republic, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela. Two other States, Costa Rica, and El Salvador, have signed the Treaty but have not yet ratified it. They are, however, expected to ratify the treaty by the time of the Third LACAC Assembly. LACAC Doc. CLAC/A2-NE/14 (1976).

³¹ SHAWCROSS AND BEAUMONT, *AIR LAW* 119 (1977).

³² Tapia-Salinas, *Tentatives de Regionalisation Aérienne: La Commission Latino-Américaine de L'Aviation Civile*, 2 *ANNALS OF AIR AND SPACE LAW* 206 (1977).

³³ LACAC Treaty, art. 3, *supra* note 29.

³⁴ The following directors of civil aviation compose the Executive Committee: President, Coronel Pedro Rivero (Uruguay); Vice-Presidents: General Sergio Leigh (Chile), Mr. Donald Chavarria (Honduras) and Brig. A. Bergenguer (Brazil).

establish "Working Groups"³⁵ and "Panels of Experts"³⁶ to help with the administration of the working program.

LACAC works closely with ICAO in order to coordinate its activities with those of ICAO. The Secretary General of ICAO, for example, has provided administrative services to the LACAC. The air transport officer in the Regional Office of ICAO in Lima has also served as secretary of the LACAC.³⁷

LACAC originally formulated the following goals:

1. The promotion of cooperation among the States of Latin America with a view to the orderly development and growth of Latin American air transport. Included in this first goal is the objective of obtaining a larger share of regional traffic for Latin American airlines. The importance of obtaining a more equitable balance between regional and outside airlines is demonstrated by the fact that seventy percent of all airlines using the Latin American air transport system are not from the region.³⁸

2. The development of a regional statistical information exchange. LACAC member States presently rely primarily on ICAO statistics which do not always take into account the particular characteristics of the region.

3. The implementation of the recommended practices and international standards of ICAO, particularly the application of Annex 9 to the Chicago Convention concerning facilitation in international air transport.³⁹ LACAC has also proposed additional measures to accelerate facilitation in the transport of passengers, goods and mail within the region.

4. The encouragement of cooperation among the countries of the region in order to implement ICAO's regional plan for air navigation facilities and adopt ICAO standards for air-worthiness, maintenance and operation of aircraft, personnel licensing, and accident investigations.

³⁵ LACAC Treaty, art. 15, *supra* note 29; *Rules of Procedure for LACAC Meetings*, art. 43.

³⁶ *Id.*

³⁷ See Dallo, *Deuxieme Assemblée Générale de la Commission Latino-Américaine De L'Aviation Civile*, 7 FRANCE TRANSPORTS-AVIATION CIVILE, 63 (1977).

³⁸ See LAMAISSON at 17, *supra* note 1. See also *Informe Comision Latinoamericana de Avacion Civil*, app. 4, at 4-4 and 4-5, LACAC Doc. CLAC/1 (1974).

³⁹ See note 26 *supra*.

5. The promotion of technical cooperation agreements in order to best utilize available resources.
6. The promotion of agreements concerning personnel training in all aviation fields.
7. The promotion of economic studies on air transport in the region.

IV. LACAC'S FIRST ASSEMBLY⁴⁰

Representatives of nineteen States and several international bodies attended LACAC's first Plenary Session in Buenos Aires held on August 21-28, 1974.⁴¹ The following nine recommendations constituted LACAC's original working program.

A. Statistics—The Assembly instructed the Executive Committee to initiate a program to gather origin and destination statistics for both scheduled and non-scheduled services in the region.

B. Air transport planning—Member States were encouraged to utilize the technical assistance available from the United Nations Development Program (UNDP).⁴² The Executive Committee of LACAC was requested to provide member States with information collected regarding the general framework of national air transport plans, including data on the use of simulated models for economic purposes, future trends and developments in civil aviation, choice of aircraft equipment and fleet size, statistical systems for management control, and airline accounting. The Assembly has also requested that the Executive Committee organize seminars of experts on air transport planning and inform member States of the results of these proceedings.⁴³

C. Tourism and air transport—The Assembly recommended

⁴⁰ For detailed information on the work done in the First Assembly see *Informe Comision Latinoamericana de Aviacion Civil*, LACAC Doc. CLAC/1 (1974).

⁴¹ See Payen, *The Latin American Civil Aviation Commission: First Assembly*—Buenos Aires, 41 ITA BULLETIN 981 (1974) [hereinafter cited as Payen].

⁴² LACAC Doc. CLAC/A1-NE/8 (1974).

⁴³ A Civil Aviation Forecasting Workshop took place in ICAO's Regional Office of Lima (June 14-18, 1976). The following subjects were examined: the role of planning and forecasting in the development of civil aviation; the need for those plans (national air transportation) and the functions that forecasting can assume in those plans; and development of procedures for short, medium, and long term structures for national air transport. See ICAO Doc. FW/3 (Lima Report, 1976).

that member States should study the possible integration, at a national level, of tourism and air transport industries.

D. Training of aeronautical staff⁴⁴—Member States were urged to implement a training program for aeronautical staff in conjunction with ICAO.

E. Cooperation among airlines—The Assembly suggested that member States encourage domestic airlines to conclude cooperative agreements with other Latin American carriers.⁴⁵

F. Implementation of the ICAO regional plan—The Assembly suggested that member States make maximum use of the assistance offered by the UNDP to carry out development plans to expand air navigation facilities and services.

G. Development of new UNDP/ICAO projects for long-range VHF facilities⁴⁶—The Assembly instructed the Executive Committee to contact the director of the regional office of the UNDP and give him the full support of the LACAC with regard to the development of new regional VHF stations.

H. Adherence to international civil aviation conventions—Member States, which had not previously complied with certain international air law conventions were advised to do so. Three conventions were frequently mentioned: the Tokyo Convention of 1963, Hague Convention of 1970, and Montreal Convention of 1971, all of which deal with the subject of unlawful interference with civil aviation.⁴⁷

I. Financial assistance—The Assembly directed the Executive Committee to contact various international organizations, such as

⁴⁴ The term "aeronautical staff" includes all aviation personnel involved in air traffic control, aircraft maintenance, pilots, etc.

⁴⁵ For a comprehensive discussion of the subject see *Summary of Material Collected on Co-Operative Agreements and Arrangements*, ICAO Doc. 84-AT/14 (1967).

⁴⁶ VHF is the abbreviation for Very High Frequencies, which is a frequency channel used in aeronautical communications. The VHF has a frequency range of 30-300 MHz metric waves. When used for air-ground communications VHF frequency channels can provide continuous communications coverage over widely varying distances at any time.

⁴⁷ The following international conventions deal with crimes on board aircraft: *Convention on Offences and Certain Other Acts Committed on Board Aircraft*, Tokyo, Sept. 14, 1963, ICAO Doc. 8634; *Convention for the Suppression of Unlawful Seizure of Aircraft*, The Hague, December 16, 1973, ICAO Doc. 8920 (commonly known as "The Hijacking Convention"); *Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation*, Montreal, September 23, 1971, ICAO Doc. 8966 (commonly known as "The Sabotage Convention").

the World Bank and Inter-American Development Bank, to inform them of the financial requirements of Latin American States for improving their aviation infrastructure.

The first Assembly also approved rules of procedure for LACAC meetings and a work program, as well as budgetary provisions until the end of 1976. The work program included a study of air transport in Latin America and compiling and publishing origin and destination statistics for both scheduled and non-scheduled services. The Executive Committee, based on the directives of the first LACAC Assembly, adopted a series of other measures to be implemented in connection with LACAC's work program.⁴⁸ The measures included: the approval of a draft UNDP project document prepared in consultation with the IACO and Economic Commission for Latin America (ECLA) to study the situation of air transport in Latin America; the approval of a tentative program of studies for the period 1977-1981 to be carried out by LACAC with the cooperation of UNDP; the implementation of an origin and destination statistics program proposed by a special working group for both scheduled and non-scheduled services for the South American region; the agendas of LACAC meetings; the LACAC budget and other financial matters; and the working methods and procedures for the subordinate bodies of the Executive Committee.

V. LACAC'S SECOND ASSEMBLY

The second regular session of LACAC met in Montevideo, Uruguay on December 1-7, 1976, and was attended by a gathering of representatives from fifteen member States, six observer countries, various international organizations, and Latin American airlines.⁴⁹ Two working committees were formed. The first committee examined the most important questions concerning air transport development in Latin America. Such questions included possible regulation of non-scheduled flights, regulation of scheduled service capacity, rate-making machinery, and rate enforcement.⁵⁰ The second com-

⁴⁸ LACAC Doc. CLAC/A1-NE/3 and NE/16 (1976).

⁴⁹ See Payen, *supra* note 41.

⁵⁰ These matters also appeared on the agenda of ICAO's Special Air Transport Conference, which was held in Montreal (April 13-26, 1977), and was attended by 97 member states of the ICAO. See *Report of the Special Air Transport Conference*, ICAO Doc. 9199 (1977) [hereinafter cited as SATC].

mittee considered all matters within the responsibility of the Executive Committee, i.e., the LACAC working program and budget for 1977 and 1978.

A new Executive Committee was elected for a two-year term. The representative from Uruguay was appointed President and the representatives from Brazil, Chile and Honduras were elected Vice-Presidents.⁵¹ Eight recommendations were adopted by the Second Assembly in various civil aviation fields:⁵²

A. Capacity regulation—A declaration was adopted encouraging each LACAC member country to develop a system for gathering and compiling statistical information regarding the origin of passengers by country of residence and airport of embarkation. The statistical information would allow LACAC countries to agree upon certain basic principles, especially with regard to capacity regulation. These principles would take into account the fact that in the Latin American region such capacity regulations may have different characteristics in each country depending upon whether or not the country has a strong international tourist industry.

B. Rate enforcement—The Commission adopted a series of recommendations regarding rate enforcement. The Commission also noted certain problems related to tariff enforcement which could be solved by individual governments. These questions include: the need for the filing of tariffs for non-scheduled services; enforcement of government approved tariffs for services provided by carriers which do not belong to the International Air Transport Association (IATA); the absence of government regulation of travel freight agents, tour operators, and other such persons. Other problems include the lack of, or insufficiency of, trained investigators in many countries needed to investigate tariff violations; and the lack of cooperation on enforcement problems between national administrations and air carriers.

C. Air transport agreements and operating permits—Air transport agreements establish procedures to be followed by governments for the designation of airlines which will provide particular services.

⁵¹ The first Executive Committee had been composed by representatives of Argentina, Panama, Peru, and Venezuela.

⁵² For a detailed information on the work done in the Second Assembly see *Informe Comision Latinoamericana de Aviacion Civil*, LACAC Doc. CLAC/2 (1976).

Under such procedures the airlines designated must satisfy all legal requirements as a prerequisite to providing air transport services. LACAC studied the problems related to the application of air transport agreements arising from the contingent internal procedures which govern their application. A LACAC working paper stressed the need for simplified internal procedures for member States of the Commission to enforce air transport agreements in order to avoid unnecessary limitations or delays for the designated airlines. LACAC recommended that its member States should not impose their own internal procedures upon bilateral agreements, which might delay their implementation.⁵³ The Commission also urged that States should grant airlines designated by other member States the same treatment granted to its own airlines.

The topic of tax reductions or elimination and its relationship to air transport agreements was also discussed. Even though air transport agreements are supposed to govern payments for rights, taxes, and consular privileges, it has been proven that certain States discriminatorily impose levies upon some airlines. A working paper presented by Brazil suggested that the States in the region should avoid applying measures that could result in discriminatory taxing practices or that would derogate consecrated principles of reciprocity and equality of treatment with respect to the imposition of rights, taxes, and consular privileges.⁵⁴ The recommendation adopted regarding air transport agreements provides that States should interpret their bilateral agreements in such a way as to eliminate any discriminatory practices, including discriminatory requirements for paying taxes, which might have adverse affects on relationships between the parties concerned.

D. Free transit of persons and circulation of currency—The Protocol on the Transit of Persons,⁵⁵ signed by member States of the Latin America Free Trade Association, in Montevideo, December 12, 1966, is an important agreement which may contribute to the development of regional air transport. The Protocol's pri-

⁵³ LACAC Doc. CLAC/A2-NE/11 (1976) presented by the Delegation of Brazil on Air Transport Agreements and Operating Permits.

⁵⁴ LACAC Doc. CLAC/A2-NE/12 (1976) presented by the Delegation of Brazil on Tax Elimination.

⁵⁵ For a text of the Protocol, see *Inter-American Institute of International Legal Studies*, 1 INSTRUMENTS OF ECONOMIC INTEGRATION IN LATIN AMERICA AND THE CARIBBEAN 143 (1975).

mary objective is to allow nationals of the contracting parties to have ingress to and egress from the territory of the participating States. Free circulation of currency is regarded as a necessary element of this freedom of travel and is, therefore, also embraced by the Protocol. The Assembly recommended that member States ratify the Protocol.

E. Air Transport Statistics—The Assembly expressed satisfaction that three digests of origin and destination statistics had already been published,⁵⁶ and that member States were regularly requesting statistics regarding services from the LACAC secretariat.

F. Further training for aeronautical personnel in the economic and legal fields—The Assembly requested that the Executive Committee design a training program for personnel in the civil aviation departments of LACAC member States in areas of air transport economics, civil aviation statistics, airport economics, and air law. The Assembly also suggested that a number of grants in each of these fields be included in the national projects financed by UNDP for the development of civil aviation and/or in the State's respective national budget.

G. Updating and implementation of the regional air navigation plan⁵⁷—The regional air navigation meeting for the Caribbean and South America took place in October of 1976, in Lima, Peru.⁵⁸ During the meeting the air navigation plan for the region was reviewed. Recommendations were adopted to update the plan.⁵⁹ The

⁵⁶ LACAC [VOL. I-III], ORIGIN AND DESTINATION STATISTICS PROGRAM: SCHEDULED SERVICES (1976).

⁵⁷ Air Navigation Plans set forth in detail the facilities, services and procedures required for international air navigation within a specified area. Such plans contain recommendations which governments can follow in programming the provision of their air navigation facilities and services. See *Air Navigation Plan for the Caribbean and South American Region*, ICAO Doc. 8733/10 (10th ed. 1977).

⁵⁸ The Caribbean/South American (CAR/SAM) Air Navigation Meeting, held in Lima (October 5-28, 1976), approved a major overhaul of the air navigation plans for both regions. The main purpose of the Lima Conference was to undertake a thorough review and update the Air Navigation Plan covering specifications of the ground facilities and services required to support international civil aviation. This included consideration of the aerodromes, navigation aids, air traffic and support units, ground-to-ground and air-to-ground communications, search and rescue, meteorological, and aeronautical information. For the first time requirements of supersonic transport aircraft were included in the Air Navigation Plan. See *Report of the Regional Air Navigation Meeting Caribbean/South America*, ICAO Doc. 9194 (1976).

⁵⁹ The updating was due to the fact that it became apparent that the Regional

Assembly noted the recommendations and asked member States to cooperate with the ICAO in implementing the proposals.

LACAC also acknowledged the importance of UNDP/ICAO technical assistance in carrying out the regional plan. There was however, concern among member States about the future availability of UNDP financial assistance as most ICAO/UNDP regional projects in Latin America faced termination at the time of the Second Assembly. Some of these programs were scheduled to terminate, others were to be cut short because of the financial difficulties of the UNDP.⁶⁰ It is thought that there will be few prospects for reactivating those programs in view of the financial condition of the UNDP, which has forced reductions in programs in 1976 and 1977.⁶¹ Consequently, the Assembly recommended that member States include financing for multinational projects that cannot be financed using regional resources of the UNDP in their national UNDP programs.

H. Technical training for aviation personnel—LACAC requested that member States update their training plans to reflect present needs. A current regional study of training needs by ICAO was considered essential to the development of adequate regional training centers. Member States with their own training centers were asked to improve them. The Assembly also requested a vote of support for the UNDP/ICAO technical cooperation program.⁶²

VI. ICAO'S SPECIAL AIR TRANSPORT CONFERENCE

The most important topics of LACAC's Second Assembly were on the agenda of ICAO's Special Air Transport Conference; i.e., capacity regulation, tariff enforcement, policy concerning non-scheduled services, and machinery for the establishment of inter-

Plan was no longer consistent with current or future requirements of international civil aviation.

⁶⁰ See *Regional Projects of Technical Cooperation*, LACAC Doc. CLAC/A2-NE/20 (1976).

⁶¹ For an examination of the activities and policy on Technical Assistance provided under the UNDP see ICAO Working Paper A22-WP/13 EX/6 (1977), submitted by the ICAO Council to the 22nd Assembly. The paper reviewed developments affecting the technical assistance program in the period 1974-1977 and in particular regional and inter-regional program activities, the administration of the program and constraints on its implementation.

⁶² See *Training of Aeronautical Personnel*, LACAC Doc. CLAC/A2-NE/19 (1976).

national air transport fares and rates.⁶³ The Conference, held in the ICAO's headquarters in Montreal, confirmed LACAC's expanding role in formulating the policy of the ICAO.⁶⁴ LACAC member States expressed themselves at the Conference by joint action, through working papers and by intervening in the debates.⁶⁵

A brief examination of the items on the agenda will indicate the influence of the Latin American States on important issues at the conference:

A. Tariff Enforcement—The task before the Conference was to discuss methods of enforcement available to governments to ensure compliance with international air transport tariffs. As noted, previously LACAC's Second Assembly discussed this problem. Tariff violations related to international air services operating in the region were considered a danger to the economic stability of Latin American airlines. Therefore, the governments of member States of LACAC adopted strong measures aimed at ensuring observance of the registered tariffs.⁶⁶ Based upon this previous experience in dealing with the problem, LACAC referred the following measures to the Conference:

1. Require prior registration of passenger and freight tariffs for all scheduled and non-scheduled international air carriers. Tariffs registered would be required to include all terms, including all commissions paid to travel and freight agencies.

2. Establish regulations for travel and freight agents, tour organizers and freight forwarders.

3. Impose penalties to ensure that tariffs are enforced. Such penalties would take into account the seriousness and the likelihood of reoccurrence of the violation.

4. Establish appropriate machinery to monitor tariff enforcement.

5. Provide LACAC with a copy of member States' regulations and other provisions concerning the recommendations listed in sec-

⁶³ Bogolasky, *Recent LACAC Meetings*, 2 AIR LAW 177 (1977).

⁶⁴ The Conference took place from April 13 to April 26, 1977.

⁶⁵ For detailed information on the Special Air Transport Conference see SATC, *supra* note 50.

⁶⁶ See SATC, *supra* note 50, ICAO Working Paper WP/26 (1977), for recommendations concerning the enforcement of tariffs adopted by the Second LACAC Assembly.

tions 1 to 4 above, and also provide statistics concerning proven violations and the penalties applied for each violation.

6. Support the activities of IATA with regard to the enforcement of tariffs.⁶⁷

During the Conference, Venezuela submitted a proposal,⁶⁸ adopted as Recommendation 2, expressing concern for the serious economic impact of tariff violations on both consumers and the aviation industry. Recommendation 2 emphasizes the need for increased cooperation in enforcing and exchanging information regarding tariff violations.

B. Non-scheduled international air transport services—The Conference's goal was to formulate recommendations regarding regulation of scheduled and non-scheduled international operations. LACAC's position is since non-scheduled air services are of increasing significance in air transport they should be governed by regulations similar to those governing scheduled services. The fact that non-scheduled services are not presently regulated has created certain problems. For example, a definition which distinguishes and characterizes scheduled and non-scheduled services has become

⁶⁷ With regard to the last recommendation there is a split of opinion among LACAC member States as to the adequacy of the IATA's tariff enforcement apparatus. Chile believes that the IATA enforcement machinery is not adequate as it does not have jurisdiction over charter or non-IATA member airlines.

Argentina asserts that the ICAO, rather than the IATA, could monitor tariff violations by collecting data on revenue yields by area, and focusing on abnormal variations. Tariffs could be enforced by the regional organizations concerned, or, at ICAO's request, by the governments of the areas in question.

Brazil takes the position that the role of ICAO should be to supplement that of IATA in establishing and promulgating tariff standards utilized worldwide. Colombia, in contrast, emphasizes that ICAO, as an organization of individual States, should undertake studies that may result in limiting the applicability of tariffs. On the matter of tariff enforcement see ICAO Cir. 135-AT/41 (1977).

The IATA has strengthened its enforcement machinery. Additional staff has been assigned to its compliance activity and budgets have been increased. One of the latest measures adopted by IATA to support its compliance objectives requires chief airline executives to abide by IATA regulations. Also certain amendments have been made to the unanimity rule so as to prevent the blocking of agreements by parties with only a marginal interest in the subject matter of the agreement. IATA's Breaches Commission imposes fines for tariff violations by airlines which are members of the Association. See SATC, *supra* note 50, *Tariff Enforcement*, Information Paper No. 1, at 5-7.

⁶⁸ See SATC, *supra* note 50, ICAO Working Paper WP/65 (1977), for a presentation of the proposed recommendations of Agenda Item No. 1 dealing with tariff enforcement. This item was presented by Canada, Japan, the Philippines, Spain, Switzerland, the United Kingdom, the United States of America, and Venezuela.

indispensable for their co-existence. However, the ICAO definition of scheduled services has become obsolete.⁶⁹

LACAC countries have generally not regulated the operation of charter services in detail, even though many of them accept the principle expressed in Resolution 045 of IATA.⁷⁰ However, in accordance with Resolution 045 Latin American states tend to refuse authorization of non-scheduled services between points which are served by scheduled airlines, particularly when the scheduled airlines involved are national. This attitude is attributable to the secondary role of non-scheduled air transport in South America.⁷¹ LACAC's Second Assembly had previously determined that questions relating to non-scheduled international air transport and capacity regulation within the regional framework could only be resolved after a detailed study, identifying and evaluating the main problems encountered.⁷²

⁶⁹ The Chicago Convention does not define "scheduled international air service," but the ICAO Council presented the following definition in 1952 for the guidance of contracting States:

A scheduled international air service is a series of flights that possesses all the following characteristics: (a) it passes through the air space over the territory of more than one State; (b) it is performed by aircraft for the transport of passengers, mail, or cargo for remuneration, in such a manner that each flight is open to use by members of the public; (c) it is operated so as to serve traffic between the same two or more points either (i) according to a published time-table or (ii) with flights so regular or frequent that they constitute a recognizable systematic series.

ICAO Doc. 7278-C/841 (1952).

⁷⁰ Until 1953 IATA member airlines operated charter services subject only to the regulations and conditions applied by their own national governments and those of the country of destination. No major problems were encountered, however, the IATA resolutions establishing the level of fares and rates to be charged on regular services stipulate that no member may charge less than the specified amounts. The IATA thought that operating charters which provided for per capita rates below these amounts might be considered as a violation of the agreement. Consequently a resolution was prepared which permitted members to operate charters, but defined the conditions under which this was permissible. Resolution 045 permitted IATA to examine the whole concept of charter traffic very closely, and it set the basic rules under which affinity groups could use charters. Provision was also made for inclusive tour charters. See IATA, *AGREEING FARES AND RATES* 67 (2d rev. ed. 1974).

⁷¹ *Policy Concerning International Non-Scheduled Air Transport*, LACAC Doc. CLAC/RE (CETA)-NI/2 (1977).

⁷² SATC, *supra* note 50, ICAO Working Paper WP/27 (1977). Some LACAC member States made specific statements about non-scheduled operations during the Special Air Transport Conference. Brazil stated that many problems regarding charters are due to the absence of any unified approach on the part of the international aviation community. Brazil noted that due to the increasing volume

The Latin American position at the Conference was expressed in a working paper, presented by Brazil and Venezuela. This paper contained a draft resolution and a work program to be implemented by the ICAO Council.⁷³ The Latin American position was that studies should be carried out aimed at establishing a definition of non-scheduled services which distinguishes and classifies types of non-scheduled flights such as charters. Other important aspects of air transport to be considered in the proposed studies would include regulation of non-scheduled international air transport capacity, rates, operational areas, and travel agents. Recommendation 3 of the conference reflects the impact of the Latin American working paper.⁷⁴

C. Regulation of Airline capacity in international air transport services—The problem faced by the conference was to formulate recommendations on the type of capacity regulation that would be most conducive to healthy development of international air transport. Capacity clauses,⁷⁵ based on the Bermuda I Agreement,⁷⁶ are

of tourists traffic, a marked increase is expected in the number of charter applications. Venezuela suggested that price controls on non-scheduled services should be established, in order to avoid ruinous competition with scheduled services; and such control should be carried out by States, as well as by specialized international aviation organizations such as ICAO and IATA. Venezuela also mentioned the problems created by lack of compliance, by airline operators, with established regulations. Examples of such regulations include the requirement of seven days prior notification of prospective flights and the requirement that permission for such flights be obtained from the aeronautical authorities.

⁷³ *Draft Resolution on International Non-Scheduled Air Transport*, SATC, *supra* note 50, ICAO Working Paper WP/33 (1977).

⁷⁴ The impact of Recommendation 3 is based on the fact that ICAO will start to examine in July 1977 with a Panel of Experts some of the problems brought forward by the Special Air Transport Conference. Among those problems are the need to establish a definition or guidelines which characterize international non-scheduled air transport operations and distinguish these from scheduled operations. The guidelines adopted will give direct regulation of international non-scheduled air transport. For further information on non-scheduled services see *On International Non-Scheduled Air Transport*, ICAO Cir. 136-AT/42 (1977).

⁷⁵ The "capacity clauses" in bilateral air transport agreements are those setting forth conditions or limitations concerning the capacity that may be offered by the scheduled air services utilizing the operating rights granted. These rights generally relate to the so-called "Five Freedoms of the Air" as defined in the International Air Transport Agreement drawn up at the Chicago Conference in December, 1944. See Convention on Civil Aviation, *penned for signature* at Chicago, Illinois, December 7, 1944, 61 Stat. 1180, T.I.A.S. No. 1591, 15 U.N.T.S. 295 (1948). These clauses tend to determine the volume of air transport operations that may be effected by each carrier. See *Handbook on Capacity Clauses in Bilateral Air Transport Agreements*, ICAO Cir. 72-AT/9, at 3 (1965).

⁷⁶ In Bermuda in 1946, the United States and United Kingdom signed a bi-

no longer adjusted to reflect the actual realities of international air transport and are therefore inadequate.⁷⁷ The bilateral system must continue to regulate international air transport. A prior examination by states of the capacity to be introduced by their designated carriers is of the greatest importance in the preservation of good aviation relations. The bilateral system must be structured so as to allow the existence of agreed upon regular services with a proper balance of accessory traffic. The following LACAC policy statements, concerning capacity regulation, take into account current high airline operating costs and regional market characteristics.⁷⁸

1. High operating costs and the problem of surplus capacity—The world economic situation has had a very significant impact on the development of international air traffic. Worldwide inflationary pressure and currency fluctuations have resulted in restrictive government fiscal and monetary policies. As a consequence, world economic growth has decreased drastically, especially in Organization for Economic Co-Operation and Development (OECD) countries. OECD nations have also experienced a recent decline in personal income reflected in a rise in unemployment. These economic problems have had a very negative impact on the growth of air transport. However, these negative factors have not affected the development of Latin American air traffic to the same extent as world traf-

lateral air transport agreement which governed commercial air transport operations through the territories of both parties. The agreement constituted the basis for many of the bilateral agreements of the last 30 years. In 1976, the United Kingdom denounced the agreement, and on June 22, 1977, a new bilateral air transport agreement was concluded between both nations commonly called Bermuda 2. For further information on Bermuda I see Bermuda I Agreement, February 11, 1946, United States-United Kingdom, 60 Stat. 1499, T.I.A.S. No. 1507; SHAWCROSS AND BEAUMONT, *AIR LAW*, 213-217 (1977). For information concerning Bermuda II see Bermuda II Agreement, July 23, 1977, United States-United Kingdom, — Stat. —, T.I.A.S. No. 8641; Haanappel, *Bermuda 2: A First Impression*, 2 *ANNALS OF AIR AND SPACE LAW* 139-149 (1977).

⁷⁷ The Bermuda Agreement of 1946 was a compromise reached between the United States and the United Kingdom. The agreed upon capacity clauses, instead of being predetermined, were to be regulated only by the airlines designated to operate on each route for which rights were granted on the basis of general principles and limited by the possibility of after the fact review by the aeronautical authorities concerned. This was a flexible approach that permitted varying degrees of control by participant governments. However, in the last decade there has been a general tendency towards more stringent control of capacity. Nowadays a majority of states favor predetermination of actual capacity to be offered in terms of passenger-seats and freight tonnage.

⁷⁸ *Statement of Principle on the Regulation of Capacity in International Air Transport Services*, LACAC Doc. CLAC/A2-NE/6 (1976).

fic. Latin American air traffic grew at a more accelerated pace than the world average. However, the rising cost of air services increases the importance of more rational utilization of available capacity.

In the past few years, significant airline cost increases have been registered due to rising fuel costs. Fuel costs today represent approximately twenty-five percent of the operating costs of scheduled airlines as compared with half that percentage prior to 1974.⁷⁹ Rising labor costs (forty percent of operating costs), airport and air navigation facility use charges, and loan servicing costs have also affected the airlines.⁸⁰ Latin American airlines are more directly affected by these cost factors than airlines of other areas.⁸¹

The problem of surplus or excess capacity is another issue facing international air transport. This problem is due to the introduction of large capacity aircraft, charter services, and reductions in air traffic generated by the OECD countries. Although the problem of surplus capacity is not as serious for the Latin American airlines as for the largest airlines in the world, it is still an important concern.

2. Particular characteristics of the Latin American air travel market—All the Latin American air transport studies undertaken at the regional level⁸² have agreed that, due to the diversity of its geographical and social conditions, it would be inadequate to formulate a general plan regarding capacity regulation covering the region as a whole. This is true even with regard to Latin American subregions delineated in accordance with similar physical and cultural bases, since these are not homogeneous from the point of view

⁷⁹ Since late 1973 the rising cost of jet fuel has become a matter of grave concern to the airline industry, and has wide implications from both financial and operational standpoints. See *Draft Study of Air Passenger and Freight Transport—Latin America and the Caribbean*, ICAO Working Paper AT-WP/1262 (1978).

⁸⁰ *Id.*

⁸¹ The above-mentioned economic factors prejudice the ability of airlines in the region to generate the internal working capital and to raise the necessary external funds with which to finance the purchase of new assets. Economic and environmental considerations may oblige airlines to step up their aircraft acquisition programs in the foreseeable future and financial problems could become more acute at that time. Inflation and devaluation have resulted in significant increases in the cost of replacement equipment which are not covered by the depreciation of existing assets.

⁸² See *Air Freight in the Latin American Region*, ICAO Doc. 8487-AT/720 (1965); *Development of International Air Passenger Travel in Latin America*, ICAO Cir. 90-AT/16 (1968).

of traffic movement or seasonal traffic variations. Certain countries of Latin America receive a considerable share of tourist traffic. In other areas, little traffic originates outside the region. Nevertheless, in countries with substantial tourist traffic, the volume of participation in the tourist traffic carried by regional carriers is in many cases less than that carried by non-Latin American airlines. The importance which such outside participation has on maintaining tourist traffic, and hence the economies of countries in northern Latin America, makes it difficult for the governments of these countries to challenge such outside participation. In contrast, countries which do not have strong tourism industries will certainly lean towards stricter limits on outside participation in air traffic.

3. Need for a general policy consensus concerning capacity regulation—The problem of regulating capacity in international air transport services is a very complex one. The prevailing policy towards foreign airline participation in air traffic will always be in one of the two directions outlined in the previous paragraph. Consequently, there is initial agreement that participation of foreign airlines will be more extensive where such participation is accompanied by an increase in air traffic. Such a policy will make it necessary to have available adequate statistical information for each country in order to determine the origin of passengers classified according to their country of residence and airport of embarkation.

The Second Assembly of LACAC in accordance with the previous discussion adopted a recommendation that:

The member states of LACAC, recognizing on the one hand the importance of traffic originating in other states and regions for the development of their national economies and, on the other, the negative effects on their airlines of a surplus capacity offered by non-national carriers whenever it does not produce a traffic volume justifying it, have agreed to state that it is acceptable to have differing criteria in the region for the regulation of capacity bearing in mind the contribution to traffic made by non-national carriers, without such distinction affecting the unanimous desire of the member states of LACAC to achieve the greatest measure of agreement in the field of air transport.⁸³

Statements made by LACAC member States at the Special Air Transport Conference showed a clear preference for a policy of

⁸³ SATC, *supra* note 50, ICAO Working Paper WP/28 (1977).

predetermination of capacity⁸⁴ and certain opposition to the Bermuda I principle of no prior determination.⁸⁵

4. Stop-Over—In the context of the question of capacity regulation in international air transport services, LACAC's Second Assembly considered it desirable to also undertake a study of stop-overs, as different regulations were being applied by LACAC States to this increasingly popular type of traffic.⁸⁶ The Assembly noted nearly all bilateral agreements signed by LACAC States contain clauses in which 5th Freedom traffic is clearly defined as being complementary and secondary to 3rd and 4th Freedom traffic.⁸⁷

⁸⁴ Predetermination is one of the systems by which capacity can be regulated in a bilateral air transport agreement. In it the share of the traffic to be carried by each contracting party to the agreement is determined by them in advance. It is a totally restrictive method. See *Handbook on Capacity Clauses in Bilateral Air Transport Agreements*, ICAO Cir. 72-AT/9 (1965).

⁸⁵ The dominant feature of the Bermuda I Agreement was the freedom given to airlines to operate services at the frequency/capacity they considered justified, so long as they complied with the general provisions of the agreement. See *Regulation of Capacity in International Air Transport Services: The Stop-over Question*, LACAC Doc. CLAC/RE(CETA)-NI/3 (1977).

⁸⁶ See LACAC Doc. CLAC/A2-NE/17 (1976). An interesting examination of the subject of stop-over in the region was done by Dr. Folchi in a symposium which took place in Buenos Aires, in December 1977, on the matter of capacity regulation. See Folchi, *Stop-Over* 11, IL DIRITTO AEREO 61-62 (1977).

⁸⁷ At the end of the Chicago Convention (Convention on Civil Aviation, penned for signature at Chicago, Illinois, Dec. 7, 1944, 61 Stat. 1180, T.I.A.S. No. 1591, 15 U.N.T.S. 295 (1948)), the most important area of controversy among those in attendance could not be solved within the Convention itself: the question of how to share the international civil air traffic accruing to each state as a right. Two agreements were drawn up as a compromise:

(i) The "International Air Services Transit Agreement" grants the "Two Freedoms of the Air":

1. the right to fly across the territory of a State without landing;
2. the right to land on the territory of another State for non-traffic purposes (repairs, refueling, etc.) is called the "technical landing."

(ii) The "International Air Transport Agreement" grants the "Five Freedoms of the Air." These "freedoms" are not really freedoms but privileges granted by States to the carriers of other States, and relate only to the airspace that is not above national territory. In addition to the two technical freedoms mentioned above, the agreement contains the three "commercial freedoms":

3. the right to put down on the territory of a State passengers, mail and cargo taken on in the territory of the State whose nationality the aircraft possesses;
4. the right to take on in the territory of a State passengers, mail and cargo destined for the territory of the State whose nationality the aircraft possesses;
5. the right to take on passengers, mail, and cargo destined for the territory of any other State, and the right to put down passengers, mail and cargo coming from any such territory (carriage be-

Furthermore, the majority of these agreements established that the development of local and regional services is a basic prerogative of individual states which has induced some countries in the region to impose restrictions on the use of 5th Freedom rights to protect the 3rd and 4th Freedom traffic of their national carriers. In some cases, these restrictions also affect stop-over traffic, since strictly speaking, many countries classify stop-over traffic as 5th Freedom traffic by not taking into account the country of origin of the traffic.

During the discussion of capacity regulation at the Conference,⁸⁸ a draft resolution was presented by Argentina, Brazil, Colombia, Chile, Peru, and Venezuela, which reflected the LACAC position regarding capacity regulation.⁸⁹ An overview of this position follows. LACAC believes that the dramatic evolution of air transport requires a reevaluation of the policies which for the last thirty years have governed capacity regulation. The LACAC understands that air transport must continue to be regulated bilaterally. Unfortunately, there is at present excess airline capacity. This excess capacity constitutes an impediment to the orderly growth of international air transport. Latin American States believe that the principles to be applied must guarantee the right to operation of primary traffic between the States with fair and equal opportunities; that is, the right to participate in that traffic with equal capacity offered. Concern was expressed that there are no international rules uniformly accepted for the regulation of capacity of non-scheduled air transport. The relationship of scheduled and non-scheduled air services in the market must be studied so that a proper balance can be maintained between them.

Recommendation 4 of the Conference, taking into account LACAC's position, suggests that ICAO undertake studies aimed at establishing relevant criteria to be used to formulate alternative methods for regulating capacity of scheduled and non-scheduled international air transport services. The Conference also recommended that ICAO formulate model guidelines for regulating capacity.

tween two foreign countries). See SATC, *supra* note 50, *Regulation of Capacity in International Air Transport Services*, Information Paper No. 3, at 2.

⁸⁸ See *Document Regulation of Capacity in International Air Transport Services*, ICAO Doc. 137-AT/43 (1977).

⁸⁹ SATC, *supra* note 50, ICAO Working Paper WP/57 (1977).

D. Machinery for the establishment of international air transport fares and rates—The problem before the Conference was to evaluate the existing systems of establishing international fares and rates, with emphasis on the proper role of governments in establishing fares and rates. A related problem discussed was the possibility of establishing an integrated system for fixing tariffs applicable to all scheduled and non-scheduled carriers. In general, the LACAC member States support the IATA system of rate-making, but there is also full agreement that the IATA system should be improved and simplified.⁹⁰

The Conference revealed a need to determine the effect of the non-scheduled service dichotomy with respect to tariffs. Such a study would allow ICAO to evaluate the desirability of further standardizing the procedures by which both scheduled and non-scheduled carriers arrive at their tariffs. This study should clarify the means by which fares on non-scheduled services are established.⁹¹ A recommendation was adopted by the Special Air Transport Conference requesting that the ICAO Panel of Experts on “the Machinery for the Establishment of Fares and Rates” focus its efforts on such a study.⁹²

E. Second Air Transport Conference—The possibility of convening a Second Air Transport Conference was considered. This was motivated by the deep concern of the international aviation community over current economic problems, and a desire to finish up the work of the first Conference by finding satisfactory solutions to the major problems which had been discussed. Once again, LACAC played a major role, as the proposal to convene the Second Conference was initially presented by the Latin American members of the ICAO Council.⁹³

⁹⁰ IATA established in its General Assembly of 1977 a five-man executive task force which had one substantive task: to review existing traffic conferences procedures taking into account the need to reexamine the IATA machinery.

⁹¹ SATC, *supra* note 50, ICAO Working Paper WP/53 (1977).

⁹² Recommendation 9 of the Special Air Transport Conference, SATC, *supra* note 50, was based upon ideas put forward by Brazil, Colombia, Uruguay, and Venezuela.

⁹³ The Conference, on the basis of a draft text presented by Argentina, Australia, Brazil, Colombia, Costa Rica, Egypt, Indonesia, Lebanon, Malawi, Mauritius, Mexico, Pakistan, Spain, Sudan, and Yugoslavia, in SATC, *supra* note 50, ICAO Working Paper WP/77 (1977), adopted Recommendation 20.

VII. TWENTY-SECOND ASSEMBLY OF ICAO

The Twenty-Second Session of ICAO's Assembly was held in Montreal on September 13 - October 4, 1977.⁹⁴ The most important item on the agenda of the Assembly was the election of the thirty council members. Six Latin American LACAC member States were elected to the council.⁹⁵ By obtaining six positions of the total thirty council seats, LACAC possesses a better percentage representation than held by member States of either the African Civil Aviation Commission (AFCAC) or European Civil Aviation Conference (ECAC). The results of the 1977 ICAO elections illustrated that the group approach definitely provided for the most effective results in international aviation.

An amendment to Article 50(a) of the Chicago Convention raising the membership of the ICAO Council to thirty-three was adopted on October 16, 1974, and will enter into force when ratified by eighty-six States. It had been ratified by seventy-four States as of June 1, 1978.⁹⁶ The expected stiff competition for the new seats when the amendment becomes effective will be an important test of the political power of LACAC within ICAO. LACAC will determine in its Third Assembly which country will be the regional candidate for the new seats. Venezuela has shown great interest for the new seat in the ICAO Council.

A brief examination of additional items on the agenda of the Twenty-Second Assembly of ICAO will highlight the areas which are of greatest importance to LACAC. One area of concern is ICAO's possible future role in providing member States with technical assistance. Brazil, Chile, and Uruguay presented a draft resolution concerning such technical assistance.⁹⁷ The resolution ex-

⁹⁴ For an examination of the resolutions adopted by the Assembly and an index to documentation see ICAO Doc. 9215, A22-RES (1978).

⁹⁵ Argentina, Brazil, Colombia, Honduras, Jamaica, and Mexico were elected to the Council. A difficulty arose concerning the inclusion of Jamaica as a LACAC candidate. Although Jamaica has attended some LACAC meetings, it still has not signed the LACAC treaty (no non-Spanish Caribbean States have signed). The LACAC plans to make great efforts to incorporate this important region of Latin America into the LACAC. In the event these States do not join, LACAC will probably seek to replace Jamaica with a member State.

⁹⁶ ICAO State Letter 78/95 (May 18, 1978) and ICAO Council Working Paper WP/6735 (May 26, 1978).

⁹⁷ *ICAO's Activities and Policy on Technical Assistance*, ICAO Working Paper A22-WP/65, EX/22 (1977).

pressed concern for the poor present financial condition of UNDP. The great uncertainty as to the future adequacy of funds contributed to the UNDP by developed countries is not encouraging to underdeveloped nations. One particularly harsh effect of UNDP fund cuts will be a decrease in the availability of fellowships for training aviation personnel. The paper stressed the considerable progress developing countries have made with the assistance of the UNDP and ICAO in establishing or expanding national and regional training centers. Many of these centers may be forced to contract their curriculum due to the unavailability of future UNDP financed fellowship grants.

The sixteenth ICAO Assembly, held in Buenos Aires in September of 1968, adopted two resolutions aimed at utilizing contributions from ICAO member States for fellowships, training equipment, and training of aviation personnel.⁸⁸ These resolutions were influenced by the unavailability of UNDP funds at the time. ICAO, in response to the then existent conditions, set up a system of voluntary contributions to be utilized for scholastic purposes. As a result, the ICAO budget for the years 1969, 1970, and 1971 included one hundred thousand dollars annually for scholarships and fellowships.

The LACAC working paper mentioned the change in UNDP policy. It asserted that past experience had shown that direct budget appropriations for scholastic endeavors were the most effective means of establishing a fellowship program, the benefits of which inure primarily to civil aviation. The paper expressed concern for the inability of national programs to adequately provide for the continuing need of developing countries for fellowship assistance. LACAC recommended that ICAO allocate part of its budget to provide scholarships and fellowships.

The LACAC proposal was opposed, primarily by those states that are the principal contributors (Contributing States) to UNDP. In order to obtain a consensus the LACAC presented a new proposal. This proposal called upon Contributing States, who are also members of the Governing Council of UNDP,⁸⁹ to take necessary

⁸⁸ *Assembly Resolutions in Force*, ICAO Doc. 9124 (1975), Resolution A16-7, *Aeronautical Technical Training*, and Resolution A16-8, *Aeronautical Technical Training-Fellowships and Scholarships*.

⁸⁹ See Report of the Executive Committee, ICAO Doc. 9210, A22-EX, at 34 (1977).

steps to provide UNDP funds specifically for civil aviation fellowships. The proposal was ultimately adopted.¹⁰⁰

Another area of LACAC influence on the Twenty-Second Assembly concerned a proposal that ICAO should catalogue and periodically publish important judicial decisions concerning aviation.¹⁰¹ LACAC, through Chile and Ecuador, presented a proposal which, although defeated in its submitted form, was the substance of a recommendation subsequently adopted.¹⁰²

LACAC member States also stressed the importance of convening a second Special Air Transport Conference prior to the next regular session of the Assembly. The first Conference had been successful in suggesting possible courses of action to solve many of the more urgent problems facing civil aviation. However, many facets of the complex economic situation prevailing in international aviation remain to be considered, therefore, there exists a need to convene a second conference.¹⁰³ Argentina, Brazil, Chile, Costa Rica, Venezuela, and other States also noted the progress that the first Air Transport Conference had made towards bringing about modernization of the thirty year old system of air transport regulation.¹⁰⁴

The Twenty-Second Assembly of ICAO was a major test of strength for LACAC. The successful performance by its member States at the Assembly demonstrates the important role of LACAC in world aviation.

¹⁰⁰ *Scholarships and Fellowships for Basic and Advanced Training*, Resolution A22-10. For a detailed report on this matter see *Report of the Executive Committee on Agenda Item 12*, ICAO Working Paper A22-WP/158 P/58 (1977).

¹⁰¹ *Digest of Judicial Decisions Relating to Multilateral International Private Air Law Conventions*, ICAO Doc. A22-WP/72 LE/7 (1977). Chile and Ecuador proposed to direct the ICAO Council to prepare and distribute a digest of judicial decisions relating to multilateral international private air law conventions.

¹⁰² The Assembly did not approve a resolution on this matter, but directed the Secretary General of ICAO to implement the idea in a list of judicial decisions. The repertory will include the indication of the country where the decision was issued, tribunal seized of the case, date and number of the decision, a short description of the facts and of the decision and the international convention referred to by the Court.

¹⁰³ See *Report of the Economic Commission on Agenda Item 25*, ICAO Working Paper A22-WP/119 P/37, at 25-29 (1977).

¹⁰⁴ *Review of the Results of the Special Air Transport Conference*, ICAO Working Paper A22-WP/148 P/48 (1977).

VIII. 1977-1978 WORKING PROGRAM OF LACAC¹⁰⁵

The following outline maps out the working program of LACAC for 1978:

A. Examine the status of international air transport in Latin America including—¹⁰⁶

1. Policies, regulations and existing agreements in Latin America related to the operation of scheduled and non-scheduled international services;
2. The stop-over question;
3. Latin American airlines participation in the operation of intra-regional and inter-regional scheduled services;
4. Development of non-scheduled international services in the Latin American region;
5. Operating costs and revenues of Latin American Airlines;
6. Air transport taxes in the region;
7. Scheduled and charter tariffs of airlines servicing international routes within, to and from Latin America.

B. Air Transport statistics—

1. Work to improve the capacity of member States to accurately compile and process civil aviation statistics;
2. Establish a regular program of origin and destination statistics;
3. Examine the possibility of compiling statistics on the country of origin of passengers.

C. Methodological systems used for analysis of costs and revenues of airline operations—

1. Examination of the methods used by Latin American airlines for computing and analyzing operating costs and revenues;
2. Providing systems of analysis which will allow both governments and airlines to break down costs by routes serviced (and by route sections).

¹⁰⁵ For an examination of LACAC activities from 1974 to 1977 see the following ICAO documents: *Annual Report of the Council 1974*, ICAO Doc. 9127, at 67 (1975); *Annual Report of the Council 1975*, ICAO Doc. 9166, at 71 (1976); *Annual Report of the Council 1976*, ICAO Doc. 9188, at 77 (1977); and *Annual Report of the Council 1977*, ICAO Doc. 9223, at 71 (1978).

¹⁰⁶ LACAC has established a Panel of Experts which will study the capacity regulation problem and air transport taxes. The Panel will meet in Lima, Perú, August 14th-18th, 1978.

D. Compilation and publication of methodologies concerning various aspects of air transport planning.

E. Coordination of air transport activities and tourism—The Commission will closely examine the program of those international and regional tourism organizations whose activities fall within the scope of air transport. Adequate communication with such groups should be established and maintained in order to avoid duplicating the efforts of other organizations.

F. Economic aspect of airports, air navigation facilities, and in-route air navigation services—

1. Examine the criteria used by LACAC member States in imposing taxes on air transport;

2. Formulate recommendations based upon suggestions of ICAO in order to integrate diverse systems of taxation;

3. Examine and evaluate accounting methods used by Latin American airports and air navigation facility operators, and determine how the costs of such facilities are allocated to airlines and consumers;

4. Devise a system to efficiently determine and allocate airport and air navigation facility costs.

G. Improve the overall economic performance of LACAC States in air transport.

H. Facilitation in International Air Transport—

1. Measures will be taken to implement the provisions of Annex 9 to the Chicago Convention on Facilitation. Initially this will require LACAC to determine to what extent the mandates of Annex 9 have already been complied with by individual LACAC States. LACAC will then formulate further recommendations designed to facilitate application of Annex 9 provisions;

2. Study the extent to which member States comply with ICAO in achieving other facilitation objectives;

3. Continue to cooperate and correspond with other international organizations concerned with the problems of facilitation in air transport.

I. Unlawful interference with international civil aviation—

1. Study to what extent member States have complied with ICAO resolutions regarding aviation security measures, particu-

larly Annex 17 to the Chicago Convention on Aviation Security¹⁰⁷ and the provisions of the Security Manual of ICAO;¹⁰⁸

2. Formulate recommendations to facilitate application of security measures adopted by the ICAO;

3. Work towards improving the capacity of member States to deal with security problems.

J. Work towards full implementation of ICAO's Air Navigation Plan for the Caribbean and South American regions—¹⁰⁹

1. Examine the scope of the Air Navigation Plan in order to better formulate measures to implement the plan;

2. Work towards concluding international agreements intended to facilitate regional air navigation programs.

K. Examine the extent to which member States have adhered to international air law conventions such as the Tokyo, Hague and Montreal Conventions—¹¹⁰

1. Prepare up-to-date statistics indicating which LACAC States have ratified and/or adhered to international air law conventions;

¹⁰⁷ Annex 17 to the Chicago Convention is concerned with the protection of international civil aviation against acts of unlawful interference. The objective of the Annex is the safety of passengers, crew, ground personnel and the general public and protection of the regularity and efficiency of international civil aviation against unlawful interference acts. ICAO member states are required to prepare plans and procedures and to make appropriate arrangements which together provide a minimum level of security for normal operating conditions and which are capable of rapid expansion to meet any increased security threats. ICAO, *International Standards and Recommended Practices: Security*, Chicago Convention, Annex 17 (1st ed. 1974).

¹⁰⁸ ICAO has developed a "Security Manual for the Prevention of Unlawful Acts Against Civil Aviation" (ICAO Doc. 7873), which is designed to assist member states to implement specifications and practices in order to safeguard international civil aviation against acts of unlawful interference, such as hijackings, sabotage, etc. The Security Manual is a document of restricted circulation.

¹⁰⁹ See *Air Navigation Plan—Caribbean and South American Region*, ICAO Doc. 8733/10 (10th ed. 1977).

¹¹⁰ A Panel of Experts will meet in Lima, August 1978, to examine the most recent developments in the Air Law field. The object is to precise the role of LACAC in certain subjects which are at present in the Legal Working Programme of ICAO. In the first meeting of the Panel the following subjects will be reviewed: a) Revision of the 1952 Rome Convention, taking into account the September, 1978 Diplomatic Conference to be held in Montreal, which will introduce important amendments to the Convention; b) Examination of the Report of ICAO's Legal Subcommittee on Noise and Sonic Boom; c) Examination of those problems which arise due to charter, lease and interchange of aircraft in international air operations.

2. Adopt measures to encourage LACAC States to participate in international air law conventions;

3. Examine the present state of the law regarding the Warsaw Convention and its protocols¹¹¹ and the Rome Convention of 1952.¹¹²

L. Compile and publish the statutory air law of Latin American States.

IX. CONCLUSION

Five years have passed since LACAC was established. Today the LACAC constitutes an efficient, constructive regional civil aviation organization. One cannot but admire the Latin American States, who have so quickly transformed their civil aviation regional commission into a highly organized, effective organization.

LACAC's role will be very important in hurdling the obstacles to further development of the Latin American and Caribbean international air transport industry. With the assistance of LACAC, member States will be better able to deal with these problems, and formulate air transport plans and aviation policies.

Latin American States fully understood the importance of an efficient and economically viable air transport system as an essential element in economic development. Air transport facilitates the conduct of public and private business, both domestic and international, in a world consisting of states characterized by increasing interdependency. It constitutes a key factor in the development of tourism and foreign trade in manufactured goods and perishables.

The expanding role of LACAC will once again be demonstrated during its Third Assembly which will be held in Santiago de Chile, November 27 - December 1, 1978. Member states are convinced that a lack of cooperation and integration will leave them at the

¹¹¹ The Warsaw Convention of 1929 establishes certain conditions of contract for international carriage. It defines and limits the rights of passengers and owners of cargo in such carriage as well as the corresponding liabilities of the carrier and regulates the enforcement of those rights. The convention has undergone several amendments, all of which form the so-called "Warsaw system": The Hague Protocol of 1955, the Guadalajara Convention of 1961, the Guatemala City Protocol of 1971, and the four additional Protocols of Montreal of 1975. See SHAWCROSS AND BEAUMONT, *AIR LAW*, Appendix C, at 31 (4th ed. 1977).

¹¹² *Rome Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface*, October 7, 1952, 310 U.N.T.S. 182 (1958).

mercy of the strong aviation powers. The projects that will be studied in the Assembly clearly show a determination to finally establish LACAC as a major aviation body.

The problem faced by Latin American airlines can be dealt with by the Commission, which will attempt to find the best solutions for their particular needs. For the first time Latin American aviation authorities, through their own regional organization, have the means to identify and to solve important aviation problems.

Comments and Case Notes

