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International Air Transport Association - The Legal Committee

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INTERNATIONAL REVIEW

INTERNATIONAL AIR TRANSPORT ASSOCIATION

THE LEGAL COMMITTEE

BY E. O. BAILEY†

Like IATA's other standing committees, the Legal Committee has always enjoyed considerable freedom in determining its role in serving the airlines.¹ Even at its first meeting in London in October 1946, the main item on the agenda was the formulation of terms of reference which IATA's Executive Committee promptly approved. The language drafted at that time has never been amended and reads:

The Legal Committee shall concern itself generally with all legal matters having a bearing on international air transport, particularly the following:

1. International Conventions on public and private air law
2. International Conventions on other means of transport
3. Conflict of laws
4. Arbitration²

Within the broad scope of action afforded by these terms, the Committee has made recommendations on almost every major legal issue which has confronted international commercial aviation in the postwar era. It has also been instrumental in the development of a number of fundamental legal documents in use by IATA member airlines today. These would include, *inter alia*, the IATA Standard Passenger Ticket and Conditions of Contract, the IATA Air Waybill, and various interline agreements.³

As IATA's responsibilities for developing uniform recommendations and procedures have increased over the years, so have those of the Legal Committee. Each new IATA committee, working group, commission, panel or conference seems to have encountered legal problems which require answers from an industry point of view. As a consequence, the Legal Committee has been asked to give its opinion on an ever-widening range of subjects with the result that it has, from time to time, appointed

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¹ IATA's four other standing committees are the Traffic Advisory Committee, the Technical Committee, the Financial Committee, and the Medical Committee.

² *Rules and Regulations for the Standing Committees of the International Air Transport Association*, Para. 11 (1) (A).

³ In the past twenty years there have been thirty-six meetings of the Legal Committee. Regular meetings are held annually on dates and at places determined by the Committee. Special meetings may be called by the Committee's Secretary at any time at the request of the Director General of IATA, or at the request of at least one-third of the members of the Committee.

its own correlative subcommittees, working groups and special bodies. At present, there are five subcommittees studying topics ranging from air carrier liability for carriage of mail and the passenger ticket to long-range planning in the light of advances in technology.⁴

Just as IATA's membership has more than doubled since 1946, so has that of the Legal Committee. Originally the Committee comprised nine members. Today it is IATA's largest standing committee with Executive Committee authorization for twenty-four lawyers who serve two-year terms.⁵ To qualify for membership, a nominee must satisfy the Executive Committee that he has an active association with the business of the IATA member airline sponsoring his candidature and that he is of the legal profession. Each member serving on the Committee acts as a representative of IATA, and not as a representative of any particular IATA member airline. Only one employee or associate of an IATA member airline may serve as a member of the Committee at a time.⁶

In addition to advising the various IATA bodies, the Legal Committee may be authorized by the Executive Committee to take final action on behalf of the Association on certain items or to submit its comments directly to the International Civil Aviation Organization, so long as these comments represent the unanimous view of the Committee.⁷ This important privilege makes it possible for the Committee to work in close liaison with groups outside IATA and with its ICAO counterpart should the need arise.

The Committee does not offer advice to individual IATA members. On the contrary, all matters submitted to it for comment or recommendation must involve industry-wide interests; nor does the Committee consider matters which pertain to IATA as a Canadian corporate entity. Such problems as may arise in this connection are referred to IATA's General Counsel.

As a matter of practice, the Committee sends most of its opinions through the Director General to the IATA bodies immediately concerned and to the Executive Committee. In addition, it reports to the membership as a whole at the Annual General Meetings.⁸ This is not to suggest that

⁴The Legal Committee is empowered by the Executive Committee to appoint standing or temporary sub-committees as it deems necessary. Of the Committee's five subcommittees, four are considered to be temporary.

⁵Although it is not required, the Legal Committee has always been fortunate in having a wide geographical and jurisdictional representation amongst its members, which has assured that its opinions are broadly based. At present there are twenty-three members on the Committee: Ahmed Alaraji, (Iraqi); J. P. de Andrade, (Air-India); Crispin D. Baizas, (Pal); P. J. Brennan, (Aer Lingus); L. Cooper, (El Al); Jose M. de Figueras, (Iberia); R. M. Forrest, (BOAC); N. H. Hay, (Qantas); Dr. A. Junqueira, (Varig); Dr. J. Koutalidis, (Olympic Airways); Maurice Lemoine, (Air France); I. E. McPherson, (Air Canada); M. L. Milligan, (TWA); M. J. Nederlof, (KLM); Erik Norman, (SAS); Roger Nys, (Sabena); Dr. A. F. Pereira, (TAP); John C. Pirie, (PAA); Dr. A. Rudolf, (Lufthansa); Irwin Schneiderman, (Seaboard); Dr. A. Schweickhardt, (Swissair); Dr. E. E. Suherman, (Garuda), Mr. Zylicz, (LOT).

⁶Rules, *supra* note 2, at Para. 111(3).

⁷*Id.* at Para. X. Ordinarily action by the Committee may be taken by a majority vote of the members present at any meeting. One-third of the members of the Committee constitute a quorum at any meeting.

⁸Annual reports of the Legal Committee are published in the IATA *Bulletin*.

members are not kept abreast of important legal developments throughout the year. On the contrary, the Committee constantly seeks the views of all members on major topics. In recent years, the adequacy of limits of liability under the Rome and Warsaw Conventions are apt examples.

A review of the Committee's annual reports over the past few years gives an idea of the present scope of the issues before it:

- (1) Amendments to the passenger ticket and air waybill necessitated by the coming into effect of the Hague Protocol;
- (2) Adequacy of ICAO draft Aerial Collisions Convention;
- (3) Civil liability for nuclear damage;
- (4) Implications of the Tokyo Convention;
- (5) Coordination of airline views with respect to the U.S. notice of denunciation of the Warsaw Convention;
- (6) Possible development of uniform conditions of carriage;
- (7) Clarification of the liability of air carriers engaged in the carriage of mail;
- (8) Carrier liability for aircraft noise;
- (9) Liability for damage to aircraft caused by space vehicles;
- (10) Questions relating to nationality and registration of aircraft operated by international operating agencies.⁹

IATA's Legal Committee has had a past voice in many of the decisions taken by the world's airlines during the past two decades and it seems probable that this will continue to be the case. This will be assured if the future brings with it all of the novel and complex legal problems about which we hear so much today.

⁹ For the report of the Legal Committee which was presented to the 22nd Annual General Meeting (31 October to 4 November, 1966) see 33 *J. Air L. & Com.* 138 (1967).

LATIN AMERICAN AIR LAW AND THE WARSAW CONVENTION†

BY MATTHEW J. CORRIGAN††

Why is it that there are no more than six Latin American countries party to the Warsaw Convention or the Hague Protocol? Review of the role of aviation in Latin American development, of the principles underlying the aviation liability laws, and of recent Warsaw Convention developments suggest that participation in those Conventions by additional countries might be advantageous to all of Latin America. It is likely that the benefits of such regional participation would spread world-wide.

I. EXAMINATION OF LATIN AMERICAN AIR TRANSPORTATION

A. *The Past*

Since World War I, air transportation has played an important role in the economic development of Latin America—linking the scattered population concentrations of many countries and permitting a strengthening of economic and political ties between peoples separated by some of the most formidable natural barriers in the world. Air travel has offset the long time deficiencies of surface transportation of persons and goods between remote areas and population centers and promoted survey and exploration in Latin America. A dramatic example of aviation's pioneering role occurred during the construction of Brasilia. The site is 600 miles northwest of Rio de Janeiro, and at the beginning of construction it was 125 miles from the nearest railroad. Therefore, one of the earliest efforts was the construction of a runway over which much vital machinery, equipment, and personnel were brought in by air in order to develop this ultramodern metropolis.

Air transportation has enabled Latin American countries to establish and develop better connections with world markets. For domestic travel, air transportation has played its traditional role of providing the fastest means of communication available, an aspect that continues to be important even where convenient surface transportation exists between major cities. All signs indicate a rapid growth within Latin America of both domestic and international air transportation.

B. *Basic Principles of Latin American Air Law*

The aviation laws of Latin American countries show individualistic

† Paper prepared for delivery at the Fifteenth Conference of the Inter-American Bar Association at San Jose, Costa Rica on 10-15 April 1967.

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trends. In some there is absolute liability; others a presumption of liability, and some require proof of negligence. Statutes of limitation vary, usually being one or two years. Most countries have compulsory aviation insurance for liability to passengers, baggage, and cargo. Remarkably, Latin American air law incorporates many of the principles of the Warsaw Convention.

In what ways are the aviation laws of Latin America compatible with Warsaw Convention principles? Six of twenty Latin American countries are parties to either the Warsaw Convention or Hague Protocol. Six signed the Guadalajara Convention, effective in 1964, which was mainly concerned with clarifying the status of carriers in Warsaw or Hague carriage. Mexico has ratified it.

Thirteen of the countries have limits of liability for passengers in domestic air travel, and in twelve the limit is rendered ineffective under certain circumstances as under the Warsaw or Hague. Airlines from seven countries have signed the Montreal Agreement. These seven countries include Colombia, Peru, and Costa Rica, although these three countries are not parties to Hague or Warsaw. In eight countries there is absolute liability (as under the Montreal Agreement), and in five there is a presumption of liability (as originally under Warsaw). In seven countries it is possible for the carrier to be exonerated from passenger liability under provisions similar to Article 20(1) of the Warsaw Convention, if it proves it took all necessary measures to avoid the damage or they were impossible to take. All Latin American countries are party to the Chicago Convention of 1944 which recognized that the future development of international civil aviation can greatly help to create and preserve friendship and understanding among the nations and peoples of the world.

It is obvious that the major features of Warsaw and Hague are compatible with the air laws of most of the Latin American countries. Uncertainty arises when attempting to determine why only six of the countries have become parties to Warsaw or Hague. One possibility is that until fairly recently, few countries in Latin America have had extensive carriage by international airlines of that region. Today nearly all Latin American countries operate international air carrier operations. As late as 1957, 70 percent of the total Latin American air traffic was domestic. With more communication, it is hopefully forecast that the rise in international air traffic in Latin America will be accompanied by an increase in uniformity of air law.

C. Economic Factors Prompting Cooperation

There are major economic factors affecting coordination of air transport in Latin America. Airlines have long found it to their economic advantage to enter into agreements for the joint performance of commonly needed services, utilization of each other's facilities, and similar cooperative arrangements. Possible types of coordination are in two fields. Economically, coordination can be by merger, consortium, equipment interchange and schedule coordination, and pooling. Technically, there can be coordination

in maintenance, parts pooling, training, equipment leasing, and cooperative purchasing. The benefits of coordination are obvious, and in the economic and technical fields there has been progress. There should now be progress in air law coordination which will surely lead to more peaceful relations among the countries in Latin America.

D. *The Future*

There is no doubt that air transportation has rapidly increased and will continue to increase the rate of Latin American development. A movement is underway to encourage the 19 Latin American partners in the Alliance for Progress to join forces in establishing a Latin American Common Market that would become operative in 1970.¹ As communication increases and more people travel, the concept of identical aviation laws governing international transportation among Latin American countries becomes more attractive. Becoming party to the Warsaw Convention or Hague Protocol is the first step toward achieving domestic and international uniformity in Latin American aviation law.

II. UNIFORMITY IN AIR LAW IS REQUIRED NOW

Rapid acceleration of communications among the countries, technological advances in transport airplanes, the probability of a common market, and closer cooperation should lead to uniformity in air law.

There is much similarity in the domestic air laws of Latin America. The principles of the Warsaw Convention are not alien but compatible to Latin American law. With the aim of uniformity, adoption at this time of Warsaw or Hague by all the countries would be a giant step forward in Latin America. There is a great opportunity for the legal profession in Latin America, guided by the principles incorporated in the domestic air laws, to encourage their countries toward uniformity and thereby show the world that an important political region can achieve accord in the law regulating domestic and international air transportation. The prospect is exciting. If it happens, and there is every reason to think it will, there will be lessons for non-Latin American lawyers to learn, particularly those in the United States who have been advocating denunciation of the Warsaw Convention.

¹ Wall Street Journal, 3 Feb. 1967, at 3, col. 4.