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INTERNATIONAL LAW ASSOCIATION — FIFTY-THIRD CONFERENCE — BUENOS AIRES*

BY DR. GERALD F. FITZGERALD†

At its Buenos Aires Conference, the International Law Association discussed seven air and space law problems of current interest: (1) Aviation liability, (2) hijacking of aircraft, (3) nationality and registration of aircraft operated by international agencies, (4) air cushion craft (hovercraft), (5) general questions on the legal regime of outer space, (6) telecommunications satellites, and (7) the legal status of spacecraft. All of the discussions of the Air and Space Law Section of the Conference were ably chaired by Professor Gunther Jaenicke (Federal Republic of Germany).

I. AVIATION LIABILITY RULES

The Conference had before it a report on the liability of air carriers, prepared by A. B. Rosevear (Canada), containing a summary of comments on the revision of the Warsaw Convention received from members of the ILA Air Law Committee. Some general comments were that work should continue on the Warsaw Convention and related instruments and that the Association should seek to elaborate basic principles on which to establish satisfactory long-term solutions for aviation liability problems. It was further suggested that carriers' liability should be considered in the context of other liability regimes in aviation, such as surface damage and aerial collisions. In this vein, the view was expressed that the Association should deal not only with the Warsaw Convention, but also with the problem of "aerial liability" as a whole, as had been done, for instance, in the field of nuclear liability. One suggestion was to consider the possibility of channelling all civil aviation liability through the operator and/or carrier.

Comments were also received on specific problem areas. It was generally agreed that efforts should be made to restore and preserve the uniformity of rules governing international carriage by air, the best solution being that which secures the adherence of as many states as possible. Five members of the Air Law Committee thought there should be a single limit of liability. One member thought the single limit should include two figures, one including and the other excluding costs. Two members believed that more than one limit might prove necessary.

Views were more divided on the system of liability. Some members

* Conference held 25-31 August 1968; paper prepared by Dr. Fitzgerald in a private capacity.

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would retain the Warsaw-Hague system with a much higher liability limit, while others were in favor of absolute liability subject to diverse exceptions with the limit fixed not too high. As to Article 25, one member felt that the provision should not be allowed to become merely a means for circumventing the treaty limits on the carrier's liability. Concerning the formula of Article 25, one view was in favor of the Hague wording and another in favor of restoring the Warsaw wording. A further view was that, even in a system of strict liability, an Article 25 providing for unlimited liability should be retained. But here, according to one comment, the answer depended on the actual limit of liability to be adopted. Some considered that Article 25 of the original Warsaw Convention should at least be replaced by the Hague Protocol formula, if not revised along the lines of Article 12 of the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface (Rome, 1952).

In a report on liability for aerial collisions, Dr. Werner Guldemann (Switzerland), after sketching the recent history of the subject in ICAO, discussed the following problems: The net value of a collisions convention, the scope and framework of the convention, the basis of liability, the limitation of liability, and the relationship between direct and recourse claims. An interesting and at the same time cautious suggestion put forward by Dr. Guldemann was that of having a consolidated aviation liability convention. In his view, "The International Law Association is a very good body to discuss such a general and important problem."

At the end of its discussions on these liability questions, the Association did not adopt specific resolutions, but merely requested the Air Law Committee to draft rules on aviation liability governing carriage by air, surface damage, aerial collisions and related matters.

II. HIJACKING OF AIRCRAFT

Professor Roger Nys (Belgium) and his Air Law Committee colleagues brought to the attention of the Conference several facts: (1) The increasing number of illegal diversions of aircraft in flight, (2) the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo, 1963) limited the injurious consequences of such acts and (3) the Convention had not yet entered into force. The Conference consequently expressed the desire that all states become parties to the Convention and requested that the resolution be transmitted to ICAO, IATA and other relevant international organizations.

On a related matter, the Full Council of the Association authorized, on 31 August 1968, the establishment of a Committee on Piracy (all forms of piracy and not just "aerial piracy," the latter term sometimes being applied to the unlawful seizure of aircraft). The new committee is headed by Professor Haroldo Valladao (Brazil). The Air Law Committee will continue to work on the question of hijacking and it is proposed that there be close cooperation between the two committees in order to avoid duplication of effort.

III. NATIONALITY AND REGISTRATION OF AIRCRAFT OPERATED BY INTERNATIONAL OPERATING AGENCIES

Professor Bin Cheng (United Kingdom), Chairman of the ILA Air Law Committee, who had presented a detailed report on this subject to the Helsinki Conference of the Association in 1966, submitted a further report in which, after a critical examination of the ICAO Council resolution of 14 December 1967, he concluded that "it is still desirable to amend the Chicago Convention in order to open, under specified conditions, joint registration to all owners and operators of aircraft and to allow the introduction, in due course, of true international registration. . . ." The Conference decided that the Air Law Committee should keep this subject under study.

IV. AIR CUSHION CRAFT—HOVERCRAFT

Professor P. Chauveau (France) submitted a report on this subject through the Air Law Committee. He suggested that the Association might possibly first recommend that in view of the *sui generis* nature of hovercraft, there should be regulations appropriate to these vehicles. Second, it should recommend that while awaiting the preparation of these regulations in final form and, in order to avoid any uncertainty prejudicial to economic activity the following intermediate solutions were available. (A) In the case of traffic on the territory of a state, the rules of that state would apply. (B) In the case of collision between a hovercraft and another hovercraft, a ship or river boat, the rules of the Brussels International Convention on Collisions (23 September 1910) would apply and the hovercraft would be deemed to be a ship for the application of that Convention. (C) The Brussels Convention on Assistance and Salvage (23 September 1910) would also apply to such collisions. (D) The liability of the carrier would be governed by the provisions of either the Warsaw Convention of 1929 or the Brussels Convention for the Unification of Certain Rules Relating to the Carriage of Passengers by Sea (1961), at the choice of the Association. The Conference decided that the Air Law Committee should, as a matter of urgency, carry on its study of the international legal regime of air cushion craft and, bearing in mind their special character, submit proposals concerning their regulation, in matters of public law (such as nationality) as well as private law (such as liability and mortgage), to the next Conference of the Association.

V. GENERAL QUESTIONS ON THE LEGAL REGIME OF OUTER SPACE

After considering a report on this subject prepared by Professor D. Goedhuis (Kingdom of the Netherlands), Chairman of the ILA Space Law Committee, that Committee and later the Conference approved a statement to the effect that the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, confirms the principle of freedom of outer space for exploration and use and the principle of non-appropri-

tion of that space as principles of general international law. The Conference further stated that the term "outer space" as used in the above-mentioned Treaty, includes all space at and above the lowest perigee achieved by 27 January 1967, when the Treaty was opened for signature, by any satellite put into orbit, without prejudice to the question whether it may or may not later be determined to include any part of space below such perigee. Adoption of this statement represented a rejection of a suggestion put to the Space Law Committee that it accept "the principle that air sovereignty in no event extends as far as the lowest perigee of any satellite so far placed in orbit." Objection to this statement was made in the Space Law Committee on the ground that it would severely affect the principle of state sovereignty over airspace set forth in Article 1 of the Chicago Convention.

VI. TELECOMMUNICATIONS SATELLITES

In a report on this topic, Dr. E. Pépin (France) discussed the system of telecommunications by satellites. The Conference noted that various projects of worldwide and regional organizations for telecommunications by satellites had already been drawn up or were in preparation. It also noted that, due to technical progress in this field, there would be, in the near future, direct reception by the public, *i.e.*, without any intervention of a terrestrial distribution station—of radio broadcasting and television emissions from satellites. Accordingly, the Space Law Committee was requested by the Conference: (A) To make a comparative study of the various drafts of worldwide and regional organizations of telecommunications by satellites with a view to reporting its conclusions to the next Conference, (B) to consider the legal problems, especially those concerning due respect for national culture, intellectual property, interference, advertisement and propaganda, which might result from the practical use in the near future of direct radio broadcasting and television through satellites.

VII. LEGAL STATUS OF SPACECRAFT

Professor R. H. Mankiewicz (Canada) examined this question in a forward-looking report. As a result, the Conference was able to decide that: (A) In principle, all spacecraft and their component parts must be identifiable; (B) spacecraft need not have a nationality, it being stated that the identity of the national or international authority entitled to protect the space objects and persons therein, and responsible for the functioning, control and activities of the space object, and for damage caused by such object will be established by notations in the registry; (C) it is desirable that all spacecraft be registered with the same international authority, independently of any other registration. The Space Law Committee has been requested to carry out further study of the legal status of spacecraft and has been asked, in particular, to prepare a definition of the expression "space device" or any similar expression and draft rules for the registration of spacecraft.