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Editorial

EDITORIAL

CONVENTION ON THE INTERNATIONAL RECOGNITION OF RIGHTS IN AIRCRAFT — EARLY RATIFICATION DESIRABLE

On January 13, 1949, the President transmitted to the United States Senate the Convention on the International Recognition of Rights in Aircraft signed at Geneva on June 19, 1948, with a view to receiving its advice and consent to ratification. The leadership of the United States in promptly ratifying this important Convention will facilitate the financing and use of American air transports in international services both by United States and foreign operators. Its ratification is supported by all U. S. international air carriers, aircraft manufacturers, and financial institutions concerned with loaning funds on aircraft used in international services.

Modern transport aircraft now coming into intercontinental air service involve an expenditure of more than one million dollars per plane, with spare parts costing an added 15 to 20%.[1] These giant airliners are operated by the scheduled carriers in fleets up to 16 or more. The millions required for such equipment is beyond the financial resources of most airlines, even in prosperous periods, and the companies must turn to banks or government for financing their equipment purchases. But the world-wide mobility of transport aircraft has naturally made lending institutions hesitate to invest in aircraft until they can be assured that the priority of their security rights will be recognized in all countries to which the aircraft might be flown. This is the objective of the Convention.

The nature and priority of security liens on chattels is a field of private law wherein national concepts differ markedly. In the United States, many security devices are considered suitable for airline financing, particularly the equipment trust leasing device developed for railroad equipment purchases. Apparently other countries do not have our elaborate security devices, and few were willing to accept unreservedly those employed in the United States. Almost from the founding of CITEJA in 1926, consideration has been directed to drafting conventions relating to an aeronautical property record and to aircraft mortgages and other security interests. Early attempts to agree upon a "treaty mortgage," analogous to that found in maritime conventions, were not fruitful, and this approach would have sacrificed the flexibility of the various U. S. financing devices.

For this and other reasons, the Convention, as signed at Geneva, is not one of international unification, but of *mutual recognition* by the

[1] The Boeing 377 Stratocruiser is reliably reputed to cost $1,500,000 to $1,700,000; Pan American Airways has on order 20; American Overseas Airlines 8; United Airlines 7.

signatory states of security and property rights created according to the laws of the nationality of the aircraft. With American initiative, the difficult problems of conflicts of law presented by this approach were resolved by the drafters into a workable accord, as attested by the fact that the Convention has been signed by 23 countries, although none have deposited their ratifications.

Because of the different forms that title and security rights may take in various countries, Article One of the Convention begins by carefully enumerating four classes of rights that each signatory state agrees to accord recognition. Briefly, these are, (a) rights of property in aircraft (title or outright ownership), (b) rights to acquire aircraft by purchase coupled with its possession (purchase by conditional sale, or option rights under a hire purchase agreement or equipment trust), (c) rights to possession of aircraft under a lease of six months or more (equipment trusts and ordinary long term leases) and (d) mortgages, hypotheques, and similar rights in aircraft which are contractually created as security for payment of an indebtedness.

The basic concept of the Convention is that the contracting states agree to recognize the above-described rights upon two conditions and agree not to give other interests priority. The first condition is that the right in question must be constituted according to the law of the nationality of the aircraft—not to *lex loci contractus* or the intention of the parties—and the second, that it must be recorded by the state of the aircraft's nationality.

In addition to protecting creditors who may lend money on aircraft as security, the Convention provides some protection to third parties dealing with aircraft against hidden liens, defines privilege or priority claims which alone take priority over recorded liens (restricted to recent salvage claims and "extraordinary expenses indispensable for the preservation of the aircraft," but not including state "fiscal claims") and provides for transfer of aircraft title from one signatory state to another only on payment or consent of all recorded claims.[2] Extending the recognition of security rights to include fleet mortgages and spare parts presented many technical and novel problems.

The tersely worded Convention requires careful study. Because of the legal and technical nature of many provisions, particularly with respect to priorities, spare parts, and fleet mortgages, the JOURNAL has reprinted, beginning on page 70, the *annotated text* of the Convention as prepared by the Legal Subcommittee of the Air Coordinat-

[2] The basic objectives of the Convention are discussed in a most enlightening article by R. O. Wilberforce, *The International Recognition of Rights in Aircraft*, 2 Int'l. L.Q. 421-58 (British, August 1948). A detailed commentary on the text is included from the British point of view. For the general background of the Convention, see, G. N. Calkins, *Creation and International Recognition of Title and Security Rights in Aircraft*, 15 J. of Air L. & C. 156-80 (1948) and note by A. O. Moore, "Some Principle Aspects of the ICAO Mortgage Convention" 14 J. of Air L. & C. 531 (1947).

ing Committee and transmitted to the United States Senate by the Department of State.

The annotations present the legislative history of significant phrases. While this study will reveal that the Convention has not solved all of the technical problems or eliminated all of the conflicting national points of view, it will convincingly demonstrate that the Convention is a workable international agreement—one that should be approved and promptly ratified by the United States and supplemented by enabling domestic legislation.

E. C. SWEENEY

STEPHEN LATCHFORD

When Stephen Latchford entered the Department of State in 1911, after six years previous service with the Government in the Panama Canal Zone, international air law was practically non-existent. When he retired from the service of the Department on July 30, 1948, international air law had become a powerful factor in world affairs. To this development Mr. Latchford made a very real and valuable contribution. As Secretary of State Marshall wrote him in a letter made public by the State Department:

> "Your retirement from the Department of State is a significant loss to the Government. Your leadership has made considerable contributions to the work of international bodies in the fields of private and public air law. Your long background and specialized knowledge in international air law have made your services invaluable to the Department's considerations in this field."

Those of us who had the pleasure of working with Mr. Latchford can more than endorse the commendation of the Secretary of State. The United States did not ratify the Paris Convention of 1919. It did, however, ratify the Pan American Convention on Commercial Aviation signed at Havana in 1928, and also entered into separate air navigation agreements with foreign governments not parties to the Havana convention. To Mr. Latchford the State Department looked for expert legal guidance in connection with these new international air law commitments.

It was always his view that the United States should assist in the unification of the rules of private air law so that ultimately they might be the same wherever aircraft flew on international routes. He was instrumental in urging that the United States become a member of the CITEJA in 1932 and that it be represented at the Third International Conference on Private Air Law held in Rome in 1933. Until then the United States had never been represented by official delegations at any of the great private air law conferences held in Europe. The accurate, clear and learned instructions to the United States delegation at the

Rome conference were drafted by Mr. Latchford and guided the delegation at that conference developing rules of liability for damage caused by aircraft to third persons and property on the surface.

The following year he became one of the United States members of CITEJA, and in the same year prepared the data on the basis of which the State Department recommended that the Warsaw convention be sent to the Senate for ratification. In 1938 he served as vice chairman of the delegation at the Fourth International Conference on Private Air Law held at Brussels. He also attended many sessions of CITEJA as chairman of the U. S. Section, and became one of the first U. S. members on the Legal Committee of ICAO.

He participated actively in the important negotiations in 1935 between the United States and British, Canadian and Irish authorities, which resulted in the later exchange of flight permits for the world's first trans-Atlantic air transport service opened in 1939. Even more important was his contribution toward the drafting of the Chicago convention in 1944. When the United States issued the call for the conference which was held in Chicago in 1944, Mr. Latchford was assigned the task of preparing the preliminary draft of a new international convention to be presented by the United States. Many of the principles in Mr. Latchford's draft appear in the final text of the convenion now in force.

Although Mr. Latchford has retired from public service, his influence will continue for many years. Public officials and scholars fortunately have the benefit of the carefully prepared and excellent articles which he wrote at various times. Those of us who continue to work in the field of international air law with which he was so long associated will always be deeply in debt to the breath of his knowledge and to the accuracy of his statements.

Stephen Latchford has been a devoted and loyal public servant, a good citizen, and an able lawyer. The world owes him much.

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