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Prefatory Remarks to the International Law Symposium on the Guatemala Protocol and Recent Developments in Aerial Hijacking

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PREFATORY REMARKS TO THE INTERNATIONAL LAW SYMPOSIUM ON THE GUATEMALA PROTOCOL AND RECENT DEVELOPMENTS IN AERIAL HIJACKING

THE AIR LAW SYMPOSIUM recorded in this edition of the *Akron Law Review* had its genesis in the deliberations by the embryonic Akron International Law Society. The Society itself was formed only a year and a half ago with a twofold purpose: First, to instill in the minds of the law students at Akron University some appreciation of, and interest in, International Law; and second, to serve as a springboard for topical discussions by experts in specialized International Law fields. To foster the latter purpose, the members of the Society unanimously decided to undertake the task of preparing for and holding a Symposium of more than routine interest: one that would be stimulating to attend, and instructive to review and dwell upon in retrospect.

The two topics selected were generally considered by all to represent timely and significant international legal problems — The Guatemala Protocol of 1971, and Aerial Hijacking.

The Guatemala Protocol places a higher limit on liability of air carriers where a passenger on board a scheduled international air flight is killed or injured. Some paramount questions raised by the Protocol are: Whether there should be any liability limitation at all available to the air carrier? Whether any limitation should be augmented by a supplementary compensation plan within the United States? Who would be covered by the supplemental plan? Obviously, the passenger (and his attorney) would prefer no such limitation on the carrier's liability for passengers injured or killed in flight. Equally obvious is the air carrier's desire to impose some ceiling on the amount they must pay. The Government, as often happens, finds itself caught between opposing interests: On the one hand is the sustaining desire to maintain a viable commercial aviation industry, and on the other, the desire to provide adequate compensation for passengers and their families in the event of aircraft accidents.

The problems surrounding Air Hijacking are well known. They have been with the air carrier industry for the past forty years; however, only in the past five years have they assumed alarming proportions. No air traveler today may escape the restrictive controls imposed on air travel because of the threat of hijackings. For those who are, unhappily and involuntarily, parties to an air hijacking incident, it can cause lasting mental as well as physical adverse impact. Recently a New York judge ruled such an incident an "accident" within the meaning of the Warsaw Convention.[1] It has also been ruled that mental suffering alone may be compensable under Article 17 of that Convention.[2]

In preparing for the Symposium, two fundamental guidelines were stated. First, the Symposium was to occur on the pragmatic rather than the truly academic level. That is to say, the panelists were to be selected from lawyer-experts in the field of applied air law rather than in the teaching thereof. Second, the panel was to be limited to three participants who would reflect in their individual capacities the diverse points of view. The Society wished to have panelists with informed and yet opposing perspectives in the resolution of the two central themes—hijacking and liability problems. In the following pages, the reader may judge for himself the measure of the Society's success.

The panelists selected have long and distinguished careers in air law. The Honorable Robert P. Boyle has served as the United States Representative to United States delegations to several international conferences on air law. He is now Special Consultant on Aviation Matters to the Department of Transportation. Mr. Lee S. Kreindler is a prominent New York trial attorney specializing in air law. He is the author of the recent treatise "Aviation Accident Law" and is well acquainted with the plight of the air passenger in distress. Mr. Ian E. McPherson is the first and only General Counsel for Air Canada. He was a delegate for Canada to the historic Tokyo Convention of 1963 on Crimes On Board Aircraft. He knows, as well as any air carrier attorney, the dilemma confronting airlines when disaster befalls one of their air carriers.

The Society was moved by the participation of the Honorable John Seiberling as Moderator. Congressman Seiberling, on very short notice and only shortly after his reelection responded to the Society's request to moderate the program. His well balanced and even-handed treatment of questions and his keen sense of humor did much to heighten the interest in the Symposium.

It is healthy in a free society to expose and debate different viewpoints. Certainly the air carrier industry, the Government, and the

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[1] Husserl v. Swiss Air Transport Co., 168 N.Y.L.J. No. 89 at 1 (1972).

[2] Salmon v. Pan American World Airways, Inc., 165 N.Y.L.J. No. 21 at 2 (1972).

trial attorneys have discordant views on aircraft liability limitations. Equally certain, the law student develops his own insight by observing and participating in dialectical conflict between top professionals who disagree in selective fields of expertise. In a measure, it is part of the law student's education to see this dialogue and controversy. It also brings into one interested group both the citizens of the legal community and the students of the University at large. The airport manager, the traffic controller, the University student from the Middle East, and even a Cuban refugee participated. It is ardently hoped the reader will catch some of the flavor of that occasion in the pages that follow.

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