

Title: Air Transport Bilateralism in the Arab Middle East.

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Abstract

The purpose of this thesis is to conclude that the five Arab States, selected by the present author (Iraq, Jordan, Kuwait, Lebanon, and Syria), with their existing potentialities can attain a better level of sound and economic exploitation of scheduled air transportation. This stands on two basic facts. The first is that being contiguous countries and part of the Arab nation it is possible for them to form a unit economically and socially integrated capable of becoming a potential market for air commerce. The second is that this integration, should it take place, can lead to the standardization of the aviation policy of these States in general and of commercial air transportation in particular.

Therefore it is necessary to discuss the following subjects:

Part One: Serves as an introduction to show how scheduled air transport was treated in air law from the Paris Conference 1910 to the Chicago Convention 1944. It may be also of great benefit to the five States since no such study was made for them before.

Part Two: Deals with the development of air transport in the Middle East and specially in the five States. It also shows the status of multilateral agreements both international and regional. More over, it deals with the aspects of regional cooperation between the five States in the field of air transport within the Arab League.

Part Three: Exposés what is meant by the "Five Freedoms of the Air" and a "Scheduled International Air Service". Since the spirit of the Bermuda Agreement appears in many of the bilateral air transport agreements concluded by each of the five States, it was found necessary to present a brief discussion of its main principles

Part Four: Contains an analysis of the existing bilateral air agreements concluded by each of the five States, and aspects of their cooperation in the field of air transportation. The analysis covers the grant of rights, inauguration of services, regulation capacity, regulation of tariffs, settlement of disputes, entry into force, registration, modification, and termination.

AIR TRANSPORT BILATERALISM

in

THE ARAB MIDDLE EAST

(IRAQ - JORDAN - KUWAIT - LEBANON - SYRIA)

A Thesis

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by

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C O N T E N T S
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	<u>P a g e</u>
Introduction	1 - 4

PART ONE

Chapter I

Section 1

The Paris Conference 1910	5 - 8

Section 2

The Paris Convention 1919	9 - 15

Section 3

The Ibero-American Convention 1926	16

Section 4

The Pan American Convention 1928	17 - 18

Chapter II

The Chicago Conference 1944 and International Air Transport	19 - 30
Before the Conference	19 - 21
The Conference	21 - 22
Results of the Chicago Conference	22 - 24
Chicago Convention 1944	24 - 25
International Air Services Transit Agreement	25 - 26
International Air Transport Agreement	27 - 28
Conclusion	29 - 30

PART TWO

Chapter I

Development of Air Transport in the Middle East	31 - 48
Importance, and Selection of Five Arab States	31 - 36
Development of Air Transport:	
The Middle East	37 - 38
The Five Arab States	39 - 48

Chapter II

Status of Multilateral Agreements International and Regional	49 - 101

Section 1

Status of International Agreements	50 - 51

Section 2

Regional Agreements:

The Alexandria Protocol 1944	52
Pact of the League of Arab States 1945	53 - 67
The Arab Air Transit Convention 1965	68 - 71
Convention on the Civil Aviation Council of the Arab States 1967	72 - 83
The Arab Air Carriers Organisation 1965	84 - 101

PART THREE

Chapter I

Section 1

The Five Freedoms of the Air	102 - 107

Section 2

Scheduled International Air Services	108 - 111

Chapter II

The Bermuda Agreement	112 - 122

PART FOUR

Introduction	123 - 127
Status of Existing Agreements	128 - 137

Chapter I

The Grant of Rights

I - Reciprocity Clauses	138 - 139
II - The Operating Permission	140 - 141
III - Transit Rights	142 - 143
IV - Traffic Rights	144 - 155
V - Air Cabotage	156 - 157
VI - Ancillary Rights	158 - 172

Chapter II

Inauguration of Services	173 - 185

Chapter III

The Regulation of Capacity	186 - 195

Chapter IV

Regulation of Tariffs	196 - 203

Chapter VP a g e

Settlement of Disputes

204 - 211

1. Arbitration

205 - 206

2. The ICAO Council

207 - 208

3. The International Court of Justice

208 - 209

4. The Arab League

209

5. Constitution of Arbitral Tribunals

209 - 210

6. Procedure, and Expenses

210 - 211

7. Compliance with Interim Measures and Awards

211

Chapter VI

Entry into Force, Registration

Modification, Termination

212 - 221

1. Entry into Force

212 - 213

2. Registration

214 - 215

3. Conformity with Multilateral Agreements

215 - 216

4. Modification

216 - 220

5. Termination

220 - 221

CONCLUSION

222 - 227

FOOTNOTESPART ONEFootnote No.

Chapter I

1 - 58

228 - 241

Chapter II

59 - 101

242 - 248

PART TWO

Chapter I

1 - 45

249 - 254

Chapter II

1 - 66

255 - 262

PART THREE

Chapter I

1 - 30

263 - 265

Chapter II

1 - 37

266 - 272

PART FOUR

Chapter I

1 - 104

272 - 283

Chapter II

1 - 35

284 - 286

Chapter III

1 - 23

287 - 288

Chapter IV

1 - 35

289 - 290

Chapter V

1 - 29

291 - 292

Chapter VI

1 - 47

293 - 296

APPENDIX I

P a g e

Convention on the Establishment of

World Arab Airlines

297 - 310

BIBLIOGRAPHY

311 - 317

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TO THE MEMORY OF MY FATHER

Whose last wish was that I should not be
informed of his death until I had completed
my study at McGill University.

A C K N O W L E D G E M E N T

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INTRODUCTION

The majority of historians are of the opinion that the genesis of civilization should be considered on the basis of several factors taken together. Among those factors are compact society, and the geographic and economic elements of favourable climate, fertile soil, good harbours and abundance of mineral resources.

The part of the world now known as the Middle East enjoyed such conditions and therefore witnessed the earliest rise of civilization and culture.

Being a crossroad, the Middle East also witnessed the development of the means of transportation from the beast of burden, through various types of river boats used in the Tigris, the Euphrates, and the Nile, sea boats used by the Phoenicians to modern liners, down to jet air liners flying in its air space.

Unfortunately, the area did not stay as prosperous as it was. Historical events took place to such an extent that they changed the progressive course it was following, and brought the entire region to a lull as a result of which it became influenced by external agents rather motivated by internal effects. Although this state of affairs existed for centuries it finally came to an end. The expansion movement of Europeans drew attention to the area which happened to be regarded as a bridge or a stepping stone to the countries situated beyond it. The discovery of petroleum focused the sight of the western world to the potentiality of the area.

However, after World War II the importance of the Middle East began to emerge especially in the aviation field. It is worthy of notice here that the complex of causes which favoured the genesis and existence of civilization for hundred of years in the region joined again to make it one of the concentration points of the civil aviation of the world. The location of the Middle East at a crossroad between densely populated continents - Africa, Asia, and Europe - coupled with its historical, economic, and strategic background, places at the disposal of the region exceptional possibilities for the development of international travel in spite of the unsettled political situation. For example, the economic development and favourable weather conditions go with the development of transport to a degree that Lebanon received, in 1965, more than 25 per cent of the international tourist receipts accruing to the region as a whole even though its population represents only 2.6 per cent of the region's population.

Prior to and a few years after that war there were no national airlines worthy of note. All the aeroplanes which flew over the Middle East belonged to foreign companies who took this area just as a step along their routes. The airports were good for small aeroplanes making technical landings. The traffic was not attractive. But with the general progress of aviation, the countries of the area began trying to keep up with such progress. Each country wanted to establish its own national airlines and to equip it with modern aircraft. Airports were improved to meet the requirements of developments. Thus the Middle East started to occupy its proper place in the world aviation. Foreign air carriers

became on their part more interested in the Middle East finding it a promising market for selling their air transport services.

It was evident that this new epoch required its own regulation and a new pattern of relationship whether among the States of the region or between them and the family of nations. Therefore they participated in international agreements and conventions, concluded bilateral air agreements and entered into special arrangements. Cooperation existed among the Arab countries within the framework of the Arab League.

The purpose of this thesis is to conclude that the five Arab States selected for the present study can attain a better level of sound and economic exploitation of scheduled air transportation. This stands, in the view point of the writer, on two basic facts. The first is that being contiguous countries it is possible for them to form a unit economically and socially integrated capable of becoming a potential market for air commerce. The second is that this integration, should it take place, can lead to the standardization of the aviation policy of those States in general and of commercial air transportation in particular.

Therefore the study requires, as an introduction, an exposition of the status of international air transport in air law, and how the world community was unsuccessful in organizing this public utility at an international level but regulated through bilateral agreements and special arrangements. And in view of the growing importance of air transportation in the area, it would be

appropriate to give a brief review of the development of this kind of transportation followed by a short account of the most important fields of cooperation within the regional limits. In the domain of the bilateral air transport agreements, it is felt that it would be suitable to give a compendium of the Five Freedoms of the air and scheduled international air services, thereafter the most important principles that stemmed from the Bermuda Conference and the resultant agreement which laid down the foundation stone for the regulation of scheduled air transport and paved the way for many subsequent bilateral agreements. Then comes an analytical study of the existing bilateral agreements through which cooperation and coordination among the five States appear.

It is hoped that this study will be useful to those who wish to get a summary of the regulation of scheduled air transport in this part of the world as no such a study was made to cover the countries concerned.

The opinions of the author are personal and do not express or reflect the views of the Directorate General of Civil Aviation in Syria.

P A R T O N E
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CHAPTER I

- SECTION 1 : The Paris Conference 1910.**
- SECTION 2 : The Paris Convention 1919.**
- SECTION 3 : The Ibero-American Air
Navigation Convention 1926.**
- SECTION 4 : The Pan American Convention
on Commercial Aviation 1928.**

CHAPTER II

**The Chicago Conference 1944 and International
Air Transport.**

CHAPTER I

SECTION 1 : The Paris Conference 1910

The situation before the Conference: Before the Paris Conference convened in 1910, international flights were unregulated. Aviators took off from one State and landed in the territory of another showing no consideration for obtaining the latter's consent. Free balloons crossed the national frontiers and landed in foreign territories without being invited.⁽¹⁾ The early Zeppelin flights over Switzerland, the French aviator Bleriot who first crossed the English Channel by his airplane in 1909, and the repeated landings of German balloons in French territory in 1908-1909 are good examples.⁽²⁾ Under such a situation, security of the state flown over, its natural rights to exercise sovereignty over its national air space, and the international commercial relations had to be considered.

Consequently, states felt that the regulation of international flights should be sought at the international level. The French Government, then most affected by such flights, decided in 1908 to invite the European powers to hold a diplomatic conference on the regulation of civil aviation.⁽³⁾

The Conference: The first Diplomatic Conference on International Air Navigation met in Paris on May 10, 1910. The Conference adjourned on June 29, 1910, without having signed a convention.⁽⁴⁾ Although the Conference was technically a diplomatic failure, there was general agreement on the most important issues of civil aviation.⁽⁵⁾

Eighteen European States attended the Conference including the great European powers (France, Astro-Hungary, Germany, Italy, Russia, and the United Kingdom).⁽⁶⁾ It was clear from the almost complete draft convention achieved at the end of the Conference that there was actual agreement among the delegations of the States represented in the Conference on the main issues.⁽⁷⁾ How the Conference dealt with commercial aviation and the way in which it was to be treated may be briefly explained below.

The First Commission of the Conference adopted certain rules of great importance in the history of international air transport.⁽⁸⁾ Those rules read as follows:

"Rule 1. Each contracting State shall permit the navigation of aircraft of other contracting States within the limits of and above its territory subject to the restrictions necessary to guarantee its own security and that of the persons and goods of its inhabitants.

The contracting States undertake to conform the private law of their countries to the preceding paragraph.

Sojourn required by necessity can not be refused in any case to aircraft of a contracting State.

Rule 2. The restrictions imposed by a contracting State, pursuant to Rule 1, paragraph 1, will be applied without any inequality to national aircraft and to aircraft of every other contracting State.

This obligation does not cover measures which a State should take in extraordinary circumstances to assure its national defense.

Rule 3. Each contracting State has the power to reserve the professional transport of persons and goods between two points on its territory to national aircraft alone, or to aircraft of certain contracting States, or to submit such navigation to special restrictions.

The establishment of international air lines depends upon the assent of interested States.

Rule 4. With regard to a contracting State which imposes restrictions of the kind foreseen in Rule 1, paragraph 1, analogous measures may be applied by every other contracting State.

Rule 5. The restrictions and reservations contemplated by rules 1 to 4 shall immediately be published and notified to the interested governments."

As the Conference did not agree on Rules 1 and 2 as recommended by the First Commission, therefore they were not included in the draft convention.⁽⁹⁾ Rules 3, 4, and 5 were approved by the Conference and appeared in the draft convention as Articles 21, 22, and 23. It is worthwhile to mention that the Conference recognized that the rights of carriage of goods by air should be regulated by special conventions between the states concerned. Article 35 of the draft convention read: ⁽¹⁰⁾

"The carriage of goods by air can only take place in virtue of special conventions between the States concerned or of the provisions of their own legislation."

Results of the Paris Conference 1910 with respect to international air transport may be summarized as follows:

(1) Each State had full sovereignty in the air space over its national lands and waters and this air space constitutes a part of its territory. ⁽¹¹⁾

(2) As a rule of positive international law, there is no general right of transit (innocent passage) or commerce for all states in the territory of the sovereign state.

(3) The establishment of international air services is subject to special agreements between interested states.

(4) Cabotage (transport between two points in the territory of one State) is reserved to the territorial State.

(5) The carriage of goods by air is subject to special agreements between the States concerned.

It may be concluded, however, that the Conference opened a new page in the development of international regulation of this new means of communication which was destined to create a strong appeal for international cooperation. Although it adjourned without a convention being signed, and did not reconvene later as planned, the Conference demonstrated the need for an international agreement for regulation of air navigation.⁽¹²⁾ The Conference agreed that the establishment of international air services should be sought in special arrangements between the interested States.

Moreover, it seems fit to stress the fact that the Conference emphasized the already existing rule of international law that each state has full sovereignty over its national air space, and that no general freedom of transit through such air space was recognized as a general rule of international law.⁽¹³⁾

CHAPTER I

SECTION 2 : The Paris Convention 1919

The Great War: The years of the First World War 1914-1918 witnessed a rapid technological progress in the airplane industry more than had been achieved during the decade or so that had passed since the first flight. The war provided a tremendous incentive to the improvement of airplanes and the exigent requirements of the war caused more airplanes to be built and more pilots to be trained.⁽¹⁴⁾ The new discoveries and inventions and the advanced technology of military⁽¹⁵⁾ aircraft manufacturing that grew out of the war turned to be the real progenitor of international air transport. Such progress had its reflex on commercial aircraft manufacturing by advancing the speed, safety, comfort, and reliability of commercial flying.

Paris Convention 1919: The technological progress in civil aviation industry specially affected by the war, the founding of companies for the operation of regular international flights, the increased interest of the public in air travel, the new trend of states to subsidies and encourage civil aviation industry as part of their foreign policy, the desire to encourage the peaceful intercourse of nations by means of the new mode of communications, and the need for regulation of international civil aviation, were the main factors which contributed to the bringing of the Paris Convention of 1919 into existence. It will be noted that this Convention laid down the basic principles of international public air law. ⁽¹⁶⁾

The Aeronautical Commission of the Paris Peace Conference was entrusted in 1919, among other duties, with the preparation of an air navigation convention for peace time.⁽¹⁷⁾ As a result, the convention was signed on October 13, 1919, by twenty-six states.

It is worth mentioning in this regard that the British views which largely represented a liberal treatment of international air navigation were not accepted at the Conference. The British draft-convention contained extremely broad privileges of flight in its Articles 1 and 2 which form practically what we would now call the "Five Freedoms" of the air.⁽¹⁸⁾ When it was put to a vote the British proposal was not approved by the Legal Subcommission.⁽¹⁹⁾

"Had the United States representative in the Legal Subcommission supported the British position, an entirely different draft convention might have been reported to the full Aeronautical Commission and might have been there adopted. Instead of a convention which authorized interested States to regulate the establishment of international airlines over their territories, such a convention would have denied the right of any State to restrict the disembarkation of passengers or goods from abroad brought in by airlines of other contracting States, or the embarkation of passengers or goods destined for points abroad. Such a convention would in substance have meant that what we now consider as Third, Fourth, and Fifth Freedoms commercial privileges would have been written into the Paris Convention from the beginning."⁽²⁰⁾

A brief consideration of articles 1, 2, 3, 15, 16, 17, and 24 of the Convention shows their importance as containing the basic principles on which international air commerce was based.

Article 1, which is the key provision for the whole Convention, read as follows:

"The High Contracting Parties recognize that every Power has complete and exclusive sovereignty over the air space above its territory.

For the purpose of the present Convention the territory of a State shall be understood as including the national territory, both that of the mother country and of the colonies, and the territorial waters adjacent thereto."

This clear confirmation of the principle of state sovereignty in the superjacent space, as an already existing rule of customary international law, put an end to the controversy which took place on the subject by advocates of the doctrine of "freedom of the air."⁽²¹⁾ Such sovereignty, however, is absolute and exclusive and any right of entry for aircraft of other states is granted subject to this understanding.⁽²²⁾ Hence, privileges of commercial rights between nations arise from the exclusive sovereignty of any state over its national air space. At its infancy, international air transport was placed at the option of national policies.⁽²³⁾

Article 2 of the Convention read as follows:

"Each contracting State undertakes in time of peace to accord freedom of innocent passage above its territory to the aircraft of the other contracting States, provided that the conditions laid down in the present Convention are observed.

Regulations made by a contracting State as to the admission over its territory of the aircraft of the other contracting States shall be applied without distinction of nationality."

Taken separately, Article 2 accords a right of transit for commercial airlines of other contracting States across the territory of any other contracting State. But the accord of freedom of innocent passage between contracting States was severely limited by

Article 15 of the Convention. It may be noted that the principle of freedom of innocent passage was ambiguously stated in the Paris Convention and was a reflection of the doctrine of freedom of the air then advocated by many international lawyers.

However, Article 2 should be interpreted together with Article 15 of the Convention. In fact, Article 2 denies the existence of a general right of transit and declares that any such right claimed is merely a conventional privilege instead of being conceded as a natural right. This Article clearly shows that each contracting State had agreed, in time of peace, to accord freedom of innocent passage above its territory to the aircraft of the other contracting States subject to the conditions laid down in the Convention. Whereas two main conditions are to be observed in Article 15. First, that "Every aircraft which passes from one State into another shall, if the regulations of the latter State require it, land in one of the aerodromes fixed by the latter...." and second, that "The establishment of international airways shall be subject to the consent of the States flown over."⁽²⁴⁾ Indeed the last paragraph of Article 15 is the most important provision directly related to international air transport. It will be noted that the Paris Convention was the first formal international instrument to declare that the establishment of international airways shall be subject to the consent of the State flown over. Hence, the future of international air transport was decided from the time when this form of transport was still in its formative stage, that is to say, impossibility of "internationalism". This paragraph caused many discussions and raised many divergent interpretations⁽²⁵⁾

which were later reflected in the amendment of this article by the Protocol of June 15, 1929. The amendment read as follows:

"Every contracting State may make conditional on its prior authorization the establishment of international airways and the creation and operation of regular international air navigation lines, with or without landing, on its territory."

Professor Cooper finds this new provision more restrictive than the original one, "Each nation was thereby left full authority to admit or to refuse the entry of commercial air operations into its territory on any basis or for any reason that it saw fit. Straight political bargaining was accepted as the rule to be followed."⁽²⁷⁾

Article 3 provided for another obstacle by prohibiting international flight from flying over certain prohibited areas which might be established in the territory of any contracting State for military reasons or in the interest of public safety. This prohibition applied without distinction between national aircraft and those of the other contracting States.⁽²⁸⁾ The same article was subject to significant changes by the Protocol of June 15, 1929.

According to Articles 3 and 15, therefore, each contracting State had the right to determine the air corridors through which aircraft must fly, the points of air entry across its frontiers, the aerodromes at which aircraft must land, the air routes connecting these aerodromes, and its own prohibited areas. The exclusive exercise of this right especially in connection with pro-

hibited areas, has caused some inconveniences and restrictions to international air transport, and yet this right could be used also for imposing certain national policies.⁽²⁹⁾

Article 16 of the Convention, dealing with air transport between points in the territory of each party to the Convention, reserves the right of each contracting State to establish "reservations and restrictions" in favour of its national aircraft with regard to the carriage of persons and goods for hire between two points on its territory (cabotage).⁽³⁰⁾ Some States were able to use air cabotage and freedom of passage as a bargaining power in negotiating the exchange of commercial rights with other States.⁽³¹⁾ However, air cabotage is much more inclusive than maritime cabotage.⁽³²⁾ Although states may be inclined sometimes to grant air cabotage to foreign operators for national considerations, it would be too much to expect, if at all possible, that air cabotage may be freely opened.⁽³³⁾

Article 17 as an inference to Article 16 of the Convention seems to have opened the way for bargaining by providing that:

"The aircraft of a contracting State which establishes reservations and restrictions in accordance with Article 16, may be subjected to the same reservations and restrictions in any other contracting State, even though the latter State does not itself impose the reservations and restrictions on other foreign aircraft."

Article 24 provided for non-discrimination between national and foreign aircraft in respect of using the aerodromes opened for public use in any country.⁽³⁴⁾ Although the exercise of this right by regular international airlines depended entirely upon the

possibility of obtaining the necessary authorization for entry, nevertheless this provision indicated a liberal trend in the treatment of international flights.

It may be concluded here that apart from the atmosphere which dominated its conclusion,⁽³⁵⁾ and from having satisfied the need for a multilateral agreement on international air navigation,⁽³⁶⁾ and from having laid down the fundamental principles of public international air law⁽³⁷⁾ as well as its significance from the view point of international organization of civil aviation,⁽³⁸⁾ the Paris Convention of 1919 did not satisfy the need for a multilateral agreement on regular international air transport.⁽³⁹⁾ In addition, the right of innocent passage authorized by the Convention could not be assumed by regular international flights.⁽⁴⁰⁾ Therefore, the exchange of commercial rights in international air transport was destined to be subject to special agreements between the interested states, and prior authorization became a requirement for the operation of regular international airlines.⁽⁴¹⁾

It goes without saying that the experience of Paris Convention of 1919 had positive results on the future of international civil aviation but its value today lies mainly in the past.⁽⁴¹⁾

CHAPTER I

SECTION 3 : THE Ibero-American Air Navigation Convention 1926

This Convention was drafted at Madrid in 1926, at the time when Spain threatened to withdraw from the League of Nations. It was an attempt among other efforts to create a block of states, on both sides of the Atlantic, associated with the Hispanic origin of their culture.⁽⁴²⁾ The text of this Convention very closely followed the Paris Convention 1919 except for some modifications in nomenclature and in Articles 5, 7, 34, 36, 37, and 43.⁽⁴³⁾ Two European and nineteen Latin-American States signed the Convention but only the following ratified it: Costa Rica, Dominican Republic, Mexico, Paraguay, and Spain.⁽⁴⁴⁾ The Ibero-American Commission for Air Navigation, provided for in Article 34, was never established.⁽⁴⁴⁾ The Convention did not provide any essential change toward international air transport after the Paris Convention.

The significance of the Ibero-American Convention today appears as of purely academic and historical interest.⁽⁴⁵⁾ The Convention was apparently never seriously applied by the contracting States⁽⁴⁵⁾ and perhaps would have never been concluded had it been possible to revise the Paris Convention before 1926.

CHAPTER I

Section 4 : The Pan American Convention on Commercial Aviation 1928

The Pan-American Convention drawn up at Havana in 1928, was purely Western in conception. It reproduced a number of the essential provisions of the Paris Convention.⁽⁴⁶⁾ It was signed by twenty-one nations, and was limited in its application to the American Continent.⁽⁴⁷⁾ The main reason for concluding the Convention seems to have been based on the assumption that the Western Hemisphere should have separate codes for international aviation independent of those applied in the Eastern Hemisphere.⁽⁴⁸⁾

Of direct interest to international air commerce were Articles 1, 4, 5, 21, and 22.

The principle of 'complete and exclusive' sovereignty of the subjacent state was recognized by Article 1 of the Convention.⁽⁴⁹⁾

According to Article 4,⁽⁵⁰⁾ each contracting State undertook to accord, in time of peace, freedom of innocent passage to the private aircraft of the other contracting States subject to the observance of the conditions laid down in the Convention.⁽⁵¹⁾ The Convention did not restate the right of innocent passage as the Paris Convention did in the first paragraph of Article 15.⁽⁵²⁾ Moreover, the Convention did not expressly state that the establishment and operation of regular air transport services would be subject to the consent of the State concerned. Although this might indicate that the parties to the Convention enjoy full freedom of commercial air navigation, in practice prior authorization for such operations was required by the State flown over.⁽⁵³⁾

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Under Article 5, each contracting State reserved the right to establish in its territory zones over which flight is prohibited and routes within which the aircraft of the other States should fly.⁽⁵⁴⁾

Article 21 of the Convention has been generally interpreted, with respect to the operation of regular international air services, in such a way that prior consent of the State concerned was required.⁽⁵⁵⁾

Article 22 dealing with air cabotage, reserved the right of each contracting State to establish 'reservations and restrictions' in favour of its own national aircraft regarding commercial transportation of passengers and merchandise between two or more points in its territory, and other remunerated aeronautical operations wholly within its territory.⁽⁵⁶⁾

However, the Havana Convention significance from the point of view of international air transport was geographically limited to the American Continent.⁽⁵⁷⁾ In practice, the operation of regular international air transport services into or through the territory of a contracting State was to be negotiated with that State prior to the commencement of such services.⁽⁵⁸⁾

CHAPTER II

THE CHICAGO CONFERENCE 1944

and

INTERNATIONAL AIR TRANSPORT

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The Chicago Conference was convened in the latter stages of World War II by the Allies to lay down a new world convention to govern international aviation in the post war era, taking into account both the changing world map and the technological advances in aeronautics achieved by the major nations during the war.

Before the Conference: The practice of states with respect to international air transport demonstrated a contrast between the needs of international trade and national interests. The technological progress achieved in civil aviation industry between the two World Wars increased the importance of aircraft as an instrument of world air transport. Therefore, states were reluctant to accord freedom of innocent passage to international air traffic and the establishment of international airways was conditioned on prior authorization. To that effect the multilateral agreements were interpreted very restrictively by most of the states in an endeavour to protect their national interests in the rapidly growing international air transport industry. It seems that such a situation was a natural consequence of the national rights versus international rights. Crystalizations began to appear in the realm of developing air law through regional agreements grouping states that are geographically, economically or

politically near together. Even more, certain international airlines started to cooperate under pooling agreements. Bilateral agreements were to be concluded between states which have remained outside the multilateral conventions, or even between a state party to one of these conventions and a state not a party thereto in order to regulate international flights between each other. In addition to those agreements of general character, a large number of bilateral agreements for the establishment and operation of international airlines were concluded even when the states in question were parties to the Paris Convention. In other cases, international air services were established by agreement between the state and the foreign air transport enterprise concerned.

The developments in civil aviation which have taken place prior to the Second World War led to the fact that air services were essentially those operated on scheduled basis. "Any air transport company that wished to attract a substantial amount of business had not merely to run to a schedule, but had to advertise that schedule as widely as possible. Companies running charter or taxi services found little demand and were able to operate only relatively small aircraft at a passenger-mileage charge considerably above the scheduled air service rate."⁽⁵⁹⁾ Airlines began to compete within a network of air routes connecting most parts of the world.⁽⁶⁰⁾

It may be concluded that, owing to economic, political, and safety reasons, the exertion of the principle of 'complete and exclusive sovereignty over the national airspace' resulted in the imposing of 'restrictions and limitations' on the 'freedom of the air'. ⁽⁶⁰⁾

Such was the situation when the Chicago Conference convened in 1944 to "make arrangements for the immediate establishment of provisional air routes and services" and "to set up interim council to collect, record and study data concerning international aviation and to make recommendations for its improvements" and "to discuss the principles and methods to be followed in the adoption of a new aviation convention." (61)

The Conference: International regulation of civil aviation and in particular economic regulation of air transport was to be re-established by the Conference on a new world-wide scale. (62) Three major proposals to this end were put forward before the Conference:

First: Internationalization of civil air trunk routes. That "the air services using the international air trunk routes should be operated by an international air transport authority", that "full control of international air trunk routes and the ownership of all aircraft and ancillary equipment should be vested in the international air transport authority", that this authority should be set up by international agreement. And that each nation should have the right to conduct all air transport services "within its own national jurisdiction including its own contiguous territories, subject only to agreed international requirements regarding safety facilities, landing and transport rights for international services, and exchange of mails." (63)

Second: Economic control of international air transport through an international organization having the authority to fix and allocate international routes, frequencies, capacity, and rates. (64)

Third: The establishment of an international organization which would have power in technical matters and have a consultative function in economic matters.⁽⁶⁵⁾

Furthermore, the Conference was confronted by three crucial problems that had to be solved in connection with the economic regulation of international air transport, more specifically the regulation of scheduled international air services. The problems were:

- (1) Should it be "order in the air" or "freedom in the air"?
- (2) What privileges of commercial rights should be granted to a foreign airline and how much traffic it should be allowed to carry?
- (3) What fares and tariffs should be applied by airlines?

Results of the Chicago Conference: Faced by differing views, the Conference reached a compromise for the purpose of regulating international civil aviation. Four treaties were adopted in the Final Act of the Conference:

- (1) The Interim Agreement on International Civil Aviation.
- (2) The Chicago Convention on International Civil Aviation.
- (3) The International Air Services Transit Agreement.
- (4) The International Air Transport Agreement.

So, one may conclude that the Conference was unable to attain an economic agreement on international air transport.⁽⁶⁶⁾

But, apart from its failure in this field, the Conference has proved itself in retrospect a great success by:⁽⁶⁷⁾

- (a) adopting a world convention, that became a basis for contemporary international air law,
- (b) setting up the nucleus of the first real world organization for civil aviation,
- (c) creating machinery to assure standardization of flight safety and operations,⁽⁶⁷⁾
- (d) opening the door for future study and discussion on the economic and nationalistic barriers which impede the development of air commerce, and
- (e) adopting the International Air Services Transit Agreement which has secured a minimum order for international scheduled air services.⁽⁶⁷⁾

As to the problems connected with the economic regulation of scheduled international air services, they were to be solved by the Air Transport Agreement and through bilateral arrangements between the states concerned.⁽⁶⁸⁾ Freedom of air commerce remained largely unachieved⁽⁶⁹⁾ although the Conference made some contribution in this respect by:

- (a) the adoption of the International Air Transport Agreement which has been accepted only by twelve states,⁽⁶⁹⁾ and
- (b) the adoption of a Standard Form of Agreement for Pro-

visional Air Routes which is not binding on States but has facilitated the conclusion of many bilateral air transport agreements.⁽⁷⁰⁾

How the Chicago Convention, the International Air Services Transit Agreement and the International Air Transport Agreement treat scheduled international air services may be briefly summed up as follows:

1. The Chicago Convention, 1944: The main objective of the Convention is that international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically.⁽⁷¹⁾ Of special interest to scheduled international air services are those provisions of the Convention which recognize the following:

- (a) The complete and exclusive sovereignty of every nation over the airspace above its territory.⁽⁷²⁾
- (b) Scheduled international air services may not be operated into or over the territory of any State except with its special permission or authorization.⁽⁷³⁾
- (c) Each State has the right to limit the transport of its internal traffic to its national aircraft (cabotage).⁽⁷⁴⁾
- (d) Each State has the right to establish prohibited areas over which no aircraft shall fly.⁽⁷⁵⁾

- (e) Each State has the right to impose charges for the use of its airports and air navigation facilities provided no distinction is made between its national aircraft and the aircraft of other States parties to the Convention.⁽⁷⁶⁾
- (f) Each State has the right to designate the route to be followed within its territory by any international air service and the airports which any such service may use.⁽⁷⁷⁾
- (g) Each State undertakes to register, with the ICAO Council, all aeronautical agreements or arrangements to which it is a party provided that they are not inconsistent with the Convention.⁽⁷⁸⁾

In addition, the Convention contains other provisions which further regulate the right of nations to fly.

2. International Air Services Transit Agreement, 1944: This Agreement came into force on 30 January, 1945.⁽⁷⁹⁾ The parties to the Agreement mutually exchange the first two freedoms of the air in respect of scheduled international air services, each State grants:

- (1) The privilege to fly across its territory without landing; and
- (2) The privilege to land for non-traffic purposes.⁽⁸⁰⁾

Beside the privileges of transit, the Agreement also provides that:

- (a) any State granting an airline the privilege to stop for non-traffic purposes may require such an airline to offer reasonable commercial services at the points where such stops are made.⁽⁸¹⁾
- (b) each State has the right to designate the route and airports to be used in its territory.⁽⁸²⁾
- (c) each State reserves the right to withhold or revoke a certificate or permit to an air transport enterprise of another State in any case where it is not satisfied that substantial ownership and effective control are vested in nationals of a contracting State.⁽⁸³⁾
- (d) Each State may, when it deems that action by another State is causing injustice or hardship under the Agreement, request the ICAO Council to investigate the case.⁽⁸⁴⁾

Today, the majority of States have accepted the Transit Agreement, but should it become universally accepted in more permanent form, it would largely solve any difficulties which may impede the establishment of world air trade routes through the territory of any State. It would, at least, also maintain a minimum order for scheduled international air services.

The Transit Agreement, nevertheless, can be considered now as constituting an integral part of world organisation.

3. The International Air Transport Agreement, 1944: Under this Agreement which came into force on 8 February, 1945, the contracting States mutually exchange the five freedoms of the air with respect to scheduled international air services.⁽⁸⁵⁾ In addition to the grant of transit privileges (known as the first and second freedoms) the Agreement authorizes the following commercial privileges (known as the third, fourth and fifth freedoms):

"(3) The privilege to put down passengers, mail and cargo taken on in the territory of the State whose nationality the aircraft possesses;

"(4) The privilege to take on passengers, mail and cargo destined for the territory of the State whose nationality the aircraft possesses;

"(5) The privilege to take on passengers, mail and cargo destined for the territory of any other contracting State and the privilege to put down passengers, mail and cargo coming from any such territory."⁽⁸⁵⁾

These commercial privileges, however, relate only to "through services on a route constituting a reasonably direct line out from and back to the homeland of the State whose nationality the aircraft possesses."⁽⁸⁶⁾

Like the Transit Agreement, the Transport Agreement provides for the same conditions as mentioned above.⁽⁸⁷⁾ It further stipulates that in the establishment and operation of through services, each contracting State shall give due regard to the interests of

the other contracting States so as not to interfere unduly with their regional services or to hamper the development of their through services.⁽⁸⁸⁾ The Agreement provides also that each State may refuse to grant permission to foreign aircraft for taking on in its territory traffic carried for remuneration or hire and destined to another point within its territory (cabotage).⁽⁸⁹⁾

As to the fifth freedom traffic, it is limited to traffic between contracting States only, and any State, by a reservation made in accordance with Article 4 (Section 1) of the Agreement, may refuse to accord the fifth freedom privilege to other States which entitles them to take on and discharge passengers, mail and cargo destined to or coming from the territory of a third contracting State.⁽⁹⁰⁾

The Transport Agreement, however, does not contain any provision for rate control, or limitation of capacity and frequencies. It has been accepted by a small number of States including only few nations of importance in the world of air transport.⁽⁹¹⁾ Although the United States had vigorously sponsored the Agreement at the Chicago Conference in 1944, and later, in 1945, accepted it, the same nation announced on July 25, 1946, its withdrawal from the agreement.⁽⁹²⁾

Many objections have been made to the acceptance of the agreement based mainly on the view that it goes too far in relinquishing economic control by the State flown over.⁽⁹³⁾ Despite the fact that it gives certain limited commercial privileges, not given in the Transit Agreement, States are still reluctant to accept the Transport Agreement.

The abortive Agreement, as it stands now, has been accepted only by twelve widely scattered States.⁽⁹⁴⁾ Its role in the legal regime of international aviation is insignificant⁽⁹⁵⁾ and cannot yet be considered as part of a permanent world organization.

It may be concluded, after this brief analysis of the Chicago Conference and its results, that any nation still has the full right, unless otherwise committed by the Transirt or Transport or other special Agreements, to take advantage of its own political position and bargaining power as well as its important geographical location, and unilaterally determine, based on the dictates of its national policy, what foreign aircraft may be permitted to enter or be excluded from its airspace and the extent to which such airspace may be used for world air commerce.

Thus "freedom of air commerce" has not been achieved by the existing multilateral agreements. New efforts have been made since the Chicago Conference within the framework of PICAO⁽⁹⁶⁾ and later ICAO, to draft a generally acceptable multilateral agreement for the exchange of commercial rights in air transport. The efforts of the Geneva Commission on Multilateral Agreement on Commercial Rights in International Civil Air Transport in 1947 did not succeed in achieving a consensus as was the outcome of previous conferences on the same subject.⁽⁹⁷⁾ Conflicts of national interests, particularly with respect to the most crucial problem of fifth freedom traffic, was reflected in a resolution unanimously adopted by the Assembly of ICAO in 1953, which recited that "there is no present prospect of achieving a universal multilateral agreement."⁽⁹⁸⁾

Even at the regional level the States of Western Europe could not achieve an agreement on commercial rights for scheduled services similar, at least, to the severely limited agreement on non-scheduled air services.⁽⁹⁹⁾ A similar fate awaited the proposed multilateral agreement for the Arab countries on technical and commercial civil aviation.⁽¹⁰⁰⁾

The outcome of all this, is the failure of the international community to reach a general agreement on the degree of freedom to be accorded to international air services. Consequently, scheduled international air services are largely regulated by bilateral agreements and arrangements of varying degrees of formality, the situation which will remain for many years to come. Yet, the freedom of world air commerce, and in particular that of scheduled international air services, continues to be subject to many legal restrictions.⁽¹⁰¹⁾

Only by good will and effective cooperation among the nations of the world that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically.

P A R T T W O
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CHAPTER I

Development of Air Transport in the Middle East

CHAPTER II

Status of Multilateral Agreements :
International and Regional

SECTION 1 : Status of International Agreements

SECTION 2 : Regional Agreements

- I - The Alexandria Protocol
- II - The Pact of the Arab League
- III - The Arab Transit Convention
- IV - The Arab Council of Civil
 Aviation
- V - The Arab Air Carriers Organiza-
 tion
- VI - The World Arab Airlines

CHAPTER I

DEVELOPMENT OF AIR TRANSPORT in THE MIDDLE EAST

I. Importance, and selection of Five Arab States

Historical Importance

The Middle East where man first lived in an organized society, can be considered as the cradle of civilization in the world.⁽¹⁾ The great civilizations of the Nile and Tigris Euphrates valleys contributed so much to the development of early human society. No place in the world has witnessed so many great successive civilizations as the Middle East did.⁽²⁾

The spread and intermingling of those civilizations into other parts of the world was made easier by virtue of the central position of the Middle East being located at the crossroad of the three continents of Europe, Asia, and Africa. Armies, traders, and ideas could move with relative ease along the natural communication routes of the area.

It is not surprising then that the area became the centre of trade and communication. It was from here that the Phoenician traders crossed the seas in their ships, and the Assyrians made use of the wheel to create a vast empire, while the Pharaos and Sumerians had started even earlier to use the rivers for transporting their products. The same region gave birth to the existing majore religions of the world.

Present History

In the modern world, the Middle East has acquired new importance after several centuries of stagnation in the backwaters of the stream of world developments. The opening of the Suez Canal in the second half of the 19th century put the Middle East back on the main routes of world commerce and communication; the recent developments of air transportation have given the area additional importance. Moreover, the discovery and production of oil in huge quantities resulted in giving the area great economic significance the fact that has created political problems and international competition and rivalry among the powers of the world for spoils and influence in the area. Perhaps because of this, the Middle East continues to be the theatre of severely conflicting foreign spheres of influence. In this respect, Admiral Arthur W. Radford has bluntly put it:

"The importance of the Middle East to the free world can hardly be overestimated militarily and economically. First, its huge oil reserves now supply most of the wants of Europe, and their loss would be disastrous. Secondly, its geographic location is astride the lines of communication between West and East, and thirdly, it is only in this area that the Soviets have no buffer states."(3)

The strategic importance of the Middle East does not lie only in its military and economic value to the world but also in its very geographic location. It was and still is the shortest link for surface transportation between West and East. It is hard to find an air route between the Western and Eastern worlds that can be plotted for fine weather without crossing the Middle East.

For reasons such as shorter distance, more safety,⁽⁴⁾ tourism,⁽⁵⁾ business⁽⁶⁾ and pilgrimage,⁽⁷⁾ the Middle East attracts international air traffic from the Western world as well from the Eastern. The five Arab States, subject-matter of the present study occupy the centre of the area.

Turning to these five countries, they are ancient lands but newly independent States. IRAQ, an independent kingdom since 1932, and a republic since 1958, has a population (in 1965) of 8,220,709, and an area of 169,284 sq. miles; and is famous for its oil resources.⁽⁸⁾ JORDAN, an independent kingdom since 1946, has a population (in 1961) of 1,706,226 including more than 500,000 displaced Palestinians, and an area of 34,434 sq. miles; and is famous for its holy places.⁽⁸⁾ KUWAIT, an independent state since 1961, has a population (in 1965) of 567,422, and an area of 5,800 sq. miles; and is famous for its huge oil reserves.⁽⁸⁾ LEBANON, an independent republic since 1941, the most densely populated country in the Middle East has an estimated population in 1961 of 2,150,526 and an area of 4,015 sq. miles.⁽⁸⁾ SYRIA, an independent republic since 1943, has a population, according to 1960 census, of 4,565,121 and an area of 71,498 sq. miles; and is famous for its numerous historical places and some oil reserves.⁽⁸⁾

Selection of five States

Five Arab countries were selected by the writer for this thesis, namely: IRAQ, JORDAN, KUWAIT, LEBANON, and SYRIA. The selection stands on the two following considerations:

1. Part of the Arab Nation

All these countries have the common heritage of the Arab nation, and have similar aspirations towards greater integration and unity in nationalistic, political, social, and economic matters which may lead to better coordination amongst them if not union. This in turn should give a greater bargaining power and influence for this section of the Arab nation in aspects such as commercial air transportation. They can further lay down a uniform air transport policy to be followed by the other Arab States as well. It remains true, however, that the ultimate objective should be the unity between all Arab countries. In the economic field they have recently reached an agreement on the "Economic Unity".⁽⁹⁾ Closer cooperation and coordination should be effected in civil aviation and specifically in commercial air transportation.

If a uniform international air transport policy is to be achieved among the five Arab countries, the actions found necessary, in our opinion, to be taken include the following:

- (a) Adherence to the same international treaties.⁽¹⁰⁾
- (b) Coordination of the bilateral air transport agreements.⁽¹¹⁾
- (c) Establishment of a single State-owned airline system to be authorized only to operate the international air services.⁽¹²⁾
- (d) Building modern airports to meet present and foreseeable developments of civil aviation industry.⁽¹³⁾

- (e) Choosing of adequate airline equipment.⁽¹⁴⁾
- (f) Encouragement of tourism.⁽¹⁵⁾

If this uniform policy is to be achieved for regional air transport, we envisage the following:

- (a) Unification of air laws to the maximum extent possible.⁽¹⁶⁾
- (b) Establishment of a single inter-state airline to be authorized only to operate regional services.⁽¹⁷⁾
- (c) Building and enlarging airports especially in Iraq and Syria which occupy large areas of land.
- (d) Choosing of adequate airline equipment.⁽¹⁴⁾
- (e) Encouragement of regional air travel.⁽¹⁸⁾

Although the above is in the realm of possibility, many practical difficulties hinder its application. Some of these difficulties are due to economical or political reasons outside the direct control of those concerned. But let us not forget that only by good will and effective cooperation we can overcome most of the difficulties especially if they are accompanied with awareness of the problems facing the aviation and air transport industry in the new era of supersonic and jumbo travel.

2. A Natural Air Path

The airspace over these contiguous countries constitutes a "natural air path" on the route between Western and Eastern worlds. For eastbound traffic, the path geographically

stretches in the following order:

Lebanon - Syria - North eastern part of Jordan - Iraq -
Kuwait, and v.v. for westbound traffic.

This geographic advantage has increased the relationships with more nations whose airlines seek freedom of passage that are not directly otherwise interested in the area. This may lead them to make technical stops and sometimes seek commercial rights. Some of the airlines of the Far East and Australia that are not too much interested to operate in the area use this air path on their trunk routes.

The path attracts airlines due to fine weather almost all year round and the spread of navigation facilities in the area. For the same reasons, the airspace of the five Arab States is of no less importance to those airlines of countries north and south of them.

II - Development of Air Transport

1. The Middle East

Air transport has rapidly developed in the Middle East. The following figures may show the development and importance of the Middle East in the realm of international air transportation. The selected traffic data are based on traffic performed by scheduled services of airlines of ICAO Member States according to the statistics published thereby.

(a) Scheduled Services

The total revenue traffic of scheduled services of 1951 compared to that of 1968 as shown in the table may throw enough light on traffic development in the Middle East: ⁽¹⁹⁾

<u>Selected data</u>	<u>1951</u>	<u>1968</u>
Passenger-kilometres (thousands)	207,970	5,058,413
Available seat-kilometres (thousands)	386,521	9,135,345
Tonne-kilometres performed (thousands)	25,316	612,748
Available tonne-kilometres (thousands)	43,070	1,111,039
Aircraft kilometres (thousands)	14,680	101,704

To these figures we may add the number of passengers carried by scheduled flights which is (1) million and (412) thousands in 1960, compared to (3) millions and (799) thousands of passengers carried in 1968. ⁽²⁰⁾

(b) International Operations

The following selected data are based on revenue traffic of scheduled international services of the Middle East. This traffic

has tremendously developed as shown in the following table.⁽²¹⁾

<u>Selected data</u>	<u>1951</u>	<u>1968</u>
Passenger-kilometres (thousands)	149,838	4,300,886
Available seat-kilometres (thousands)	255,935	7,844,353
Tonne-kilometres performed (thousands)	19,112	537,824
Available tonne-kilometres (thousands)	33,124	983,900
Aircraft kilometres (thousands)	10,630	78,412

We may add to these figures the number of passengers carried in 1960 which is (733) thousands compared to (2) millions and (45) thousands of passengers carried in 1968.⁽²²⁾

(c) Domestic Operations

The following figures may show the development of traffic on domestic scheduled services in the Middle East.⁽¹⁹⁾

<u>Selected data</u>	<u>1951</u>	<u>1968</u>
Passenger-kilometres (thousands)	58,132	757,527
Available seat-kilometres (thousands)	130,586	1,290,992
Tonne-kilometres performed (thousands)	6,204	74,924
Available tonne-kilometres (thousands)	9,946	127,139
Aircraft kilometres (thousands)	4,050	23,292

We may add to these figures the number of passengers carried in 1960 which is (678) thousands compared to (1) million and (754) thousands in 1968.⁽²³⁾

2. The Five Arab States

A brief presentation of the development of air transport in these countries seems indispensable to the study of their bilateral air services agreements. It also serves as an introduction and reflects the importance of these countries in international air transportation.

The following data are based on the traffic performed by scheduled services in these countries according to statistics published by ICAO.

Due to lack of correct statistics in these countries, the comparison is based on the years 1960 and 1968.⁽²⁴⁾

The following table shows the total traffic performed by scheduled services of foreign and national airlines operating in the five Arab countries based on ICAO statistics:

<u>Selected data</u>	<u>1960</u>	<u>1968</u>
Passengers carried	411,864	1,030,983
Passenger-kilometres (thousands)	389,569	1,536,747
Available seat-kilometres (thousands)	844,195	3,251,987
Tonne-kilometres performed (thousands)	51,966	225,764
Available tonne-kilometres (thousands)	144,853	465,312
Aircraft kilometres (thousands)	20,925	40,822

These total statistics are treated below with respect to each State separately.

I R A Q

The selected data represent the total traffic performed by scheduled services of foreign and national airlines: (25)

<u>Selected data</u>	<u>1960</u>	<u>1968</u>
Passengers carried	80,215	151,939
Passenger-kilometres (thousands)	52,005	124,077
Available seat-kilometres (thousands)	97,531	238,617
Tonne-kilometres performed (thousands)	5,105	11,461
Available tonne-kilometres (thousands)	14,956	23,857
Aircraft kilometres (thousands)	2,391	3,139

The following table shows the development of international traffic by scheduled services of all airlines operating in Iraq. (26)

<u>Selected data</u>	<u>1960</u>	<u>1968</u>
Passengers carried	46,581	122,737
Passenger-kilometres (thousands)	39,398	111,402
Available seat-kilometres (thousands)	80,370	217,378
Tonne-kilometres performed (thousands)	4,042	10,376
Available tonne-kilometres (thousands)	12,398	21,122
Aircraft kilometres (thousands)	1,999	2,697

Airports: There are only two airports for international arrivals and departures: Baghdad and Basrah International Airports. There exist also five private aerodromes. (27)

Airlines: Iraqi Airways is the only national airline. It is state-owned, and has in 1969 a fleet of 3 (Trident) and 3 (viscount). Number of personnel was 1150 in 1967. Capital was 500,000.00 Iraqi Dinars.

J O R D A N
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The selected data represent the total traffic performed by scheduled services of foreign and national airlines. (28)

<u>Selected data</u>	<u>1960</u>	<u>1968</u>
Passengers carried	50,200	106,195
Passenger-kilometres (thousands)	22,740	127,066
Available seat-kilometres (thousands)	32,320	293,899
Tonne-kilometres performed (thousands)	2,205	10,582
Available tonne-kilometres (thousands)	3,270	27,151
Aircraft kilometres (thousands)	1,340	3,330

The following selected data are based on traffic for total commercial air transport at Amman and Jerusalem Airports. Due to lack of correct statistics, the development of traffic is shown through a comparison of the years 1962 and 1966. (29)

<u>Amman Airport</u>	<u>1962</u>	<u>1966</u>
Aircraft movements	1,750	6,181
Passengers : emb/disembarked	24,644	152,721
Freight and mail : loaded/unloaded (tonnes)	237	1,045

Jerusalem Airport

Aircraft movements	5,692	5,556
Passengers : emb/disembarked	148,996	187,981
Freight and mail : loaded/unloaded (tonnes)	584	645

Airports: Amman and Jerusalem International Airports are the only two airports in the country. (30)

Airlines: There is only one national airline. It is a state-owned airline called "ALIA - THE ROYAL JORDANIAN AIRLINES." ALIA has a fleet of two (Caravelle SE-210).

Its total assets in 1967 were approximately \$(12) millions. (32)

In 1969, the fleet was increased to include six aircraft: three (Caravelle SE-210), and three (DC-6).

It has a total number of (462) personnel. (31)

K U W A I T

The selected data represent the total traffic performed by scheduled services of foreign and national airlines.⁽³³⁾

<u>Selected data</u>	<u>1960</u>	<u>1968</u>
Passengers carried	58,000	207,761
Passenger-kilometres (thousands)	56,015	350,340
Available seat-kilometres (thousands)	106,930	604,410
Tonne-kilometres performed (thousands)	6,030	36,212
Available tonne-kilometres (thousands)	11,340	67,262
Aircraft kilometres (thousands)	2,940	6,896

We may add to these figures the following selected data which are based on airport traffic for total commercial air transport for Kuwait Airport. Due to lack of correct statistics, the development of traffic is shown by a comparison of the years 1962 and 1966.⁽³⁴⁾

<u>Kuwait Airport</u>	<u>1962</u>	<u>1966</u>
Aircraft movements	11,449	12,682
Passengers: emb/disembarked	261,262	335,019
Freight and mail: loaded/unloaded (tonnes)	6,000	21,875

Airports: The only airport for international arrivals and departures is "Kuwait International Airport."⁽³⁵⁾

Airlines: Kuwait has one national airline called "KUWAIT AIRWAYS CORPORATION." It is a state-owned airline equipped with: three (HS-106 Comet 4), two (HS-121 Trident), three (DC-6), and two (Twin Pioneer).

It has a total number of (1243) personnel. (36)

In 1969, the fleet became five aircraft: three (320C, Boeing 707), and two (HS-121 Trident).

LEBANON

The selected data represent the total traffic performed by scheduled services of foreign and national airlines. (37)

<u>Selected data</u>	<u>1960</u>	<u>1968</u>
Passengers carried	208,954	497,818
Passenger-kilometres (thousands)	251,509	836,994
Available seat-kilometres (thousands)	593,884	1,904,791
Tonne-kilometres performed (thousands)	37,826	156,469
Available tonne-kilometres (thousands)	83,872	326,172
Aircraft kilometres (thousands)	13,869	24,987

We may add to these figures the following selected data which is based on airport traffic for total commercial air transport of Beirut Airport. (38)

<u>Beirut Airport</u>	<u>1962</u>	<u>1966</u>
Aircraft movements	31,119	35,427
Passengers: emb/disembarked	960,138	1,138,778
Freight and mail: loaded/unloaded	19,809	30,249

Airports: There is only one airport for international arrivals and departures: "Beirut International Airport." (39)

Airlines: The following private owned airlines are the national airlines of Lebanon:

- MIDDLE EAST AIRLINES AIR LIBAN S.A.L. (MEAL).

Its fleet comprises 15 aircraft as follows: (40)

four (HS-106 Comet)	two (CV-990 Coronado) (leased)
three (SE-210 Caravelle 6N)	one (VC-10) (leased)
three (Viscount 700 Series)	one (HS-106 Comet) (leased)
one (Boeing 720 B)	

MEAL has a total number of (3400) personnel. Its total assets are approximately (42) millions of U.S. dollars.⁽⁴¹⁾ It is the largest private enterprise and employer in Lebanon.

- LEBANESE INTERNATIONAL AIRWAYS (LIA)

Its fleet comprises two (CV-990A Convair) and two (DC-7) aircraft, and a total number of (471) personnel.⁽⁴⁰⁾ Its total assets are approximately (14) millions of U.S. dollars.⁽⁴¹⁾ The airline has been merged with MEAL in 1967, and the aircraft were taken over by MEAL.

- TRANS-MEDITERRANEAN AIRWAYS (TMA)

Its fleet comprises 11 aircraft: six(DC-6), four (DC-4), and one chartered (CL-44).

It has a total number of (789) personnel.⁽⁴⁰⁾ It operates only all-freight services. Its total assets are some (13) millions of U.S. dollars.⁽⁴¹⁾

S Y R I A

The selected data represent the total traffic performed by scheduled services of foreign and national airlines.⁽⁴²⁾

<u>Selected data</u>	<u>1961</u>	<u>1968</u>
Passengers carried	14,495	67,270
Passenger-kilometres (thousands)	7,000	98,270
Available seat-kilometres (thousands)	13,530	210,270
Tonne-kilometres performed (thousands)	800	11,040
Available tonne-kilometres (thousands)	1,415	20,870
Aircraft kilometres (thousands)	385	2,470

We may add to these figures the following selected data which are based on airport traffic for total commercial air transport for Damascus Airport:⁽⁴³⁾

<u>Selected data</u>	<u>1962</u>	<u>1966</u>
Aircraft movements	8,635	9,124
Passengers: emb/disembarked	105,088	192,416
Freight and mail: loaded/unloaded (tonnes)	2,419	1,835

Airports: There are two airports designated for international arrivals and departure: "Damascus International Airport", and "Aleppo International Airport".

There are four other aerodromes for local services: Deir Ezzor, Kamishly, Lattakia, and Palmyra.⁽⁴⁴⁾

Airlines: There is only one national airline given the name "SYRIAN ARAB AIRLINES." It is a state-owned airline having a fleet of seven aircraft : two (SE-210 Caravelle), three (DC-6B), and two (DC-3), in addition to two (DC-4). It has a total number of (1034) personnel. (45)

In 1969, the fleet became five aircraft: two (SE-210 Caravelle), and three (DC-6B). The two (DC-4) are grounded.

CHAPTER II

STATUS OF MULTILATERAL AGREEMENTS INTERNATIONAL AND REGIONAL =====

In the framework of international organization of civil aviation as well as in regional organization, the five Arab States have many undertakings that affect the bilateral air transport agreements which they have concluded with other States. It seems necessary therefore to present here the status of international conventions or agreements on civil aviation, and the status of regional conventions or agreements relating to civil aviation in which the five Arab States are parties.

A brief discussion of the regional agreements under which these States cooperate will be made inasmuch as needed for the purpose of the present study.

This presentation comes under the following main headings:

Section 1

Status of International Agreements

Section 2

Regional Agreements

- I - The Alexandria Protocol
- II - The Pact of the Arab League
- III - The Arab Transit Convention
- IV - The Arab Council of Civil Aviation
- V - The Arab Air Carriers Organization
- VI - The World Arab Airlines

CHAPTER II

SECTION 1. Status of International Agreements

(1) The Chicago Agreements 1944

Reference is made only to those agreements which the five Arab countries have ratified or adhered to.

(a) The Chicago Convention 1944: By July 31, 1969, the number of States that have ratified or adhered to this Convention was (116) contracting States of which (13) Arab States are parties thereto.⁽¹⁾ The following table shows the dates of deposit of ratification or adherence to the Convention by each of the five Arab States. ⁽¹⁾

<u>Country</u>	<u>Ratification</u>	<u>Adherence</u>
Iraq	2/6/1947	
Lebanon	19/9/1949	
Syria	21/12/1949	
Jordan		18/3/1947
Kuwait		18/5/1960

(b) The Transit Agreement: Iraq has accepted it on 15 June, 1945. Jordan on 18 March, 1947. Kuwait on 17 June, 1960.⁽¹⁾ Lebanon and Syria have not yet accepted the Agreement.

(2) Other International Agreements

(a) Warsaw Convention 1929 and the Hague Protocol 1955

- Lebanon, adhered to the Warsaw Convention on 26 October, 1932.⁽²⁾
- Jordan, adhered to the Warsaw Convention on 17 December, 1937.⁽³⁾
- Syria, adhered to the Warsaw Convention on 6 September, 1955, and ratified the Hague Protocol on 26 April, 1956.⁽⁴⁾

(b) The Hague Convention 1933

Iraq, Lebanon, and Syria have ratified this Convention.⁽⁵⁾

(c) Washington Convention 1946

Syria has acceded to this Convention on 31 October, 1946.⁽⁶⁾

CHAPTER II

SECTION 2. Regional Agreements

I - The Alexandria Protocol 1944

The starting point of cooperation in the field of civil aviation among Arab countries begins with the Alexandria Protocol. Delegations of five Arab countries, i.e., Syria, Trans-Jordan, Iraq, Lebanon, and Egypt "Anxious to strengthen and consolidate the ties which bind all Arab countries and to direct them toward the welfare of the Arab world, to improve its conditions, insure its future, and realize its hopes and aspirations,"⁽⁷⁾ have met at Alexandria from September 25, 1944, to October 7, 1944, in the form of a Preliminary Committee of the General Arab Conference, and have agreed as follows: (excerpts)

"1. League of Arab States

A league will be formed of the independent Arab States which consent to join the League. It will have a council which will be known as the "Council of the League of Arab States" in which all participating states will be represented on an equal footing.

The object of the League will be to control the execution of the agreements which the above states will conclude; to hold periodic meetings which will strengthen the relations between those states; to coordinate their political plans so as to insure their cooperation, and protect their independence and sovereignty against every aggression by suitable means; and to supervise in a general way the affairs and interests of the Arab countries.

2. Cooperation in Economic, Cultural, Social, and other matters.

A. The Arab States represented on the Preliminary Committee shall closely cooperate in the following matters:

(2) Communications, i.e., railways, roads, aviation, navigation, posts and telegraphs."

II - Pact of the League of Arab States 1945

For the purpose of our present study the Pact of the League of Arab States is dealt with from the point of view of civil aviation.

The foundation of the League of Arab States or the Arab League⁽⁸⁾ is indebted to the mutual good efforts of the representatives of Egypt, Iraq, Jordan, Lebanon, and Syria, made at the Preliminary Committee of the General Arab Conference held at Alexandria in 1944.⁽⁹⁾

In brief, the history of the Arab League goes back to 1945 when the General Arab Congress, envisaged by the Alexandria Protocol, convened in Cairo on March 17th of that year to review the draft pact prepared by a committee of Arab foreign ministers and other experts which met also in Cairo during February and March of the same year to draft the constitution of the Arab League.

On March 22, 1945, the approved final draft pact was signed by six of the founding members: Egypt, Iraq, Lebanon, Syria, Saudi Arabia, and Trans-Jordan. Yemen, the seventh founding member signed the pact on May 10, 1945.⁽¹⁰⁾

According to its Article 20, the Pact of the League of the Arab States came into effect on May 11, 1945, fifteen days after

Iraq deposited its ratification with the League's Secretary General in Cairo.⁽¹¹⁾ Ratifications were as follows:

- Jordan, March 31, 1945.
- Iraq, April 1, 1945.
- Syria, April 3, 1945.
- Egypt, April 5, 1945,
- Lebanon, April 7, 1945.
- Saudi Arabia, April 7, 1945.
- Yemen, May 11, 1945.⁽¹²⁾

From the point of view of international law, the Pact of the Arab League is in fact an international treaty signed by the heads of states or representatives of the founding members and duly ratified by the respective member states.⁽¹³⁾

The Pact of the Arab League, however, may be divided into three parts, a preamble, an agreement of twenty articles, and three annexes. The following excerpts of the Pact are of our concern here:

The Heads of the founding Arab States:

"Desirous of strengthening the close relations and numerous ties which link the Arab States;

And anxious to support and stabilize these ties upon a basis of respect for the independence and sovereignty of these states, and to direct their efforts toward the common good of all the Arab countries, the improvement of their status, the security of their future, the realization of their aspirations and hopes;

And responding to the wishes of the Arab public opinion in all Arab lands;

Have agreed to conclude a Pact to that end and have appointed as their representatives....., have agreed upon the following provisions:

Article 1

The League of Arab States is composed of the independent Arab States which have signed this Pact.

Any independent Arab State has the right to become a member of the League.

Article 2

The League has as its purpose the strengthening of the relations between the member states; the coordination of their policies in order to achieve cooperation between them and to safeguard their independence and sovereignty; and a general concern with the affairs and interests of the Arab countries. It has also as its purpose the close cooperation of the member states, with due regard to the organization and circumstances of each state, on the following matters:

B. Communications; this includes railroads, roads, aviation, navigation, telegraphs and posts.

Article 4

For each of the questions listed in Article 2 there shall be set up a special committee in which the member states of the League shall be represented. These committees shall be charged with the task of laying down the principles and extent of cooperation. Such principles shall be formulated as draft agreements, to be presented to the Council for examination preparatory to their submission to the aforesaid states.

Article 17

Each member state of the League shall deposit with the Secretariat-General one copy of every treaty or agreement concluded or to be concluded in the future between itself and another member state of the League or a third state.

Article 20

This Pact and its Annexes shall be ratified according to the basic laws in force among the High Contracting Parties.

The instruments of ratification shall be deposited with the Secretariat-General of the Council and the Pact shall become operative as regards each ratifying state fifteen days after the Secretary-General has received the instruments of ratification from four states."(9)

It will be clear, after this brief presentation, that the Arab League is the body through which the purposes of the Pact are to be achieved. Evaluation of the League and its work is a matter of degree to be sought only in the kind of the objectives to be attained. All what can be said in this respect is that the Arab League in retrospect has proved itself to be a real regional international organisation. Despite many criticisms heard, the League is still carrying out the tasks incumbent on it.(14)

In the early years of its constitution, there were perhaps some grounds for criticism as the concept of regional international organisation itself was still in its infancy. Today no one can deny the importance of such organisations and their growth in the field of international organisation since the foundation of the League in 1945. Perhaps the world community itself is moving now toward regionalism, and it follows that international organisations will be left only to the task of coordinating the interests of evolving regional international organisations.

In practice, however, the Arab League could achieve most of its political purposes, but it was more successful in accomplishing its economic, cultural, and social purposes. The League's committees (Economic, Transportation and Communications, and Finance) were responsible for drafting far-reaching plans for the closer integration of the economies of the Arab countries.(15)

Closer integration of civil aviation in the Arab countries was one of the tasks of the Permanent Committee of Transportation. Subjects on civil aviation were listed on the agenda of this committee since the early years of its formation. In view that the subjects placed before it were increasing, the Committee had to meet in the form of sub-committees. The Subcommittee of Civil Aviation was relatively more active than other subcommittees. The Permanent Committee of Transportation held a number of conferences since 1946, in which matters of civil aviation were discussed. We shall endeavour to present a summary of what was decided on or recommended concerning subjects of direct connection to air transport in the following selected conferences of the Committee or other meetings held under the auspices of the Arab League.⁽¹⁶⁾

Second Conference
(Cairo - 1953)

The Committee, in a recommendation to the Arab League, agreed on the idea of establishing a council of civil aviation for the Arab countries.⁽¹⁷⁾

Third Conference
(Cairo - 1954)

At this Conference a subcommittee was formed under the name of the Subcommittee of Civil Aviation to be responsible for

matters of civil aviation. It has adopted a number of recommendations the most important of which may be summarized as follows:⁽¹⁸⁾

(1) That the idea of establishing an Arab council of civil aviation be realized. A draft convention to this effect was introduced.

(2) That the Arab states be asked to study the draft multilateral convention on regulation of air transport between Arab countries. A draft convention to this effect was introduced.

(3) That governments of the Arab states be urged to adhere to the Chicago Convention of 1944.

(4) That governments of the Arab states be urged to study all international agreements prepared by the Legal Committee of ICAO preparatory to their adherence to such agreements seeking, by doing this, a unity in air laws.

(5) That the Arab states be urged to coordinate their views before they attend international conferences of civil aviation to be held in 1954.

The Sub-committee also expressed its desire to re-study the idea of establishing one Arab airline for all Arab countries.

Fourth Conference
(Cairo - 1955)

At this Conference, convened in April, 1955, the sub-committee of Civil Aviation was further divided into three sub-

committees in order to face the increasing work it is charged with. The three Subcommittees were one for Air Transport, another for Telecommunications, and a third for Air Navigation. The most important recommendations adopted relate to the actual steps necessary for constituting the Arab council of Civil Aviation, the establishment of (pan) Arab airlines by incorporating all airlines of the Arab countries into one airline,⁽¹⁹⁾ and the amendment of the draft convention on air transport.⁽²⁰⁾

Fifth Conference
(Lebanon - 1955)

Two recommendations are of our concern here. They may be summarised as follows:

(1) That a group of foreign experts from a neutral airline and preferably from SAS,⁽²¹⁾ in view of its experience in Pool agreements, should be invited to make studies for the realization of an association or organisation for existing Arab airlines and specially in matters of traffic pooling, maintenance, and handling.

(2) That a study of existing air laws of Arab countries should be made for the purpose of achieving unity in legislation.

Sixth Conference
(Cairo - 1956)

A summary of the following selected recommendations adopted by the Subcommittee are of our concern here:

(1) That Arab Governments take one attitude at the meetings of the Assembly of ICAO in its 10th Session of 1956. And that Arab States be urged to elect from among them two States for the membership of the Council of ICAO.

(2) That certain amendments were found necessary to be included in the proposed multilateral agreements on air transport in the Arab countries.

(3) That the Arab States be urged to study the results of Strasbourg Conferences of 1954 and 1955, preparatory to adoption of similar principles in the proposed Arab multilateral agreement on air transport.⁽²²⁾

Seventh Conference
(Cairo - 1957)

The Subcommittee adopted a number of recommendations the most important of which may be summarised as follows:

(1) That an ad hoc committee be charged with the task of laying down a draft convention for the proposed (Pan) Arab airlines.

(2) That the Arab countries be urged to adhere to the international conventions such as Warsaw Convention 1929, and Rome Convention 1952 and any amendments thereto.

(3) That the draft multilateral agreement on air transport be referred to the proposed Arab Council of Civil Aviation for further study.⁽²³⁾

Eighth Conference
(Cairo - 1959)

A summary of the following selected recommendations adopted by the Sub-committee may be of our concern here:

(1) That the Arab States be urged to accept the new draft convention on the Arab Council of Civil Aviation prepared in this meeting instead of the previously proposed one. It will be noted that there was another draft prepared by the Secretary General of the Arab League and both drafts were to be sent to the Arab States for further study.

(2) That the Arab States be urged to take one attitude at the meetings of the Assembly of ICAO.

(3) That ICAO should be consulted in the question of nationality of the proposed Pan-Arab airlines and its aircraft, and in the responsibilities of participating states.⁽²⁴⁾

In March, 1961, an ad hoc committee composed of Arab experts met in Baghdad under the auspices of the Arab League and laid down a final draft convention on Pan-Arab Airlines which was approved by the Economic Council of the Arab League in its meeting in April, 1961. This convention was signed on April 17, 1961, by Iraq, Jordan, Kuwait, Saudi Arabia, and the United Arab Republic.⁽²⁵⁾

In August, 1961, a meeting of some heads of the Arab civil aviation authorities and airlines under the auspices of the Arab League was held at Bhamdon-Lebanon (attended by representatives of

Jordan, Kuwait, Lebanon, Tunisia, and the United Arab Republic). Many subjects were agreed upon, the most important of which may be summarized as follows:

(1) That the Arab States consider the question of eliminating or reducing restrictions on certain flights. And that they study the Multilateral Agreement on Commercial Rights of Non-Scheduled Air Services in Europe, signed at Paris on 30 April, 1956.⁽²⁶⁾

(2) That the Arab States follow certain principles regarding Fifth Freedom to be granted to Arab air carriers between points in Arab countries.⁽²⁷⁾

(3) That granting of the Fifth Freedom to foreign airlines between points in Arab countries be prohibited and such previously granted freedom be withdrawn. This freedom, however, may be granted on temporary basis between points in Arab countries whose airlines do not serve such points, and in this case consultation should be made between Arab States concerned before such freedom is granted.⁽²⁸⁾

(4) That an agreement on granting the first two freedoms between Arab countries be sought. And that, until an agreement is reached for the exchange of transit rights, each Arab State be asked to grant all facilities for aircraft of other Arab countries to fly over its territory.⁽²⁹⁾

(5) That granting of the First Freedom to foreign airlines operating scheduled international air services in an Arab country and routed over the territory of another, and that the question of obtaining Fifth Freedom privilege for Arab air carriers in foreign countries be studied.⁽³⁰⁾

(6) That the Arab states encourage their airlines to enter into pooling agreements on Third and Fourth Freedoms traffic on points in Arab countries or where more than one Arab carrier serve such points.⁽³¹⁾

(7) That the Arab countries encourage their national airlines to enter into pooling agreements to share traffic of Third and Fourth Freedoms between Arab countries and foreign countries.⁽³²⁾

(8) That the Arab countries encourage their national airlines members in IATA to take a unified attitude toward subjects to be discussed by this Association.

Ninth Conference
(Tunisia - 1961)

The Subcommittee adopted some recommendations of direct relation to air transport, which may be summarized as follows:

(1) That the Arab countries collaborate to the maximum extent possible in facilitating entry to and departure from their territories of aircraft, passengers, cargo, and mail in the light of Annex 9 of the Chicago Convention and the European Civil Aviation Conferences (ECAC).⁽³³⁾

(2) That Arab aircraft operating non-scheduled flights may enter the territory of any Arab country or depart therefrom without its prior permission (except for air traffic control purposes), where such aircraft are engaged in:

- (a) flights for the purpose of emergency or humanitarian needs.
- (b) taxi-class passenger flights, i.e., special flights hired by a person for emergency need, provided that the aircraft does not have a seating capacity of more than six passengers and that the destination is chosen by the hirer and that no part of the capacity of the aircraft is resold to the public.
- (c) flights on which the entire space is hired by a single person for the carriage of his staff or merchandise, provided that no part of such space is resold.
- (d) flights of inclusive tours.⁽³⁴⁾

(3) That, in order to encourage air travel between Arab countries and to reduce operating costs for Arab carriers, each Arab state in its bilateral agreements grants Fifth Freedom privilege without any restrictions on points between Arab countries except what is considered necessary for freight and the number of frequency.

(4) That, in order to obtain Fifth Freedom privileges in foreign countries, the Arab states concerned have to grant this freedom to foreign airlines serving points in Arab countries. This freedom should be granted, however, in the least possible limits and as the case may require.

(5) That the question of granting First Freedom to foreign airlines operating scheduled international air services in an Arab country and routed over the territory of another be left to the discretion of the state flown over.

(6) That in their bilateral agreements, the Arab countries grant each other Fifth Freedom privileges between their territories and foreign countries whenever this is possible.⁽³⁵⁾

Tenth Conference
(Tunisia - 1964)

The Subcommittee adopted a number of recommendations. Those of direct relation to air transport may be summarized as follows:

(1) That an Arab organization of Arab carriers similar to that of IATA, be established and those carriers be urged to join the organization.⁽³⁶⁾

(2) That the draft convention on Arab Council of Civil Aviation as amended by the Secretary General of the Arab League be put into effect and Arab states be urged to sign, ratify or adhere to it.

In November, 1964, an important Conference of Arab Ministers of Transport was convened in Beirut under the auspices of the Arab League. Among subject discussed was civil aviation in connection with which many decisions were taken. Those of direct relation to air transport may be summarized as follows:

(1) That the Arab states which did not sign or ratify or adhere to the Convention on World Arab Airlines be called upon to do so.⁽³⁷⁾

(2) That an Arab Air Carriers Organization, similar to that of IATA, be established and that all Arab carriers be urged to meet and lay down a draft convention to this effect.⁽³⁸⁾

(3) That the Arab states be called upon to sign and ratify or adhere to the convention on Arab Council of Civil Aviation (as amended by the Secretary General of the Arab League) which will be opened for signature.⁽³⁹⁾

A special meeting under the auspices of the Arab League attended by representatives of 15 Arab air carriers was held at Cairo in August, 1965. An agreement was reached on the statute of the Arab Air Carriers Organization which was signed on August 25, 1965, by representatives of 12 airlines. It was further agreed to refer the question of reducing local tariffs between Arab states to this Organization. A recommendation calling upon Arab states to facilitate granting of freedoms of the air between Arab countries was adopted at the meeting. Governments of the Arab states were asked to consider the question of cancelling entry visas between Arab countries as a first step to cancel passport requirements for the purpose of encouraging tourism and facilitating air travel.

Generally speaking, the League's activities covered all civil aviation aspects of common interest to the Arab countries.⁽⁴⁰⁾ Various conferences and meetings organized by the League were held after 1965 to consider matters of civil aviation.⁽⁴¹⁾ All relevant activities in this field were to be taken over as from 1967 by the newly established Arab Council of Civil Aviation.

It seems quite clear after this brief presentation that the Arab League was successful to a certain extent in its mission in the field of civil aviation. No doubt, the League has encountered a number of difficulties before it could accomplish its work. But its achievements are of far-reaching importance in the integration of Arab civil aviation.⁽⁴²⁾ The loose powers given to the League and its decision-making process were perhaps responsible for any failure or any prolonged discussions before an agreement or a decision could be reached.⁽⁴³⁾

As a regional organization, the Arab League plays an important role in closer Arab integration.⁽⁴⁴⁾ In fact, all existing regional agreements and arrangements between the Arab states are the production of the League.

As it stands now, the League of Arab States is capable of maintaining a minimum order of the so long sought unity between the Arab countries for many years to come. ⁽⁴⁵⁾

CHAPTER II

SECTION 2. Regional Agreements

III - The Arab Air Transit Convention

The Convention is one of the products of the Arab League. It was approved by the Arab League Council on 25 March, 1963. It came into force on 18 June, 1965. Six Arab States are now parties to the Convention. They are Iraq, Jordan, Kuwait, Lebanon, Syria, and the United Arab Republic.⁽⁴⁶⁾

Compared to the International Air Services Transit Agreement, the Arab Transit Convention varies in two main points:

- (1) It is open only for the Arab countries, and
- (2) It grants the first two freedoms to all Arab civil aircraft.

Whereas the Transit Agreement is open to all ICAO members and grants the first two freedoms only for scheduled international air services.

It is beyond doubt that the grant of transit rights is necessary for securing a sound and economic operation, and stimulating scheduled air transport. The first step towards achieving this purpose at inter-regional level is that the Arab states should join the Arab Transit Convention. The second step at the international level is that they should join the International Transit Agreement. Up till now seven Arab States have accepted the Agreement, including Iraq, Jordan, and Kuwait.⁽⁴⁷⁾

It seems appropriate to present here a translation of the Convention. (48)

"CONVENTION
on the grant of the First and the
Second Freedoms to the Arab Civil
Aircraft

The Governments of.....

With a view to realizing the objectives of the Arab League Pact, and being desirous of unifying their efforts in the field of commercial civil aviation, advancing air transport industry, and strengthening their mutual ties, have agreed to the following:

Article 1

Each Contracting State shall grant the other Contracting States, regarding their civil aircraft, the following two freedoms:

- (1) Freedom to fly across its territory without landing.
- (2) Freedom to land at its international airports for non-commercial purposes.

To secure their safety, the aircraft shall observe all rules laid down for regulating air traffic.

Article 2

Subject to the observance of the provisions of the present Convention and the international rules in force, each Contracting State may designate the route to be followed over its territory by any flight and the airports which may be used.

Article 3

The present Convention shall be subject to ratification by the Contracting States. Instruments of ratification shall be deposited with the Secretariat General of the Arab League which shall make a report thereon and notify it to the other Contracting States.

Article 4

Any Arab State that may become a member of the League has the right to adhere to the present Convention. Adherence may be made by a notice transmitted to the Secretary General of the Arab League who notifies such adherence to the Contracting States.

Article 5

The present Convention shall come into force one month after the deposit of instruments of ratification by four Contracting States with the Secretariat General of the Arab League.

Article 6

Any Contracting State may denounce the present Convention one year after serving a notice of denunciation to the Secretary General of the Arab League who shall notify it to the other Contracting States.

In witness whereof, the undermentioned plenipotentiaries have signed the present Convention on behalf of their respective Governments.

Done at the City of Cairo the twenty-fifth day of March, 1963, in one copy to remain deposited with the Secretariat General of the Arab League. Certified copies of the Convention shall be transmitted to each of the Contracting States.

For the Governments of:

(Signatures)

CHAPTER II

SECTION 2. Regional Agreements

IV - Convention on the Civil Aviation Council
of the Arab States

The Convention is one of the achievements of the Arab States members in the Arab League. According to its Article 17, the Convention came into force on 4 October, 1967, one month after Jordan, the fourth State, had deposited its instruments of ratification with the Secretariat General of the Arab League. By the end of 1969, eight Arab states have ratified or adhered to the Convention: (49)

	<u>Date of Signature</u>	<u>Date of deposit of ratification or adherence</u>
Iraq	--	26.12.1965
Jordan	4.2.1967	3.9.1967
Kuwait	30.6.1966	--
Lebanon	--	3.6.1968
Morocco	4.11.1968	4.11.1968
Sudan	--	31.10.1968
Syria	25.9.1965	17.8.1966
U.A.R.	8.6.1965	1.3.1966
Yemen	--	3.11.1969

The Council has so far held five sessions the last of which was on 17 November, 1969. It laid down its Statute and studied many subjects. The most important recommendations made may be summarized as follows: (50)

(1) That an expert be charged with the task of rendering into Arabic the aviation terminology from letter "D" to letter "Z". The translation shall be submitted to the competent commission to review the comments of the Arab states on the translation, and to agree on its final form. (51)

(2) That the Unified Arab Air Law be submitted to the Council of the Arab League, after being in its final draft, so that action be taken for putting the Law into force. (52)

(3) That the Member States of the Council be urged to render assistance to the Yemen and Southern Yemen Republics to raise the level of civil aviation there. (53)

(4) That the Arab states should cooperate with regional and international organizations which are directly connected with civil aviation. (54)

(5) That the Arab states who did not ratify the Convention on World Arab Airlines be urged to expedite ratification and allot their share in the airline's capital. (55)

(6) That amendments be made to the project of the Arab multilateral agreement on air transport in the light of views expressed by all Arab air carriers concerned. (56)

(7) That member States recognise the certificates of competency held by Arab crew members and the certificates of airworthiness issued by any Arab state.

(8) That member States be urged to adhere to the Tokyo Convention of 1963, as early as possible. (57)

The Council is studying now the possibility of operating Arab air services to Latin America.

What is noticed in this connection is that some Arab States of North Africa have not effectively participated in the joint efforts made within the Arab League in the domain of civil aviation, and consequently remained outside the conventions formulated within the League. This of course weakens the good efforts other states are making to achieve an Arab integration of civil aviation. Again civil aviation is placed at the mercy of national policies.

It seems advisable to present here a translation of the Arabic text of the Convention.⁽⁵⁸⁾

"CONVENTION"
ON THE CIVIL AVIATION COUNCIL OF
THE ARAB STATES

The Governments of..... being desirous of realizing the provisions of paragraph (B) of Article 2 of the Pact of the League of Arab States, relating to stimulation of close cooperation in the field of aviation, by means of consolidating the modes of air communication between them, and cooperating in the field of air transportation in line with the progress of aviation in the world, and being desirous of coordinating their efforts and potentialities in the field of civil aviation and working towards its progress at both Arab and international levels, have agreed on the following provisions approved by the Council of the League of Arab States on 21 March, 1965, in its forty-third Session where the Council called upon the Governments of the member states to abide by these provisions.

CHAPTER I

The Council

Article 1. Membership

- (a) A Civil Aviation Council shall be established having its permanent Headquarters at the League of Arab States. It may hold its sessions anywhere else if it so desires.
- (b) The Council shall be composed of the Arab League member States and other non-member States wishing to join the Convention, provided they are accepted by two thirds' majority.

Article 2. Purpose

The purpose of the Council is to work towards the progress of technical and economic principles of air transport and to promote and develop it in the Arab and international fields.

Article 3. Powers

The Council shall perform all such functions as necessary for the realization of its purposes, particularly the following:

- (1) Laying down the statutes and rules of procedures.
- (2) Approving the annual budget of the Permanent Office and determining the quota of each member State.

- (3) Cooperating to the fullest possible extent with the League of Arab States and international organizations particularly with the International Civil Aviation Organization for the realization of common objectives and progress of civil aviation.
- (4) Studying the international regulations and recommendations relating to civil aviation with a view to adopting the most suitable for the interest of Arab countries.
- (5) Studying international civil aviation agreements with a view to recommending adherence thereto should they be of benefit to member States.
- (6) Aiming at the unification of regulation, legislation and terminology in Arab countries.
- (7) Exploring the means which will ensure the progress of civil aviation in Arab countries.
- (8) Conducting researches on the various aspects of air transport and navigation and facilitating the exchange of such information among the countries concerned.
- (9) Considering every situation that may impede the progress of air navigation in the Arab countries at the request of any member State and making suitable recommendations.

- (10) Settling the differences and disputes that may arise between member States in the field of civil aviation if such differences and disputes are brought to the attention of the Council by States concerned. This, however, does not apply to differences relating to the interpretation or implementation of the Convention which are governed by the provisions of Article 10 thereof.
- (11) Studying travel fares on all Arab carriers and issuing relevant recommendations.
- (12) Setting up subcommittees to discuss the subjects referred to them by the Council.
- (13) Appointing personnel of the Permanent Office upon the proposal of the President.

Article 4. Voting

- (1) Each member State shall have one vote.
- (2) Resolutions and recommendations are adopted by simple majority unless it is stipulated otherwise. The resolutions of the Council are binding to the member States that accept them.

Article 5. Appointment of President and Vice-President

- (1) The Council shall appoint by simple majority a full time President from among specialists in aviation

affairs in the member States for a three-year term renewable for another three years.

- (2) The Council shall elect by simple majority two Vice-Presidents from among representatives of the member States. The elected Vice-Presidents, however, would retain their capacity as representatives of their respective Governments.

Article 6. Powers and Functions of the President

- (1) Convening the Council.
- (2) Presiding its sessions and directing discussions without having a counted vote.
- (3) Representing the Council.
- (4) Undertaking, in the name of the Council, all tasks entrusted to him.
- (5) Submitting to the Council the annual draft budget of the Permanent Office for approval.
- (6) Heading the Permanent Office, supervising its work and proposing the appointment of needed personnel.
- (7) Drafting a statute for the Office and referring it to the Council for final decision.

Article 7. Convening of the Council

- (1) The Secretary General of the League of Arab States shall call the first meeting of the Council one month after the deposit of instruments of ratification by four States.
- (2) The Council shall hold two ordinary sessions every year at the invitation of its President and shall meet in extraordinary sessions whenever necessary at the request of one of the member States or the President.
- (3) A quorum is established when the meetings are attended by representatives of the majority of member States.

CHAPTER II

THE PERMANENT OFFICE

Article 8. Composition of the Office

- (1) The Council shall have a Permanent Office composed of the President and a number of technical and administrative personnel.
- (2) The President shall supervise the Office's work and shall be responsible to the Council for all the duties entrusted to it.
- (3) The President and personnel of the Office shall not be subject in carrying out their duties to any authority other than that of the Council.

Article 9. Functions of the Office

The Office shall undertake the following functions:

- (1) Preparation of studies and researches required by the Council.
- (2) Arrangements for the meetings of the Council and its subcommittees and communication of its resolutions to the member States.
- (3) Preparation of memorandums and studies included in the draft agenda of the Council and its subcommittees and distribution of them to the member States at least one month before the Council's meeting.
- (4) Drafting the agenda of the meetings and referring it to the Council for approval.
- (5) Communication to the Council of all applications for admission or withdrawal submitted by any Arab country.
- (6) Submission to the Council of an annual report on the activities of the Office.
- (7) Following up the implementation of the Council's resolutions and recommendations with civil aviation authorities of the member States.

CHAPTER III

GENERAL PROVISIONS

Article 10. Settlement of Disputes

If a dispute arises between two or more member States on the interpretation or application of the Convention and negotiations fail to reach a solution, the Council shall settle the dispute at the request of any of the parties concerned. No member State has the right to vote when the Council is dealing with a dispute to which it is a party. The country concerned may appeal against the Council's decision before the Arab Court of Justice when the latter is established. Until that court is established, appeals may be submitted to the Arab League Council. Appeal shall be accepted only within 60 days from the date on which the decision of the Civil Aviation Council has been known to the parties.

Article 11. Amendment of the Convention

The Convention can be amended upon the approval of two thirds of the Council's members, and the amendment shall come into force only one month after the deposit of their instruments of ratification.

Article 12. Application of Privileges and Immunities of the League of Arab States to the Council and its Permanent Office

The Agreement on Privileges and Immunities of the League of Arab States applies to the meetings, committees and members of the Council as well as to the Permanent Office, its President and personnel.

Article 13. Relationship between the League of Arab States
and the Civil Aviation Council

An appendix shall be attached to the Convention explaining the relationship and aspects and means of cooperation between the League and the Council.

Article 14

The States of the Arab League who did not sign the present Convention may adhere to it by a notice served to the President who will, in turn, communicate it to the member States and to the Secretary General of the League.

Article 15. Withdrawal from the Convention

Any member State can withdraw from the Convention one year after the date of communicating its decision to the President who, in turn, informs the Secretariat General of the Arab League.

Article 16. Ratification of the Convention

The Convention shall be ratified by the signatories as soon as possible in accordance with the internal regulations of each. Instruments of ratification shall be deposited with the Secretariat General of the Arab League who will communicate the deposit minutes of each member State to the other contracting States and to the Aviation Council when the latter is established.

Article 17. Date of coming into force of the Convention

The Convention shall come into force one month after the deposit of instruments of ratification by four States with the Secretariat General of the Arab League.

In witness thereof the duly authorized Plenipotentiaries whose names are listed below have signed the Convention on behalf of their Governments.

Done at Cairo in Arabic on the Twenty-First of March, 1965, in one original copy to be kept at the Secretariat General of the Arab League.

A true copy was handed to each of the contracting States.

Signed on behalf of the Governments of.....

CHAPTER II

SECTION 2. Regional Agreements

V. - The Arab Air Carriers Organisation (AACO)

Twelve Arab air carriers have signed the AACO Statute on 25 August, 1965.⁽⁵⁹⁾ Some of the Arab carriers remained outside the Organisation.

The first problem placed before the Organisation was that of reducing the tariffs to be applied on regional services between the Arab countries. The Organisation succeeded in reducing such tariffs.⁽⁶⁰⁾

The Organisation was consulted on the proposed Arab multi-lateral agreement on air transport. An ad hoc committee of AACO and the Permanent Office of the Arab Civil Aviation Council was charged with the task of studying the proposed agreement. The committee met between 6-7 August, 1969, under the auspices of the Arab League, and adopted some recommendations which may be summarized as follows:

(1) That the exchange of the five freedoms of the air on liberal and cooperative basis was found important and necessary.

(2) That the exchange of such freedoms should be effected as follows:

(a) The first four freedoms should be exercised without prior permission from the authorities concerned.

- (b) The fifth freedom is to be granted subject to the regulations of the State concerned.
- (c) The air carriers concerned shall, by agreement, determine the capacity to be offered and the freight to be carried on a specified route in accordance with the requirements of the actual traffic demands on this route, provided that the agreement on capacity shall be modified if the actual traffic demands so require. Any agreement on capacity shall be subject to the approval of the aeronautical authorities concerned.
- (d) In case of a pool agreement between airlines of two or more contracting States, the airline shall not be subject to the conditions imposed by paragraphs (b) and (c) above.
- (e) The exercise of stop-over rights in respect of any group of passengers or an amount of freight shall be permitted in the territory of a contracting State, on condition that they are to be taken on for a next stage by the same airline which brought them. The minimum duration of stop-over shall be ten days unless otherwise agreed by the two States concerned.

(3) That the proposed multilateral agreement covers also non-scheduled services, provided that a permission is to be obtained from the State concerned. Arab air carriers who enter into a pool agreement shall be exempt from obtaining this permission.

It seems necessary in the context of regional organization to provide here a translation of the Arabic text of the Statute. (61)

S T A T U T E
of
THE ARAB AIR CARRIERS ORGANISATION

The Arab air carriers, whose representatives at the invitation of the Secretariat General of the Arab League, met from 23-25 August, 1965, at the Headquarters of the League, being desirous of creating an organisation that brings together those carriers and foster cooperation among them, have agreed to establish an Arab air carriers organisation in accordance with the undermentioned provision of the Statute:

Article 1 - Designation

An Arab organisation of independent and juristic person shall be established and given the name "The Arab Air Carriers Organisation (AACO)" which will be hereinafter referred to as "The Organisation."

Article 2 - Headquarters of the Organisation

The General Assembly shall, by absolute majority of active members, designate the location of the permanent office of the Organisation, and has the right to change the location on condition that the proposal of change be submitted by three active members and approved by two thirds of the active members.

Article 3 - Objectives of the Organisation

1. Promotion of cooperation among air transportation institutions and companies for the purpose of enhancing regular air transportation so that they may operate safely and economically to the benefit of the Arab countries, and encouraging air traffic and tourism among the Arab countries, and between them and the foreign countries, by all ways and particularly:
 - a- Studying tariffs and conditions of carriage among Arab countries.
 - b- Studying tariffs and conditions of carriage among Arab countries, and between them and the Americas, Europe, and the rest of the world.
 - c- Promoting cooperation in the fields of maintenance, ground services, and training.
 - d- Coordinating commercial operations within the framework of bilateral or multilateral agreements.
 - e- Endeavouring to pool the long-range services of the Arab air carriers.
2. Promotion of economical and technical cooperation among Arab air carriers especially concerning the coordination of the policy of selection of types of aircraft and equipment.

3. Cooperation with Arab and international organisations, and coordination of work towards:
 - a- The Civil Aviation Council of the Arab States.
 - b- The International Civil Aviation Organisation.
 - c- The International Air Transport Association.
4. Integration and defence of the policy of the members in international conferences of air transport.
5. Adjustment of problems and settlement of disputes among members.

Article 4 - Membership

The Organisation shall be composed of two kinds of members:
Active and Associate.

- A) Active Members: Each Arab air carrier shall be an active member if it operates, under a legal authorization, a scheduled air service open to public for the carriage of passengers, mail or cargo for remuneration provided that the air carrier bears the nationality of a State member in the Arab League, that more than half of its capital is Arab, that its operation is under effective Arab control, and that it owns aircraft having a capacity not less than 60% of the total capacity actually offered by such carrier.
- B) Associate Members: Any Arab air carrier has the right to apply for associate membership in the Organisation if it operates, under a legal authorisation, a scheduled air service open to public for the carriage of

passengers, mail or cargo for remuneration provided that the air carrier bears the nationality of an Arab State, that has not yet joined the Arab League, that more than half of its capital is Arab, that its operation is under effective Arab control, and that it owns aircraft having a capacity not less than 60% of the total capacity actually offered by such air carrier. However, when the State of the associate member joins the Arab League, the associate member automatically becomes an active member.

Arab air carriers whose function is limited to the operation of non-scheduled services have the right to be associate members but under the following conditions:

- a- That more than half of its capital is Arab, its operation is under effective Arab control, and it owns aircraft having a capacity not less than 60% of the total capacity actually offered by such carrier.
- b- That those aircraft are registered in and bear the nationality of one of the Arab States.
- c- That its head office is in one of the Arab States.
- d- That it should prove to have operated actual air services for at least three successive years.
- e- That it should submit its regulations to the General Assembly, and applies the same technical conditions imposed by the Organisation.

f- That it should submit an application for membership in writing to the Director General of the Organisation who will present it to the General Assembly to decide upon. Decision shall be final.

Article 5 - Cease of Membership

1. Membership shall cease to exist if the member fails to comply with any of the conditions stipulated in Article 4, or violates any provision of the Statute or the regulations issued in accordance thereof after it has been proved that such failure or violation did occur, and upon a decision of the General Assembly taken by majority of active members.
2. Membership terminates when the member withdraws from the Organisation in writing to the President who shall take steps to notify the other members of the withdrawal which shall take effect one year from the date of notification.

Article 6 - Revenues and Rules

1. The budget of the Organisation shall consist of the following revenues:
 - (A) Contributions of members as fixed by the General Assembly in the light of the studies presented by the Director General according to the undermentioned rules:
 - (1) Active and associate members shall pay their contributions to the Permanent Office. Contributions are calculated on the basis of the American dollar.

(2) The contribution of the active member shall be composed of a fixed amount of three thousand American dollars per annum, and of an additional amount in the same currency collected to cover sums needed to meet the requirements of the annual budget as approved by the General Assembly. This additional amount shall be fixed with respect to each member in proportion to his operations during the year that precedes the year of the budget. The proportion is based on the ton-kilometres performed on the member's services: domestic and international, whether scheduled or non-scheduled. This principle is equally applied to passenger or freight carriers.

(3) The contribution of the associate member shall be half of the active member's contribution as stated in paragraph (2) above.

(4) Any air carrier that adheres to the Organisation or changes its status from associate to active membership during any one fiscal year shall pay the contribution due on it in proportion to the period remaining from the fiscal year in question.

(B) Any other revenues including voluntary contributions.

2. The fiscal year begins on first January and ends on thirty-first December of each year.

3. In case any member withdraws or ceases to be a member he shall not have the right to claim any dues he has already paid. This shall not affect the member's duties towards the Organisation in fulfilling the obligations incumbent on him till the date of debarment of membership or withdrawal.

Article 7 - Organs

The organs of the Organisation are:

- 1- The General Assembly, which is the highest authority in the Organisation.
- 2- The Permanent Office, which is the executive organ of the Organisation. It derives its powers from its committees and conferences, and from the General Assembly.

Article 8 - General Assembly

A. Composition

The General Assembly shall be composed of representatives of active members of the Organisation. Associate members may be invited to attend its sessions.

B. Meetings

- (1) The General Assembly shall hold an annual session at such a place and date as specified by the preceding session. Extraordinary meetings may be convoked at the request, in writing, of three active members submitted to the President, or upon the invitation of the President at the request of

the Permanent Office. The Director General shall call to the extraordinary meeting within ten days minimum and twenty days maximum from the date of receipt of request on condition that it be held within fifteen days from the date of the invitation.

- (2) More than half of the active members is required to constitute a quorum for the meetings of the General Assembly.
- (3) Each active member shall have one vote irrespective of the number of his representatives attending the meeting, and he may designate a voting representative. Representation must be at a high level in view of the importance of topics discussed at the General Assembly.
- (4) Decisions shall be taken by majority of all active members, except where otherwise stated.
- (5) Associate members may attend sessions of the General Assembly and of the committees, and may participate in discussions but shall not enjoy the right to vote.

C. Powers

The General Assembly is the highest authority in the Organisation, and has the right to take such measures as to realize the objectives of the Organisation provided for in Article 3. The powers also include:

- (a) Approval of agenda and minutes of sessions.
- (b) Election of the President of the Organisation who presides the meetings of the General Assembly during his term of office.

- (c) Drawing up of the general, technical, economic, financial, and administrative policies of the Organisation.
- (d) Selection of the Director General and determination of his emoluments and powers.
- (e) Approval of the administrative and technical composition of the Permanent Office as proposed by the Director General, and the bases of staff salaries.
- (f) Consideration of the annual report of the Director General made on the activities of the Organisation.
- (g) Setting up of committees and specification of their functions.
- (h) Study of all reports sent by the Permanent Office and its committees, and taking action thereon.
- (i) Study of proposals made by members and taking action thereon.
- (j) Determination of contributions.
- (k) Study and approval of the budget for the following year and appointment of general audits.
- (l) Review of the Statute of the Organisation, and making amendments to it, if necessary, according to Article 15.
- (m) Request the Director General, subcommittees, or conferences to study matters that are deemed appropriate to be forwarded to such bodies.

Article 9 - Functions of the President.

1. The term of presidency of the Organisation shall be one year as from the date of election. The President shall continue in office until a successor is elected at the first meeting of the General Assembly convened after the expiry of the term of office.
2. To preside the ordinary and extraordinary meetings of the General Assembly during the annual session. Should he be unable to attend any meeting, the General Assembly shall elect a temporary chairman for such a meeting.
3. To represent the Organisation where he is asked by the General Assembly.
4. To adopt, on behalf of the General Assembly, the minutes of the last sessions of the Assembly.
5. To adopt on behalf of the General Assembly the urgent decisions that are submitted by the Director General provided that such decisions be submitted to the first general assembly for approval.

Article 10 - The Permanent Office

It shall be composed of:

1. One full-time chief. He will be called "Director General" and will be appointed by the General Assembly for a period of three renewable years.
2. A number of divisions and staff necessary as considered requisite for the requirements of the work by the General Assembly. The conditions of employment of the Director General and the Office staff shall be defined in accordance with a by-law to be enacted by a decision to be taken by the President of the General Assembly.

Article 11 - Functions of the Permanent Office

This Office shall be responsible for the implementation of all decisions taken by the General Assembly and carrying out the activities of the Organisation. The functions include the following:

1. Preparation of such economic and technical research works and studies as necessary for stimulating air transport industry in the member States, and presentation of them to the General Assembly for decision.
2. Studying the means of coordinating technical, economic, and commercial cooperation among member air carriers, putting forward proposals that may materialize such cooperation, and conducting such studies and research work that aim at achieving full cooperation. among the members of the Organisation.
3. Presentation of an annual report to the General Assembly on the work and achievements of the Office during the period that falls between two sessions of the Assembly.
4. Preparation of the budget of the Organisation for the coming year, and presentation of it to the General Assembly for approval.
5. Submission to the General Assembly of a report on the Organisation's accounts of the previous year.
6. Transmission of publications on the development of air transport in the member States, and circulation of information received.
7. Furnishing the members with information and proposals received from international organisations and from the members.
8. Notification of the members of adherences or withdrawals.

9. Request the members to submit proposals three months before the meeting of the ordinary General Assembly. Such proposals shall be received by the Office two months prior to the date of meeting.
10. Preparation of the draft agenda of the annual General Assembly, and coordination, printing and sending of proposals to the members of the Organisation so as to reach them at least two months before the meeting takes place.
11. Supervision of training systems set up by the Organisation.
12. Carrying out the secretariat function of the General Assembly, the Subcommittees and the conferences.
13. Collection and coordination of the points of view of the members on subjects brought forward at international conferences in order to adopt a unified working plan towards such subjects whether they concern all or some of the members.
14. Following up of the decisions and recommendations of the General Assembly.
15. Receipt of complaints and disputes and taking necessary steps for settlement.
16. Submission to the General Assembly of proposals that are deemed appropriate for the organisation of meetings.

Article 12 - Functions of the Director General

1. To manage the work of the Permanent Office, and to be responsible to the General Assembly for the duties of this Office.

2. To assume the powers of the Organisation's Presidency in case it becomes vacant before the expiry of the term of office, until a new president is elected by an ordinary or extraordinary General Assembly which is to be held within a period of three months at most.
3. To attend on approval of the President the conferences held by international civil aviation organs. He may delegate one of his assistants when necessary.
4. To organise work, appoint and discharge staff, and delegate technical advisors in accordance with regulations adopted by the General Assembly.
5. To exercise the right of disbursement on the basis of the previous budget should the approval of the new budget be delayed. This will be effected on a monthly basis to be approved by the President.
6. To open accounts with the bank or banks specified by the General Assembly where the money of the Organisation shall be deposited. The Director General has the right to sign the cheques of expenditure on behalf of the Organisation and in accordance with the financial regulations adopted by the General Assembly.

Article 13 - Violation of the Laws of a State by the Decisions of the General Assembly

Should any member find out that it would be difficult for him to implement any of the decisions taken by the General Assembly in view that it violates a law or regulation in force in his country, he shall notify the Permanent Office to this effect in writing.

Upon receiving this notification the Permanent Office shall circulate it to the other members giving notice to suspend the validity of the decision, and shall at the same time bring it forward to the first General Assembly for re-consideration.

Article 14 - Duties of the Members

Each member shall supply the Permanent Office with information dealing with air traffic statistics and air transport rates as well as any other information about his air fleet and its operation.

Article 15 - Amendment of the Statute

The provisions of this Statute may be amended by the General Assembly provided it is attended and decisions are taken by four-fifths of the active members, and that the text of an amendment should have been sent to each active member at least thirty days from the date of the meeting of the General Assembly.

Article 16 - Dissolution of the Organisation

The Organisation has no specific duration, and may be dissolved only at an extraordinary session of the General Assembly specially called for this purpose. Decision of dissolution shall be taken by the majority of four-fifths of the active members. In this case the movable and immovable property of the Organisation shall be transferred to the Arab League.

Article 17 - Relationship between the Organisation and the IATA

Nothing in the present Statute contradicts with the regulations of the International Air Transport Association.

Each member in this Organisation has the right to be a member in the IATA, and to meet his obligations toward it to enjoy his rights therein.

Article 18 - Signature and Acceptance of the Statute

The delegates of the Arab Air Carriers who have signed the present Statute are considered as active members and to have accepted its provisions as set forth in Article 4 thereof.

Done at the city of Cairo on twenty-fifth August, 1965, in two original copies one to be kept at the Secretariat General of the Arab League, and one to be kept at the Headquarters of the Organisation. A certified copy shall be transmitted to each member.

The present Statute has been signed on behalf of each of the following air carriers....."

(Signatures)

CHAPTER II

SECTION 2. Regional Agreements

VI - Convention on the Establishment of World Arab Airline

The Convention is one of the products of the Arab League.⁽⁶²⁾ It was subject to prolonged discussions and studies in the League. It was signed by six Arab states on 17 April, 1961: Iraq, Jordan, Kuwait, Saudi Arabia and the United Arab Republic. The sixth, Syria, signed it on 27 February, 1964.⁽⁶³⁾ The Convention was later ratified by four States: Iraq on 25.8.1965; Jordan, 1.6.1964; Kuwait, 18.6.1961; and Syria, 23.11.1964. Only three States have allotted their contributions: Iraq (20%); Jordan (1%); and Kuwait (15%).⁽⁶⁴⁾

The Convention is not yet in force in view that its Article 50 provides that the Convention shall come into force one month from the date of deposit of instruments of ratifications by members whose total contributions are not less than 'sixty percent' of the total capital of the Airline. Only 36% of the total capital has been made since the Convention was signed.⁽⁶⁵⁾

There is no doubt that the establishment of such an airline becomes more and more necessary in the supersonic and jumbo jet age. It seems that the Arab States are still not inclined to accept the Convention.⁽⁶⁶⁾ Perhaps the Arab air carriers fear of anticipated conflict of interests should the Airline be brought into existence.

All what can be said in this respect is that the foundation of such a joint operating organisation needs a joint actual step to be taken otherwise the Airline remains in the realm of the unknown. The text of the Convention is included in Appendix I.

P A R T T H R E E ..
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CHAPTER I

Section 1 : The Five Freedoms of the Air

Section 2 : Scheduled International Air Services

CHAPTER II

Bermuda Agreement - A Model for
Bilateral Air Transport Agreements

CHAPTER I

THE FIVE FREEDOMS OF THE AIR
AND
SCHEDULED INTERNATIONAL AIR SERVICES

A quick exposition of what is meant by "The Five Freedoms of the air" and "Scheduled International Air Services" is indispensable to this study of the bilateral air transport agreements concluded by the five Arab States under which agreements such freedoms are granted to airlines for operating scheduled international air services.

Section 1

THE FIVE FREEDOMS OF THE AIR

Prior to World War II, no real attempt was made to analyse and classify the privileges which a state may grant to foreign commercial air carriers to operate scheduled international air services into or across its territory.⁽¹⁾

By the time the Chicago Conference met in 1944, these privileges were split into five elements, which have come to be known as the 'Five Freedoms' of the air.

Freedom I: The right of an aircraft of one country to fly across the territory of another country without landing.⁽²⁾ In other words, it is the right of transit or freedom for civil aircraft of one country to fly through the airspace of another country without landing in the latter's territory.

An airline operating scheduled international air services should obtain prior permission or authorization from the state flown over.⁽³⁾ According to the Transit Agreement, this right is merely an authorization granted by the state flown over to the airlines of another contracting State, to fly nonstop across its territory while operating certain agreed routes.⁽⁴⁾

Although this right does not involve the right of commercial operations, its significance lies in the fact that its denial may deprive an airline from the benefit of following the most economical route.⁽⁵⁾

Freedom II: The right of an aircraft of one country to land in the territory of another country for non-traffic purposes.⁽⁶⁾ A state may authorize a foreign airline, operating scheduled international air services, to overfly and land in its territory for technical reasons such as refueling or repairs without having the right to take on or discharge commerce.⁽⁷⁾

The right to land for technical purposes is of practical importance for long-haul flights which have either to land at intermediate points for refueling purposes or sacrifice payload capacity. This right was of greater significance before the long range jet aircraft entered into operation. Maintenance is of no less importance in many cases. (8)

It would therefore be in the interest of most states to have the first two freedoms established as a universal principle for international civil aviation.

It seems, however, that the only way to achieve this objective lies in a world-wide adoption of the International Air Services Transit Agreement. Recognizing this fact, a considerable number of states have accepted the Agreement whereby transit rights for airlines operating scheduled international air services are exchanged between the parties without the need for a prior authorization or permission from the state concerned.

Freedom III: The right of an airline of one country to set down in another country traffic coming from the country of the airline's nationality.⁽⁹⁾ In broad terms, this right of commercial entry would mean freedom for all commercial aircraft to traverse the airspace of any country without the necessity of obtaining its prior permission to land at any public airport and to engage in air commerce.⁽¹⁰⁾ The exercise of this right opens the door for free competition between national and foreign airlines.

Aircraft engaged in air commerce and having the privilege to discharge traffic are subject to "such regulations, conditions or limitations" as the state in which the discharge takes place may consider desirable.⁽¹¹⁾ In practice, states interpreted this provision as giving them virtually unlimited power to restrict or forbid the discharge of traffic.⁽¹²⁾

Again the exercise of this right by airlines operating scheduled international air services is subject to prior permission or authorization whereby a country may authorize a foreign airline of another country to discharge at certain points in the territory of the first country, passengers, cargo, or mail (traffic) coming from the country of the airline's nationality.⁽¹³⁾

It is worthy of notice that such services may be operated without prior authorization according to the provisions of the International Air Transport Agreement 1944, under which the Five Freedoms are exchanged between the States parties to the Agreement subject, of course, to the observance of the conditions laid down therein.⁽¹⁴⁾

Freedom IV: The right of an airline of one country to pick up in another country traffic destined for the country of the airline's nationality.⁽¹⁵⁾ In general, it is the right to pick up traffic in other countries destined for the plane's homeland. The same remarks stated in the case of the third freedom apply here.⁽¹⁶⁾

Freedom V: The right of an airline to carry traffic from a point of origin in one foreign country to a point of destination in another foreign country.⁽¹⁷⁾ In general, it is the right for a foreign aircraft to carry traffic between countries outside its own. The fifth-freedom rights are of special importance in air transportation, particularly to those nations whose airlines operate long-haul international air services since the acquisition of such rights help in increasing their load factor and makes the operation of their long international routes more economical. This had led to the provision of better service and equipment by long haul carriers who become thus more competitive⁽¹⁸⁾ the fact that explains why nations of smaller importance in aviation tend to bargain hard for granting fifth freedom in order to protect their regional services.⁽¹⁹⁾

In the context of discussing the five freedoms, we may mention other freedoms that have entered the framework of international air law since the Chicago Convention. Those freedoms are:

Sixth Freedom: A term applies to that type of fifth freedom traffic carried from a point of origin in one foreign country to a point of destination in another foreign country via the country of nationality of the airline.⁽²⁰⁾

The "Seventh Freedom": It is the international traffic carried by an airline operating entirely outside its home state.⁽²¹⁾

Thus the right to carry traffic from one point in the territory of a state to another point in the same state (cabotage) is placed the last on the list of freedoms of the air.⁽²²⁾

Commenting on the freedoms of the air, Cheng has this to say: "But it hardly needs pointing out that the more refined these distinctions become the more restrictive is the policy pursued; for every newborn "freedom of the air" is in reality an additional shackle on the right to fly of foreign carriers, to be removed only at a price."⁽²²⁾

It is worthwhile, however, to mention that the sixth freedom is still disputable though widely exercised and some states specifically exclude the exercise of such freedom due to its detrimental effect on the basic and primary freedoms of the air since it is an exploitation of third and fourth freedoms for carrying fifth freedom traffic. The seventh and eighth freedoms are rarely granted or exercised except in areas where airlines have not developed sufficiently or where strong cooperation exists between states granting and benefitting from these freedoms.

It would be rather easy to deal with the problems stemming from the actual application of the freedoms of the air had they not been associated with the terms of capacity and tariffs. However, these problems and others find their way to solution in negotiation for the exchange of scheduled international air services between each two individual states.⁽²³⁾

Section 2

SCHEDULED INTERNATIONAL AIR SERVICES

International air transport today is conducted by two main categories: scheduled and non-scheduled services. The former has become the most important sector of international civil aviation since the Chicago Conference. The latter has also its special importance in air commerce. In this brief presentation emphasis is made only on scheduled international air services as they form the main substance of any bilateral agreement on air transport.

Since the early years of civil aviation it has been recognized by all international conventions on the law of the air that the establishment and operation of scheduled international air services could not be regulated by a multilateral agreement. This coupled with the vast developments in all aspects of civil aviation has made it important as an instrument of national policy.

Realizing the importance of civil aviation and in particular scheduled international air transport, States represented at the Chicago Conference 1944 made unsuccessful efforts to reach general agreement on the degree of freedom to be accorded to international air services. The result was a multitude of bilateral agreements and arrangements of varying degrees of formality for the purpose of securing regulation of commercial air transportation.

The Chicago Convention recognized this fact in its famous Article 6 which clearly states that:

"No scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorization of that State, and in accordance with the terms of such permission or authorization." (24)

Furthermore, the international community has made several unsuccessful attempts since the Chicago Conference to reach a multilateral agreement on commercial rights in scheduled international air transport.

The problem was first put before Commission No. 3 of the First Assembly of ICAO in 1947, and was subject to prolonged discussions. (25)

The Geneva Commission on Multilateral Agreement on Commercial Rights in International Civil Air Transport held a special session in 1947, for the same purpose. (26)

Even the European Civil Aviation Conference 1957, which is regional in its nature, came to the conclusion that "the present divergence of views on methods of regulating capacity and allocating routes renders impractical any immediate attempt to adopt a multilateral agreement." (27)

In the Economic Commission of the ICAO Assembly held at San Diego in 1959, the majority of its members were opposed to the suggestion of holding an international conference on the exchange of commercial rights in the period 1960 to 1962. (28)

However, the Chicago Convention mentions the scheduled international air service without giving it any definition. It was not until 1952, that a formal definition was adopted. The fact

that the definition has no binding force on the contracting States does not lessen its importance as a guidance to them in the interpretation and application of the provisions of Articles 5 and 6 of the Chicago Convention. At any rate, it also prevents to a great extent any possible controversy which might arise in connection with scheduled and non-scheduled international air services. In practice, it is the most important, semi-binding, definition ever given to scheduled services.

The definition in question was adopted by the ICAO Council at its 19th meeting, Fifth Session, 28 March 1952, and reads as follows:

"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 recognizably systematic series."(29)

Needless to say that the law governing the exchange of commercial rights in scheduled international air transport under the existing regime of international civil aviation is bilateralism and not multilateralism, the matter which will continue for many years to come.

One should bear in mind that multilateralism in international air transport remains the ultimate objective to be achieved in the future. In the meantime, the international community should endeavour to make all possible efforts for a progressive and orderly liberalisation of international air transport. (30)

CHAPTER II

BERMUDA AGREEMENT

a

MODEL FOR BILATERAL AIR TRANSPORT AGREEMENTS

Since the spirit of the Bermuda Agreement appears in many bilateral air transport agreements concluded by the five Arab States, it would seem useful to present here a brief discussion of its main principles inasmuch as needed for this study. Some of the agreements, especially those concluded in the early post-war years follow the Bermuda Agreement in many respects.

If no one questions the importance of the Bermuda Agreement this is only because it represents the most important bilateral agreement ever concluded between two countries for the exchange of air services.⁽¹⁾ The Bermuda Agreement was concluded between the United Kingdom and the United States at Bermuda in February, 1946. This agreement represents a compromise between the two conflicting philosophies, i.e., the American liberalism and the British protectionism appeared at the Chicago Conference.⁽²⁾ In the Bermuda Agreement the two countries made concessions of their previous views. It seems that in order to make such a compromise possible the Bermuda clauses were drafted in general terms and are therefore to a certain extent vague and flexible, creating possibilities for protection as well as for a necessary amount of freedom.⁽³⁾ It will be remembered, however, that routes must be exchanged in the form

of bilateral agreements since the Chicago Conference could not reach a satisfactory multilateral economic agreement on the establishment and operation of international air transport services.

Admittedly the Bermuda principles and provisions are of far-reaching importance on subsequent bilateral negotiations for the exchange of air services. The Bermuda impact on subsequent bilaterals was so great that it constitutes a pattern for air services agreements. A sound study therefore of existing bilateral air services agreements must be preceded by an analysis of the Bermuda principles.

It seems wise before we go any further to state that the starting point of any negotiations between two countries for the exchange of air services must be aiming to "foster and encourage the widest distribution of the benefits of air travel for the general good of mankind, and to stimulate international air travel as a means of promoting friendly understanding and good will among peoples and ensuring the many indirect benefits of this new form of transportation to the common welfare of both countries."⁽⁴⁾

In this brief presentation we shall cast a light on the most important principles of the Bermuda Agreement relating to the exchange of routes, competition, amount of capacity, and fares and rates.

1. Exchange of Routes: Routes have to be exchanged.

Traffic rights on such routes that is to say the carriage of passengers, cargo and mail, not only between the territories of the two contracting parties, but also between the territory of one of them

and the territories of third countries by that one party, must be negotiated. In order to accomplish this, the designated air carriers are accorded freedom to use definite routes and airports expressly named in the Bermuda Agreement.⁽⁵⁾ The access to traffic on such routes and airports is to be governed in compliance with the principles agreed upon.

2. Competition: The Final Act of the Bermuda Agreement laid down the following general rules as to competition:⁽⁶⁾

(a) That the air transport facilities available to the public should bear a close relationship to the requirements of the public for such transport. A designated airline therefore cannot absorb too great a part of the traffic that would be detrimental to the other airline by providing excessive capacity on the routes agreed upon.⁽⁷⁾

(b) That there shall be a fair and equal opportunity for the carriers of the two nations to operate on any route between their respective territories. Therefore, if one carrier is weaker than the other it is still entitled to have the same equal right to operate as the stronger competitor and should as well be given the opportunity to play its role entitled to.⁽⁸⁾

(c) That in the operation by the air carriers of one nation, the interests of the air carriers of the other nation shall be taken into consideration so as not to affect unduly the services which the latter provides on all or part of the same routes. It is therefore understood by this fundamental clause that there is room for competition but not cut-throat competition which strives for a monopoly or the domination by one carrier over the other.⁽⁸⁾

3. Amount of capacity: By far the most important provisions of the Bermuda Agreement are those relating to the regulation of capacity.⁽⁹⁾ The basis of the principles governing the amount of service which may be operated over the routes exchanged is that the services provided shall retain, as their primary objective, the provision of capacity adequate to the traffic demands between the country of the flag carrier and the countries of ultimate destination of the traffic.⁽¹⁰⁾ It is beyond doubt that the backbone of the flag carrier traffic must be that between the country of which such carrier is a national and the countries of ultimate destination of the traffic.⁽¹¹⁾ It is therefore clear that the right to pick up third-country traffic comes in the second place after the test of primary objective has been met since this fifth freedom traffic represents the fill-up business essential to the economical operation of the service offered.⁽¹²⁾ While it refrained from providing any mathematical formula, the Bermuda Agreement laid down general rules of qualitative nature governing the right to pick up third-country traffic. Those rules are generally accepted as sound principles to guide the day-to-day determination of capacity offered in international air transportation.⁽¹³⁾ This is perhaps due to the fact that authors of the Bermuda principles believed that air transportation should not be approached in an arithmetical spirit but with wide understanding of both the needs of the air carriers and the requirements of the travelling public.⁽¹⁴⁾ Those general rules governing the amount of capacity to be provided on the routes agreed upon can be summarized as follows:

(1) The air services made available to the public shall bear a close relationship to the requirements of the public for such services.⁽¹⁵⁾

(2) The air services to be operated shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country of which an airline is a national and the countries of ultimate destination of the traffic.⁽¹⁶⁾

(3) The right of fifth freedom traffic on the routes exchanged shall be applied in accordance with the general principles of orderly development to which both contracting parties subscribe and shall be subject to the general principle that capacity should be related:⁽¹⁶⁾

- (a) to traffic requirements between the country of origin and the countries of destination;
- (b) to the requirements of through airline operation; and
- (c) to the traffic requirements of the area through which the airline passes after taking account of local and regional services.

It may be concluded here, that the Bermuda capacity clauses establish a firm relationship between the capacity provided and the traffic requirements of the routes served by the same air carrier leaving the door open for designated airlines of the two nations to have a "fair and equal opportunity" through permitting them to promote new traffic by offering adequate service. As to third-countries traffic, the Bermuda capacity clauses leave room for fifth freedom but no concrete answer is given to the question of the quantity of fifth freedom allowed in relation to the quantity of third and fourth freedom.⁽¹⁷⁾ By avoiding to fix such a relation, the capacity

clauses aimed at keeping abreast with the principles on which the Agreement was based in view that the principles allow a certain range of freedom and flexibility.⁽¹⁷⁾

Although it is not specifically spelled out in the capacity clauses, the application of these clauses is based on the idea of an ex post facto review of the capacity offered as a safeguard against the possibility that the air carriers of either party may operate excessive capacity. This, of course, permits either party, upon realizing that its interests are being unduly affected by the capacity provided by the airlines of the other, to ask, any time, for a review of traffic activities in order to determine whether capacity offered has reasonably concurred with the Bermuda principles.⁽¹⁸⁾ Admittedly the over-all load factor should not be required to exceed a reasonable and commercially sound figure, a fact which must also be taken into consideration when reviewing the capacity offered for fifth freedom traffic.⁽¹⁹⁾

Finally, since the Bermuda capacity clauses were formulated in broad lines and general terms such clauses permit, in the light of experience, wide freedom of operation in open competition or tight control of operations to protect national interests the thing which gives the Bermuda Agreement a certain degree of flexibility and enables either party to adjust services according to existing conditions through consultations.⁽²⁰⁾

4. Fares and Rates: It is clear that the regulation of tariffs is essential for international air transport:

- (a) as a safeguard for the public against any abuse of the protected position which the airlines enjoy under a system of controlled entry into the industry, and
- (b) as to ensure the long-term economic stability of the industry by providing fair competition.⁽²¹⁾

The Bermuda Agreement establishes a procedure to deal with the problem of fares and rates to be charged the public by the designated airlines. The governments of both contracting parties regulate fares and rates through their approval of tariff agreements arrived at by the air carriers of either contracting party through the rate conference machinery of the International Air Transport Association (IATA). In any case all tariff agreements shall be subject to the approval of the two contracting parties within their respective constitutional powers and obligations.⁽²²⁾ Changing its mind about the desirability of controlling fares and rates, the United States seems to have accepted for the first time the conclusion of an international agreement for the control of rates.⁽²³⁾ The Civil Aeronautics Board (CAB) of the United States does have powers to require that any rate agreement involving United States airlines either in the domestic or international field should be filed with the Board for approval.⁽²⁴⁾ It is to be recognized, however, that under the Bermuda philosophy the delegation of rate-making function to the airlines is strictly subject to governmental control.

The Bermuda fares and rates procedure may be summarized as follows:⁽²²⁾

At the time the CAB did not have the necessary legal authority to fix the rates of the United States air carriers engaged in foreign commerce, the United States undertook at Bermuda that the CAB will approve the rate agreements arrived at through IATA rate conference machinery, as submitted, for a period of one year.

Any new rate which may be proposed by the air carriers shall be filed with the aeronautical authorities of both contracting parties within a specified period of time before the proposed date of introduction.

If during the period of the Board's approval of IATA rate conference machinery, either any specific rate agreement is not approved within a reasonable time by either contracting party, or a conference of IATA is unable to agree on a rate, or at any time no IATA machinery is applicable, or in the case any party withdraws or fails to renew its approval of that part of IATA rate conference machinery relevant to this provision, the matter is to be referred to consultation and negotiation whereby the contracting parties shall endeavour to reach agreement on the appropriate rate.

In case the two contracting parties cannot agree on a proposed rate, the matter in dispute will be referred to the International Civil Aviation Organisation (ICAO) for an advisory report.⁽²⁵⁾ Each contracting party agreed to use its best efforts under the powers available to it to put into effect the opinion expressed in such report. Although nothing is said in the Bermuda Agreement as to the enforcement of such report, the advisory opinion of ICAO in fact determines the question in case of disagreement between the two contracting parties.⁽²⁶⁾

Generally, what should be taken into consideration in the process of making rate agreements is that rates "shall be fixed at reasonable levels, due regard being paid to all relevant factors, such as cost of operation, reasonable profit and the rates charged by any other air services."(22)

It is necessary to point out here that the Bermuda Agreement does not provide for predetermination of frequencies.(27) In their "Joint Statement" issued at the close of the Bermuda Conference, the American and British delegations indicated that the Agreement contemplates that:(28)

- each nation is free to determine the frequency of operations of its airlines, and
- the airlines of either party are free to carry fifth freedom traffic subject to adjustment in the light of experience.

The same statement declared also that:

- there are no specific limitations on frequencies, and
- each nation is free to determine for itself the number of frequencies which are justified services being related to traffic demands.

Conclusion

The Bermuda principles work best in conditions where the airlines of both parties are of rather equal commercial strengths.(29) While in situations where one airline is comparatively weaker in

competitive position than the other the Bermuda system encounters many difficulties.⁽²⁹⁾

It is clear that newly emerged nations endeavour to protect their national airlines by securing them a reasonable share of the traffic on the routes which they operate.⁽³⁰⁾ In doing so, such nations were not inclined to accept the philosophy of the Bermuda Conference.

In practice most of the nations of the world have, since that Conference, directed their air transport policies, at one time or another, towards "protectionism" when they have found that their own airlines were going to be at a serious competitive disadvantage.⁽³¹⁾ In fact all nations believe that their own airlines should possess a reasonable share of international traffic.⁽³²⁾ In addition to this general trend towards protectionism, the vagueness in the Bermuda language led to many different interpretations.⁽³³⁾ Hence a predetermination approach was adopted by a considerable number of countries in their bilateral negotiations, and more restrictive forms were used.

The Bermuda principles, however, have been accepted not only by two major aviation nations⁽³⁴⁾ but have also been followed by a great number of other countries in their negotiations for bilateral air transport agreements.

In spite of all criticisms heard, no one can deny the importance of the Bermuda Agreement as to international air transport as a whole.⁽³⁵⁾ Let us admit that this Agreement may still be taken as a model for bilateral agreements.⁽³⁶⁾

In our view, the Bermuda Agreement with a liberal interpretation of its principles may constitute a nucleus of a multi-lateral agreement for the economic regulation of international air transportation. (37)

P A R T F O U R
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ANALYSIS
of
BILATERAL AIR TRANSPORT AGREEMENTS
of
THE FIVE ARAB STATES

Introduction

Status of Existing Agreements

Chapter I - THE GRANT OF RIGHTS

Chapter II - INAUGURATION OF SERVICES

Chapter III - THE REGULATION OF CAPACITY

Chapter IV - THE REGULATION OF TARIFFS

Chapter V - SETTLEMENT OF DISPUTES

Chapter VI - ENTRY INTO FORCE, REGISTRATION,
MODIFICATION, TERMINATION

CONCLUSION

Introduction

The principle of complete and exclusive sovereignty of each state over the airspace above its territory was reaffirmed in the Chicago Convention.⁽¹⁾ The Convention now constitutes, as far as air law is concerned, the basis of international relations among nations of the world.

The unsuccessful endeavours made at the Chicago Conference 1944 to reach a multilateral agreement for the economic regulation of air transport left the exchange of commercial rights in air transport to be regulated in the form of bilateral agreements between each two individual states interested therein. Hence, the starting point of any study of the exchange of scheduled air services is the provision set forth in Article 6 of the Chicago Convention which states that:

"No scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorization of that State, and in accordance with the terms of such permission or authorization." (2)

Generally, a bilateral air transport agreement may be defined as a contractual engagement between two states for the exchange of scheduled air services between their respective territories and beyond. It lays down rules for the exploitation of scheduled air transport. Like any other international agreement or convention, a bilateral air transport agreement passes through the following stages:

- (a) Negotiation and initialling.
- (b) The signature by plenipotentiaries of the contracting States.
- (c) The ratification by or on behalf of the heads of the contracting States.
- (d) The effectiveness by exchanging the instruments of ratification.
- (e) The registration of the agreement.

The initiative in suggesting the negotiation of a bilateral air transport agreement might come from different sources.⁽³⁾ The Arab government concerned, or the foreign government interested in establishing air services, or the aeronautical authorities in their overall planning for air transport, or sometimes the national air carriers who press their governments to negotiate an agreement.

Before negotiating for an air agreement, some basic factors should be taken into consideration.⁽³⁾

- (a) Whether the proposed service is economically sound.
- (b) A study of the route pattern desired.
- (c) What traffic rights are to be obtained.
- (d) What price will be paid in return for these rights.
- (e) What other concessions may be granted or obtained.
- (f) The political situation between the two negotiating states.

In negotiating an air agreement, each of the five Arab states usually delegates the task of negotiation to its aeronautical authority. By exchange of letters through diplomatic channels, the aeronautical authorities of the two negotiating states express their desire to conclude an agreement for the exchange of air services between their respective territories, and thereafter determine the place, date of negotiations, and nomination of delegation. Oftenly, each Arab delegation is composed of:

- representatives of the aeronautical authority,
- a representative of the Ministry of Foreign Affairs, and
- a representative of the national airlines as an advisor.

The two negotiating delegations hold official meetings for the exchange of views. If the views of both delegations meet then the project agreement is initialled by the plenipotentiaries. Usually, the head of the aeronautical authority is the chief of the Arab delegation who is authorized to sign the agreement arrived at on behalf of his country according to a letter of delegation issued by the Ministry of Foreign Affairs concerned. By signing the agreement, the State indicates its willingness to be bound by it.

The existing constitutional procedures for ratification of the agreement varies from one Arab state to the other but for all of them a law or a legislative decree ratifying the agreement is published by the head of the state, after having been approved by the legislative authority. In spite of the fact that there is no legal or moral duty on a State to ratify a treaty signed by its plenipotentiaries, it can only be said that ratification of an air

transport agreement depends on the degree of interest and the political relations between the two States concerned. There is, however, no time limit during which ratification is to be carried out unless the agreement expressly stipulates a certain period which is rare.

After ratification of the agreement by both contracting parties it enters into force on the date of exchange of instruments of ratification through diplomatic channels, unless otherwise expressly stipulated in the agreement. Quite often, it is included in the bilaterals that they enter into force provisionally on the date of signature.

The Arab states being parties to the Chicago Convention are bound by its Articles 81 and 83 which provide for the registration of all aeronautical agreements and arrangements with ICAO. They are also bound by the Charter of the United Nations which requires in its Article 102 that every treaty and every international agreement entered into by any contracting party shall as soon as possible be registered with the Secretariat of the United Nations.

In this presentation we endeavour to analyse the main provisions of the existing bilaterals of the five Arab states. The analysis deals with those agreements concluded between States. Other aeronautical agreements and arrangements are not included.⁽⁴⁾ Moreover, the present analysis covers only those bilaterals which are registered with ICAO.⁽⁵⁾ Reference is sometimes made to the agreements which are not yet registered with ICAO.

Principally, the five Arab States follow in most of their bilaterals the Chicago Standard Form Agreement.⁽⁶⁾ In many of them, some clauses similar to those of the Bermuda Agreement and to those adopted by ECAC in 1959, are found.⁽⁶⁾

Like any other bilateral agreement on air transport, all bilaterals of the five Arab countries are formed of:

- (a) A "Title": it indicates the two contracting parties and the subject of the agreement.
- (b) A "Preamble": it indicates the willingness of both contracting parties to establish air communications between their respective territories. And in most cases it indicates whether the contracting parties are parties to the Chicago Convention.
- (c) A "Body" of the agreement: it is divided into a number of articles containing provisions regulating scheduled air transport between the two parties.
- (d) An "Annex" or "Schedule": it contains the routes agreed upon.

Status of Existing Agreements

The following tables show the bilateral air transport agreements concluded by the five Arab countries as registered with ICAO up to January, 1969.

I R A Q

The following table shows the bilateral agreements concluded between Iraq and other States, the dates of their signature and entry into force.⁽⁷⁾

<u>Iraq</u>	<u>Subject</u>	<u>Signature</u>	<u>Effective</u>
Czechoslovakia	Air Transport	11. 3.1960	22. 8.1960
Denmark	Air Services	18.11.1951	26. 4.1955
Egypt	Air Services	23. 3.1955	7. 6.1956
India	Air Services	27. 7.1955	3. 9.1957
Netherlands (a)	Air Services	16.12.1954	10. 9.1956
Norway	Air Transport	12. 7.1949	12. 7.1949
Pakistan (b)	Air Services	20. 6.1950	20. 6.1950
Sweden (c)	Air Transport	28.10.1950	-
Switzerland	Air Services	31. 3.1952	30. 6.1956
Turkey	Air Transport	30. 6.1947	21.12.1949
United Kingdom	Air Services	19. 4.1951	19. 4.1951

(a) The Annex to this Agreement was amended by Modification:
14.9, 6.10.1962.

(b) This Agreement replaces the Agreement of 1947. It was further subject to many supplements in 1952, 1953, and 1954.

(c) The date of entry into force is the date of exchange of instruments of ratification which is unknown.

Iraq has concluded other bilateral agreements with the following States. These bilaterals have not yet been registered with ICAO. (8)

<u>Iraq</u>	<u>Signed</u>	<u>Ratified</u>
Jordan	14.11.1953	1955
Saudi Arabia	16. 5.1957	1957
Hungary	2. 3.1960	1960
Luxembourg	14. 3.1961	1961
Poland	27. 7.1961	1962
Federal Republic of Germany (a)	27. 3.1962	-
Italy	31. 3.1963	1963
Afghanistan	1. 9.1964	1965
France	19. 5.1966	1966
German Democratic Republic	20.10.1966	1967
Bulgaria	15.11.1966	1967
Lebanon	11. 5.1967	1967
U.S.S.R. (b)	Dec. 1968	-
Algeria (c)	-	1969
Syria (d)	22. 9.1969	-

-
- (a) The Agreement is not yet ratified.
(b) The Agreement is not yet ratified.
(c) The date of signature is not available.
(d) The Agreement is not yet ratified.

J O R D A N

Jordan has concluded bilateral air transport agreements with the following States.⁽⁷⁾ The table shows the dates of signature and entry into force.

<u>Jordan</u>	<u>Subject</u>	<u>Signature</u>	<u>Effective</u>
Belgium (a)	Air Services	19.10.1960	31. 7.1963
Denmark (b)	Air Transport	7.12.1961	7.12.1961
Egypt	Air Services	2. 1.1952	14. 4.1953
France	Air Transport	30. 4.1966	30. 4.1966
Netherlands (c)	Air Services	24. 8.1961	25. 6.1962
Norway (d)	Air Services	21. 8.1961	21. 8.1961
Sweden (e)	Air Services	9. 1.1961	9. 1.1961
Turkey	Air Services	7. 5.1948	23. 2.1949

(a) The Agreement entered into force provisionally on 19.10.1960.

(b) The Agreement entered into force provisionally on 7.12.1961.

(c) The Agreement entered into force provisionally on 24.8.1961.

(d) The Agreement entered into force provisionally on 21.8.1961.

(e) The Agreement entered into force provisionally on 9.1.1961.

K U W A I T

Two agreements have been registered with ICAO up to January, 1969.⁽⁷⁾ An Air Transport Agreement between Kuwait and Japan was signed on October 6, 1962, and has entered into force on June 20, 1963. An Air Services Agreement between Kuwait and the United Kingdom was signed on May 24, 1960, and has entered into force on the same date.

L E B A N O N

The following table shows the bilateral agreements concluded between Lebanon and other States, and the date of their signature and entry into force.⁽⁷⁾

<u>Lebanon</u>		<u>Subject</u>	<u>Signature</u>	<u>Effective</u>
Australia	(a)	Air Services	29. 9.1953	15. 1.1954
Belgium	(b)	Air Transport	24.12.1953	10. 9.1955
Brazil	(c)	Air Transport	11. 1.1951	10. 2.1951
Czechoslovakia	(d)	Air Services	12. 5.1961	19. 8.1962
Denmark		Air Transport	21.10.1955	8. 2.1956
Ghana	(e)	Air Transport	27. 8.1960	-
Greece		Air Transport	6. 9.1948	6. 9.1948
Italy	(f)	Air Transport	24. 1.1949	31. 5.1950
Ivory Coast	(g)	Air Transport	19.12.1963	19.12.1963
Netherlands	(h)	Air Transport	20. 9.1949	3. 8.1951
Norway	(i)	Air Transport	2. 2.1956	2. 2.1956
Pakistan		Air Transport	4. 2.1964	17.12.1965
Singapore	(j)	Air Transport	30.3.1968	-
Sweden	(k)	Air Transport	23. 3.1953	23. 3.1953
Switzerland	(l)	Air Transport	3,27.3.1954	29. 3.1955
Turkey		Air Transport	16. 9.1947	21. 3.1948
United Kingdom	(m)	Air Services	15. 8.1951	23.12.1952
United States	(n)	Air Transport	11. 8.1946	23. 4.1947
Yugoslavia		Air Transport	17. 4.1954	4. 6.1954

(a) Provisionally applicable on 29.9.1953.

(b) Provisionally applicable on 24.12.1953.

(c) Provisionally applicable on 10.2.1951, and was amended in 1952.

(d) Provisionally applicable on 27.5.1961.

(e) Not yet effective.

- (f) The Agreement was amended by Modification signed on 13.2.1960 and effective on 11.6.1960.
- (g) Provisionally applicable on 19.12.1963.
- (h) Provisionally applicable on 20.9.1949, and the Annex to the Agreement was amended by two Modifications in 1954 and 1956.
- (i) Provisionally applicable on 2.2.1956.
- (j) Not yet effective.
- (k) Provisionally applicable on 23.3.1953, and the Annex to the Agreement was amended by two Modifications in 1955 and 1959.
- (l) The Annex to the Agreement was amended by Modification in 1958.
- (m) The Schedule to the Agreement was modified in 1953 and 1959. The Annex was modified in 1962.
- (n) Provisionally applicable on 11.8.1946.

S Y R I A

The following table shows the bilateral agreements concluded between Syria and other States, and the dates of their signature and entry into force.⁽⁷⁾

<u>Syria</u>	<u>Subject</u>	<u>Signature</u>	<u>Effective</u>
Cyprus	Air Transport	22.12.1964	16.5.1965
Czechoslovakia	Air Services	30. 7.1957	10.2.1958
Denmark	Air Transport	20.10.1955	5.6.1956
Egypt	Air Transport	3. 7.1955	11.3.1956
France (a)	Air Transport	7. 4.1966	7.4.1966
Greece (b)	Air Services	5. 7.1949	5.7.1949
Netherlands (c)	Air Services	13. 2.1950	4.4.1951
Norway	Air Transport	25. 2.1956	16.10.1957
Sweden (d)	Air Transport	9. 3.1955	18.12.1955
Switzerland (e)	Air Transport	26. 5.1954	11.5.1955
Turkey (f)	Air Transport	6. 7.1949	-
United Kingdom	Air Services	30. 1.1954	8.12.1955
United States (g)	Air Transport	28. 4.1947	21.6.1955
Yugoslavia (h)	Air Services	17. 7.1966	17.7.1966

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- (a) Provisionally applicable on 7.4.1966, and definitely on 9.1.1967.
- (b) No longer effective. Both States do not consider the Agreement as binding on them.
- (c) Provisionally applicable on 13.2.1950, and the Annex to the Agreement was amended in 1956 and 1962.

- (d) The Annex to the Agreement was amended in 1957.
- (e) The Annex to the Agreement was amended in 1957.
- (f) Not effective for not having been ratified by Syria.
- (g) Provisionally applicable on 28.4.1947, and the Annex to the Agreement was amended in 1957.
- (h) Provisionally applicable on 17.7.1966.

The table below shows the bilateral air transport agreements concluded between Syria and the following states, the dates of their signature, and the dates of ratification by Syria. The Agreements are not yet registered with ICAO.⁽⁹⁾

<u>Syria</u>	<u>Signed</u>	<u>Ratified</u>
Algeria (a)	28. 7.1964	12. 1.1969
Belgium (b)	9. 5.1957	16.12.1957
Bulgaria (c)	13.12.1964	16. 5.1965
Czechoslovakia (d)	18. 7.1966	12. 1.1969
German Democratic Republic (e)	6. 6.1965	16. 5.1967
Hungary (f)	18.10.1962	6. 3.1963
Iraq (g)	22. 9.1969	-
Luxembourg (h)	11.10.1965	16. 5.1967
Pakistan (i)	23. 7.1954	4. 4.1955
Poland (j)	10.11.1962	6. 3.1963
Romania (k)	14. 8.1958	23.12.1958
Saudi Arabia (l)	22.10.1968	-
U. S. S. R. (m)	27.12.1962	6. 3.1963

(a) The Agreement entered into force on 22.2.1969.

(b) The Agreement is in force. The date of entry into force is not available.

(c) The Agreement entered into force on the date of its signature.

(d) The Agreement replaces the Agreement of 1957, and the Agreement of 1959 concluded between the United Arab Republic and Czechoslovakia. Syria was then united with Egypt.

- (e) The Agreement entered into force on the date of its signature.
- (f) The Agreement entered into force on 22.5.1963.
- (g) The Agreement is not yet ratified.
- (h) The Agreement entered into force provisionally on the date of its signature.
- (i) The Agreement is in force. The date of entry into force is not available.
- (j) The Agreement entered into force on 22.6.1963.
- (k) The Agreement was concluded by the United Arab Republic and is still considered in force as to Syria. The Agreement entered into force provisionally on the date of its signature and definitely on 23.12.1958. It will be noted that the Agreement is not registered with ICAO by Syria nor by Romania but it is registered by the United Arab Republic.
- (l) The Agreement is not ratified yet. The Annex of this Agreement entered into force on 22.10.1968. It will be noted that this Agreement replaces the Agreement of 1959 concluded between the United Arab Republic and Saudi Arabia. In fact the Agreement of 1959 is still in force as to Syria except for its Annex.
- (m) The Agreement is in force. The date of entry into force is not available.

Chapter I

The Grant of Rights

I - Reciprocity Clause

As the five Arab countries follow in most of their bilaterals the Chicago Standard From,⁽¹⁰⁾ all these bilaterals contain in their first articles a clause whereby the contracting parties expressly declare their intention of conferring certain rights on each other for the purpose of establishing air services on the routes agreed upon. This clause of granting the rights is generally formulated as follows:

"Each Contracting Party grants to the other Contracting Party the rights specified in the Annex to this Agreement for the purpose of the establishment of air services (hereinafter referred to as "agreed services"), on the routes described therein (hereinafter referred to as "specified routes")." (11)

Some of these bilaterals, however, include such a provision in their second articles leaving the first articles for definitions.⁽¹²⁾

Some of the bilaterals provide in their first articles the rights to be granted, as for instance the Agreement between Syria and Denmark Article 1 of which provides as follows:

"The Contracting Parties grant each other the following rights, necessary for the establishment of the regular international civil air services specified in the annex hereto, hereinafter referred to as the "agreed services".

The airlines designated by one Contracting Party shall enjoy, in the territory of the other Contracting Party, rights of transit and of non-traffic stops for civil purposes;

they may also use airports and other facilities provided for international traffic. They shall also enjoy, in the territory of the other Contracting Party and on the air routes specified in the annex hereto, the right to pick up and set down international traffic in passengers, mail and cargo in accordance with the terms of this Agreement."(13)

Other bilaterals add to this provision mentioned above certain principles relating to capacity for the exercise of Fifth Freedom privilege, as for instance the Agreement between Lebanon and Sweden Article 1 of which provides: (extract)

"(2) The right of the designated airlines to pick up and set down at the points and on the routes specified international traffic destined for or coming from third countries shall be exercised in accordance with the general principles of orderly development to which both Governments subscribe, and in such a manner that capacity shall be related to..."(14)

It will be noted that the principle of reciprocity does not mean that the rights granted by both parties should be necessarily identical. This is true in the case of the exchange of freedoms of the air. As to other rights exchanged, actually both parties intend to grant each other such rights on reciprocity basis to the same extent as specified in the agreement, such as the exemptions from national duties and charges.

The Grant of Rights

II - The Operating Permission

Under the bilateral system, before the agreed services may be put into operation there should be a designation of an airline or airlines to operate such services. Each contracting party shall have the right to designate an airline or airlines to operate the agreed services. These services cannot be started without an operating permission to be obtained from the contracting party granting the rights. In order to start operating the agreed services, an implicit condition of the mutual exchange of rights between the two contracting parties is that each party will grant the appropriate operating permission to the airline or airlines designated by the other party.⁽¹⁵⁾

In most of the bilaterals of the five Arab countries it is expressly stated that the inauguration of the agreed services may not be started without an operating permission to be granted by the contracting party granting the rights. This contracting party shall "be bound to give the appropriate operating permission to the airline or airlines concerned"⁽¹⁶⁾ provided certain conditions are fulfilled.⁽¹⁷⁾ There is no time limit during which such permission must be granted, but it should be granted "without undue delay"⁽¹⁸⁾ or "without delay"⁽¹⁹⁾ or "with the least possible delay"⁽²⁰⁾ or "without unnecessary delay"⁽²¹⁾ or "at the earliest possible date"⁽²²⁾ Few agreements are silent on this point.⁽²³⁾ In short, all agreements which require an operating permission bind each contracting party to grant the appropriate operating permission expeditiously.

In some cases it seems that the operating permission is granted by the agreement itself where it is stated that:

"Each of the agreed services may be put into operation as soon as the Contracting Party to whom the rights specified in the Annex have been granted, has designated an airline or airlines to operate the specified routes."(24)

However, once the requisite conditions have been met by a designated airline, the contracting party granting the rights becomes under a duty to give the necessary operating permission to this airline.

The Grant of Rights

III - Transit Rights

In the bilateral agreements of the five Arab countries where the two contracting parties are parties to the International Air Services Transit Agreement no mention is usually made in the bilateral of the exchange of transit rights. Some bilaterals re-affirm the grant of transit rights even if both contracting parties are parties to the Transit Agreement.⁽²⁵⁾ Where one of the two contracting parties is not a party to the Transit Agreement or if both of them are not parties thereto, the bilaterals expressly make provisions to the exchange of such rights in respect of the agreed services at the same time of granting traffic rights. Generally, such provisions are formulated as follows:

"Subject to the provisions of the present Agreement, the airlines designated by each Contracting Party shall enjoy, while operating an agreed service on a specified route, the following privileges:

- (a) to fly without landing across the territory of the other Contracting Party;
- (b) to make stops in the said territory for non-traffic purposes;"⁽²⁶⁾

The five Arab states are now parties to the Convention on the First and Second Freedoms of Arab Civil Aircraft which came into force on June 18, 1965.⁽²⁷⁾ According to this Convention, all Arab civil aircraft of the contracting parties enjoy transit rights, i.e., the freedom to fly without landing across the territory of each contracting party and the freedom to land at its international

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airports for non-commercial purposes. The Arab Transit Convention compared to the International Air Services Transit Agreement grants transit rights for all Arab civil aircraft whereas the Transit Agreement grants such rights only to scheduled international air services.⁽²⁸⁾

In the agreement between Syria and Czechoslovakia,⁽²⁹⁾ the transit rights granted by Syria were subjected to a number of landings to be made in a reasonable proportion to the overflights of the airline designated by Czechoslovakia as it was provided by the Exchange of Notes of 30 July, 1957:

"With reference to Article 1, paragraph (2), of the Agreement between Syria and Czechoslovakia concerning air services, signed on 30 July, 1957, under which the airline designated by Czechoslovakia is granted the right of transit and the right to make non-traffic stops for civil purposes, I have the honour to point out to you that it has been agreed that the number of stops made by that airline in Syrian territory shall be in a reasonable proportion to the total number of flights which it makes over Syrian territory. That proportion shall be determined in the course of subsequent negotiations between the aeronautical authorities of the two Parties. In any event, the number of transit flights shall not exceed the number of flights with landings at Damascus or Aleppo."⁽³⁰⁾

Oftenly, no mention is made of transit rights in agreements which merely provide for terminating services between the territories of the two contracting parties, as in the Agreement between Lebanon and Yugoslavia.

However, the transit rights, in our opinion, should not be used by States as a weapon giving them a stronger position in negotiating for the exchange of commercial rights.

The Grant of Rights

IV - Traffic Rights

Traffic rights constitute the main substance of any bilateral air transport agreement. In fact, the transit and traffic rights provide the legal basis for any airline designated by one contracting party to operate the agreed services in transit or into the territory of the other party. The Chicago Conference could only define these rights in relatively general terms for which, however, there was no place in the Chicago Convention. If the Transit Agreement is being more and more acceptable, the Transport Agreement still suffers from lack of acceptance. And this is the reason of the irreversible trend in air transport diplomacy toward the exchange of rights in air transport under the existing bilateral system.

In the bilateral treaty practice of the five Arab countries, the expression "the five freedoms" is not used although it became well known today in air law.

Traffic rights in the bilaterals of the five Arab States are generally defined as follows:

"c) The privilege to put down passengers, mail, and cargo taken on in the territory of the State of which such designated air carriers are nationals;

d) The privilege to take on passengers, mail and cargo destined for the territory of the State of which such designated air carriers are nationals;

e) The privilege to take on passengers, mail and cargo destined for any other territory on the specified air routes and the privilege to put down passengers, mail and cargo coming from any such territory."(31)

But the following formula is widely used in these bilaterals:

"to make stops in the said territory at the points specified for that route in the annex to the present Agreement for the purpose of putting down and taking on international traffic in passengers, cargo or mail coming from or destined for other points also specified." (32)

What may be noticed in this respect is that the definition of traffic rights in bilateral agreements for third and fourth freedoms is given by reference to the territories of the two contracting States and the fifth freedom privilege is the right to carry general third-country traffic. In the Transport Agreement the third and fourth freedoms are defined by reference to the State of registration of the aircraft and the right of fifth freedom traffic is limited to traffic of third-States which are contracting parties to the Transport Agreement. (33)

Because of the importance of traffic rights exchanged, almost all bilaterals of the five Arab countries particularize the traffic rights granted. In these bilaterals different formulas may be found, but all of them in general give the same meaning regardless of some ellipticity or ambiguousness. Most of the early post-war agreements use the following formula when granting to the designated airlines of each contracting party "the right to pick up and discharge international traffic in passengers, cargo, and mail" (34) at points in the territory of the other contracting party on the specified routes. (35) In more recent bilaterals almost all agreements favour the use of the following extended formula:

"to make stops in the said territory at the points specified in the Annex to this Agreement for the purposes of setting down and picking up international traffic in passengers, cargo and mail." (36)

In some agreements another version is found whereby the designated airlines of each contracting party "shall be entitled to operate air services in both directions on each of the routes specified, and to land for traffic purposes, passengers, cargo and mail" at points in the territory of the other contracting party on the specified routes. (37) More specific is the Agreement between Iraq and Pakistan Article 3 of which provides:

"(A) The air lines designated by the Government of Pakistan shall, subject to the provisions of Article IV, be entitled to carry international traffic to and across Iraqi territory, or set down or pick up international traffic at points mentioned in the Annex.

(B) The air lines designated by the Government of Iraq shall, subject to the provisions of Article IV, be entitled to carry international traffic to and across Pakistan Territory or set down and pick up international traffic at Karachi."

Obviously, most of the bilaterals of the five Arab countries use the expression "international traffic" as it implicitly excludes any other types of traffic such as aerial work, and any implicit grant of cabotage rights although in most cases the latter are expressly reserved to the grantor State.

Not many are those problems which may arise in connection with granting of third and fourth freedoms and the exercise of these rights by the designated airlines of the contracting parties. The Arab countries having still young air carriers which fear strong

competition of big airlines have adopted a policy recommended by the League of Arab States to the effect that their carriers are to be directed to enter into traffic pooling arrangements with foreign airlines whenever this is possible. But the exercise of the right of fifth freedom brings up major issues.⁽³⁸⁾ For this reason such right is granted subject to many conditions and limitations. And more particularization is used in bilaterals at the time of granting this right. Therefore, fifth freedom traffic is always considered as secondary and complementary to third and fourth freedoms traffic. In fact the grant of this right by any bilateral agreement has no effect if the consent of the third country concerned has not been obtained. Thus the fifth freedom by itself is a purely legal concept complementary to that of direction exchange since it is defined in relation to the exchange, and the exercise of this freedom implies, if not operation of the third and fourth freedoms, at least the existence of a contractual situation authorizing this operation and established by a route concession between at least three commercial points. Other considerations should be taken into account when granting the right of fifth freedom to foreign airlines. Arab carriers depend mostly on their regional services. These carriers were not in a position to operate scheduled air services to some countries although they have this right under bilateral agreements, such as the United States, while the latter's airlines have benefited from their services through the Middle East for many years. Not until very recently that Arab carriers could operate air services to Europe or to the Far East.

The general policy of the five Arab States with regard to the grant of fifth freedom rights to foreign airlines would seem relatively strict in many cases. In practice, this policy may be seen as follows:

(a) On points of routes where their national carriers operate, they apply brakes to the grant of fifth freedom privilege.

(b) On other routes, they usually grant this privilege but sometimes with certain limitations on capacity.

(c) On points situated in Arab countries it is hardly that they grant fifth freedom privilege.

While the five Arab countries follow this policy as to foreign airlines, they also follow in most cases a similar policy in granting rights of fifth freedom even to Arab carriers on points between Arab countries. This policy would seem to emanate from the common belief that traffic between two countries should be reserved as far as possible to airlines of their own. In practice, if the grant of fifth freedom would comprise a better benefit, or where it would be indispensable to the interest of the national carrier, the Arab state concerned would not hesitate to grant this freedom to the foreign airlines interested therein. The difficulty remains with the foreign airlines in obtaining this privilege from the third Arab country concerned.

It seems necessary to present here a brief survey of the routes exchanged in the agreements of each of the five Arab countries.

I R A Q

All agreements concluded between Iraq and other States before 1960 grant fifth freedom privilege to the contracting party concerned to points situated in Arab countries with the following exceptions:

(a) The Agreement with Sweden: By Exchange of Notes in Baghdad in 1955 to amend the Annex of the Agreement, Iraq agreed to the proposed amendment:

"provided that the Swedish Airlines shall not exercise the fifth freedom between Damascus or Beirut - Baghdad and vice-versa and also between Baghdad-Teheran and vice-versa, because the exercise of this right between the said points has not been granted to any of the International Airlines in order to protect regional airlines."(39)

(b) The Agreement with Switzerland: Iraq did not grant fifth freedom to two points: Bahrein and Kuwait. Under the amended Annex of 1962, traffic rights were granted by Iraq to many points in Arab countries (Lybia, United Arab Republic, Lebanon, Syria, Jordan).

In most of the agreements concluded between Iraq and other States since 1960, fifth freedom privilege on points between Arab countries was not granted by Iraq. In the Agreement with Czechoslovakia, Iraq did not grant fifth freedom to the airline designated by Czechoslovakia not only to points in Arab countries but also to other points in the Middle East. The route granted to Czechoslovakia was subject to the following exception:

"the designated airline is not allowed to embark and disembark in Iraq passengers, freight and mail destined to or coming from the following countries: Lebanon, United Arab Republic, Iran, Saudi Arabia, Jordan, Kuwait, Bahrain, Turkey." (40)

In the Agreement of 1966 with France, the French carrier was only permitted to make a stop-over not exceeding twenty-one days at certain Arab points (Beirut - Damascus - Amman or Jerusalem - Kuwait). (41) In the Agreement with the Federal Republic of Germany signed in 1962, Iraq did not grant the German carrier the fifth freedom to each of the following points: Beirut, Damascus, Istanbul - Ankara - Tehran. (42) In the Agreement of 1960 with Hungary, Iraq did not grant fifth freedom to points in: Lebanon - Syria - United Arab Republic - Saudi Arabia - Jordan - Kuwait - Bahrain - Turkey - Iran. (43) In the Agreement of 1961 with Poland, fifth freedom was not granted between Iraq and : Lebanon - Syria - United Arab Republic - Saudi Arabia - Jordan - Kuwait - Bahrain - Turkey - Iran - New Delhi - Karachi. (8)

J O R D A N

In the Agreements with respectively, Egypt and Turkey, the right of fifth freedom traffic was granted by Jordan to certain points in Arab countries. In all other agreements concluded since 1960, Jordan did not grant such freedom to points in Arab countries with the exception of France.

In the Agreement with Belgium, points in Arab countries were excluded according to the following:

"Airlines designated by the Govt. of Belgium will not be entitled to exercise commercial and traffic rights between points in the H.K. Jordan and points in Lebanon, U.A.R., Kuwait and Saudi Arabia and V.V."(44)

The following provision is found in the Annex of the Agreements between Jordan and respectively, Denmark, Norway and Sweden:

"Airlines designated by.... will not be entitled to exercise commercial and traffic rights between points in the Hashemite Kingdom of Jordan and points in Lebanon, United Arab Republic, Saudi Arabia, Iraq and Kuwait and vice versa."(45)

K U W A I T

In the Agreement with the United Kingdom, fifth freedom traffic was granted by Kuwait on the following routes:

"(1) ... Istanbul or Beirut or Damascus or Amman or Cairo - Baghdad or Abadan - Kuwait - Bahrain - Doha.....

"(2) Bahrain - Kuwait."(46)

In the Agreement with Japan, the following two notes expressly show how brakes are used in granting fifth freedom traffic on routes where the national airlines operate:

"Note 1:

Traffic rights of the designated airline or airlines of Japan between Kuwait and London shall be exercised temporarily and shall be cancelled automatically upon the inauguration of services by the designated airline of Kuwait to London.

"Note 2:

Traffic rights of the designated airline or airlines of Japan between Kuwait and Frankfurt shall be exercised temporarily and shall be cancelled automatically upon the inauguration of services by the Kuwait designated airline to Frankfurt. At such time the Contracting Parties will negotiate to determine a point in Germany to which traffic rights may be exercised by the designated airline or airlines of Japan."(47)

L E B A N O N

In those agreements concluded before 1960, the fifth freedom traffic was granted by Lebanon to the other contracting party concerned, with the exception of Belgium, to the following points: Baghdad, Kuwait, Dahran, Bahrain.⁽⁴⁸⁾ Some reservations were made later by exchange of notes or letters, as for instance in the case of respectively Brazil, Norway, and Sweden.⁽⁴⁹⁾

In most of the agreements concluded since 1960 which provide for routes containing points in Arab countries, traffic rights were not granted between Lebanon and these points.

In the Agreement with Czechoslovakia, Lebanon did not grant fifth freedom traffic on the following sectors:

"Beirut/Ankara, Beirut/Istanbul, Beirut/Athens
Beirut/Cairo, Beirut/Baghdad, Beirut/Tehran
Beirut/Damascus."(50)

In the Agreement with Ghana, although the route to be operated by its designated airline does not contain any points in the Arab countries it is stipulated that the airlines of either

contracting party may make additional stops provided that no traffic rights are enjoyed between these points and the territory of the other contracting party.(51)

In the Agreement with the Ivory Coast, although the route to be operated by its designated airline included two Arab points (Khartoum and Tripoli) it was further provided that:

"The designated airlines may make technical stops at any points other than those listed for the above routes."(52)

S Y R I A

In most of the agreements concluded between Syria and other States before 1960, the fifth freedom privilege was granted to Arab points. In the Agreement with Czechoslovakia, it was agreed that:

"In the case of services on the routes between Damascus or Aleppo, on the one hand, and Beirut, points in Iraq and points in Saudi Arabia, on the other, the airline designated by Czechoslovakia shall not, under the present arrangements, have the right to pick up or set down commercial traffic in passengers, mail or cargo originating in or destined for those points."(53)

In most of the agreements concluded with other States since 1960, Syria did not grant fifth freedom traffic to Arab points. In some cases, however, this right was granted but certain Arab points were excluded. In the Agreement with Cyprus, the following routes were granted:

- "1) Points in Cyprus-Damascus or Aleppo.
- "2) Points in Cyprus-Damascus or Aleppo Bahrain-Doha-Dubai.
- "3) Points in Cyprus-Damascus or Aleppo-Baghdad-Tehran."

It was further provided that the Cyprus airline will enjoy only stop-over rights on the sector Damascus or Aleppo-Baghdad.⁽⁵⁴⁾

In the Agreement with France, the fifth freedom was granted by Syria to points in Lebanon and Jordan. Points in Iraq and Kuwait were excluded except for stop-over rights not exceeding twenty-one days.⁽⁵⁵⁾

In the Agreement concluded in 1967 with the German Democratic Republic, it is stated that the airline designated by this country shall enjoy only stop-over rights on the following sectors: Nicosia-Damascus; Cairo-Damascus; Beirut-Damascus.⁽⁵⁶⁾

It may be concluded that the five Arab countries in their bilateral agreements cooperate, but only to a certain extent, in coordinating the grant of fifth freedom privilege to foreign airlines. And this is the most important point where they cooperate pursuant to the recommendations adopted by the Arab League. As among themselves, the exercise of this privilege is oftenly not allowed on their regional services where it is generally left to the airlines of each two individual states to be exercised as third and fourth freedoms. For example, Iraqi Airways operating on the routes:

Baghdad - Damascus - Cairo and V.V.
Baghdad - Damascus - Amman.

does not enjoy traffic rights on sectors: Damascus - Cairo and Damascus - Amman.

Kuwait Airways, few years ago, was operating its services from Kuwait to Lebanon through Damascus, did not enjoy traffic rights on the sector Damascus-Beirut.

Saudi Arabian Airlines was operating between Saudi Arabia and Lebanon through Damascus with no traffic rights on the sector Damascus-Beirut. It is operating now Jeddah-Amman-Damascus and V.V. with no traffic rights on the sector Damascus-Amman. It also operates one service through Damascus with no traffic rights on the sector Damascus-Beirut.

United Arab Airlines operating on the route Cairo-Damascus-Baghdad, has no traffic rights on the sector Damascus-Baghdad.

The Grant of Rights

V - Air Cabotage

Cabotage, as defined by Article 7 of the Chicago Convention is the right to take on in a territory of a contracting State passengers, mail and cargo carried for remuneration or hire and destined for another point within the same territory. This right is reserved to the State in whose territory such carriage is to be performed. The contracting states undertook not to enter into any arrangements which specifically grant any such privilege on an exclusive basis to any other state or an airline of any other state, and not to obtain any such exclusive privilege from any other state. In the local air laws of states it is oftenly stated that cabotage rights are exclusively reserved for the state where cabotage is to be exercised. In Jordan, the Civil Aviation Law of 1953 provides in its Article 42 that:

"Commercial transport by air, either of passengers or cargo, between two points in the territory of the Kingdom can only be undertaken by persons or establishments bearing the Jordanian nationality..."(57)

In Syria, the Legislative Decree No. 101 of 1949 provides in its Article 21 that:

"Commercial transportation by air of passengers or goods between two points within the territory of the Republic of Syria can only be undertaken by persons or establishments bearing Syrian Nationality."(58)

The absence of such a provision in some bilaterals, however, does not mean that a contracting party may enjoy cabotage rights in the territory of the other contracting party as long as it is excluded by the qualification "international traffic" or by specification of points to be served in such territory. (59)

The provision excluding cabotage is usually formulated in such a way so as to indicate that the rights granted by each contracting party under the agreement to the other "shall not be deemed to confer on the airlines of one Contracting Party the right to take up, in the territory of the other Contracting Party, passengers, cargo or mail carried for remuneration or hire and destined for another point in the territory of that other Contracting Party". (60) This provision may be found in the agreement itself or in its annex. (61) In the Agreement between Lebanon and Yugoslavia it seems that for the first time the expression "cabotage" was used.

The Agreement between Syria and the Netherlands refers to Article 7 of the Chicago Convention as follows:

"That in case a contracting Party uses its right under Article 7 of the Convention on International Civil Aviation signed at Chicago on December 7, 1944, it shall notify the other Contracting Party accordingly." (63)

The Grant of Rights

VI - Ancillary Rights

The bilateral agreements of the five Arab countries contain a number of provisions whereby the two contracting parties grant each other certain rights ancillary to the principal rights granted for the purpose of establishing air services between their two respective territories. Generally, the ancillary rights are reciprocally granted by the contracting parties in respect of aircraft of the designated airlines engaged in international air navigation. Such rights are derived from the Chicago Convention whereby the contracting states reciprocally grant each other certain rights ancillary to international air navigation in respect of aircraft registered therein.

Where the two contracting parties are at the same time parties to the Chicago Convention, they fall back in their bilaterals on this Convention though, in many cases, these bilaterals provide for supplementary concessions. Even where one of the two parties is not a party to the Convention, the bilateral agreement contains similar provisions, and in this case it becomes necessary to explicitly indicate the ancillary rights exchanged. This happens only in the agreements with Eastern European countries not parties to the Chicago Convention.

In one case, Iraq with the United Kingdom, the applicability of certain provisions of the Chicago Convention to the agreed

services for the duration of the Agreement is expressly reaffirmed by the following provision:

"To the extent to which they are applicable to the air services established under the present Agreement, Articles 11, 13, 15, 24, 31, 32 and 33 of the Convention shall remain in force in their present form between the Contracting Parties for the duration of the Agreement, as if they were an integral part of the Agreement, unless both contracting Parties ratify any amendment to these Articles which shall have come into force in accordance with Article 94 of the Convention, in which case the Article as amended shall remain in force for the duration of the present Agreement."(64)

In another case where Kuwait was not yet a party to the Chicago Convention, the Agreement with the United Kingdom gave effect to the provisions of this Convention and to the standards, practices and procedures adopted as annexes thereto, and the entire Agreement was considered as "supplementary" to this Convention.(65)

In this brief analysis of the ancillary rights granted in the bilateral agreements of the five Arab countries the following main points are discussed:

(1) The Principle of Non-discrimination

According to Article 11 of the Chicago Convention, the laws and regulations of a contracting state relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory shall be applied to the aircraft of all contracting states without distinction as to nationality. In generalising national treatment to all air-

craft of the Contracting States to the Chicago Convention, this provision implies equality of treatment among these aircraft, while the provision used in most bilateral agreements applies only to the aircraft of the designated airlines and simply grants national treatment to such aircraft. In some agreements, not only national treatment is to be accorded to the aircraft of the designated airlines, but also to "the aircraft of the other Contracting Party." (66)

Some bilaterals provide for this principle of non-discriminatory application of the national air laws and regulations. The provision made to this effect is generally formulated in a similar way to that of Article 11 of the Chicago Convention and the Chicago Standard Form. An identical provision is that found in the Agreement between Iraq and the Netherlands with the addition of equality in application:

"The laws and regulations of one Contracting Party relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory shall be equally applied to the aircraft of the designated air carrier(s) of the other Contracting Party without distinction as to nationality and shall be complied with by such aircraft upon entering or departing from or while within the territory of the former Party." (67)

This principle is extended in the Agreement between Lebanon and Singapore to cover the laws and regulations of one contracting party governing entry into, sojourn in, and departure from its territory of passengers, crew, cargo or mail, when it is stated that:

"Each Contracting Party undertakes not to grant any preferences to its own airlines with regard to the designated airlines of the other Contracting Party in the application of the laws and regulations provided for by the present Article." (68)

In the absence of any provision in bilaterals to this effect it is understood, however, that any specific discrimination against the aircraft of a contracting party based solely on account of their nationality would generally be regarded in international law as illegal. (69) Moreover, in most of the bilaterals the two contracting parties are bound by the Chicago Convention.

(2) The Right to Use Airports and Other Facilities

Under the Chicago Convention, the contracting states enjoy certain privileges as to the use of airports and other air navigation facilities. Every airport in a contracting State which is open to public use by its national aircraft shall likewise be open under uniform conditions to the aircraft of all the other contracting States. And in a similar way this applies to the use of all air navigation facilities including radio and meteorological services. (70) In fact there is no need to mention such privileges in bilateral agreements as they have already been accorded by the Chicago Convention. Besides, the absence of these privileges in bilaterals can only mean that the right to use airports and other air navigation facilities is foregranted otherwise the operation of air services cannot be made use of.

In most of the agreements of the five Arab countries no mention is made of this right. In the Agreement between Iraq and Pakistan, it is expressly stated that the designated airlines of both contracting parties shall have the right to use:

- "(1) for traffic purposes, airports provided for public use at the points specified in the Annex to this Agreement and ancillary services provided for public use on the specified air routes specified in the said Annex..... and
- "(2) for non-traffic purposes, all airports and ancillary services provided for public use on the specified air route, subject in either case to such conditions as may normally be applicable thereto."(71)

Sometimes by exchange of notes, reservations concerning the use of specific airfields have been made for technical reasons and any risk which might result from such use was thrown on the designated airline concerned as in the Exchange of Notes of 19 April, 1951, between the United Kingdom and Iraq.(72)

In bilaterals where one of the contracting parties is not a party to the Chicago Convention, the agreement contains a provision whereby the designated airline is granted the right to use all available facilities, as for instance in the Agreement between Syria and the German Democratic Republic:

"Each Contracting Party shall permit the designated airline of the other Contracting Party to use all available facilities including radio, navigation and lighting aids, as well as air traffic and meteorological services."(73)

The Agreement of 1962 between Syria, and the Soviet Union goes further by devoting the entire Annex (No. 2) for insuring the safety of the air services agreed upon.(74)

(3) Airport and Similar Charges

According to Article 15 of the Chicago Convention, the aircraft of one contracting State engaged in scheduled international air services as well as other aircraft not engaged therein, shall enjoy in the territories of the other contracting State national treatment as to charges imposed for the use of airports and other air navigation facilities.(75)

In most of the bilateral agreements especially those concluded before 1960, a provision is made whereby national treatment is granted by one contracting party to the airlines designated by the other. Some of these agreements contain almost the same following clauses:

"In order to prevent discriminatory practices and to ensure equality of treatment, the Contracting Parties agree that:

(a) The charges which either of the Contracting Parties may impose or permit to be imposed on the designated airline or airlines of the other Contracting Party for the use of airports and other facilities shall not be higher than would be paid for the use of such airports and facilities by its national aircraft engaged in similar international services."(76)

Some agreements add to this clause the qualification "just and reasonable charges" which becomes identical to the clause recommended by the Chicago Standard Form.(77)

It is worthwhile to notice that the Agreement between Syria and the United Kingdom uses the qualification "public airports" which means according to Cheng, no more than Article 15

of the Chicago Convention.⁽⁷⁸⁾ In fact, it may be added that according to the Syrian law, the aerodromes, with respect to their regulations and administration, are divided into three categories:

- (a) Public Aerodromes administered by the State or Municipality;
- (b) Aerodromes open to the public; (c) Private landing grounds.⁽⁷⁹⁾

(4) Certificates of Airworthiness and Licences of Personnel

According to Articles 31, 32, and 33 of the Chicago Convention every aircraft engaged in international air navigation shall be provided with a certificate of airworthiness and its crew shall be provided with certificates of competency and licences issued or rendered valid by the State in which the aircraft is registered. Each contracting State is bound to recognize the validity of such certificates and licences in accordance with requirements equal to or above the minimum ICAO Standards, subject to the right of this State to refuse to recognize, for the purposes of flight above its own territory, certificates of competency and licences granted to any of its nationals by another contracting State. The Chicago Standard Form waives the condition of conformity of these certificates and licences with the minimum standards of ICAO.

In the bilateral practice of the five Arab countries, many agreements follow the Chicago Standard Form when they provide:

"Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by one Contracting Party shall be recognized as valid by the other Contracting Party for the purpose of operating the routes and

services described in the Annex. Each Contracting Party reserves the right, however, to refuse to recognize, for the purpose of flight above its own territory, certificates of competency and licences granted to its own nationals by another state." (80)

This concession in some agreements applies only to certificates and licenses that are "still in force". (81) In a number of agreements, the reservation is limited to certificates and licenses granted to nationals of one contracting party by "the other Contracting Party" (82) and not to those granted by "another State" as provided for in the second sentence of Article 5 of the Chicago Standard Form. Although some ambiguity may be seen as to the meaning of the word "granted" and the qualification "another State", we believe that they imply respectively "issued or renewed valid" (83) and "the other Contracting Party and any other State". In those agreements where the reservation speaks of certificates and licenses granted "by the other Contracting Party and any other State", such ambiguity becomes immaterial. (84)

In some agreements no concession is made as to the recognition of certificates and licenses. (85) In this case we believe that the Chicago Convention should dominate.

In the Agreement between Iraq and the United Kingdom a different technique is followed whereby Articles 31, 32, and 33 of the Chicago Convention are considered as if they were an integral part of the Agreement. In this case it can only be said that the provisions of these Articles are considered to have been incorporated in the Agreement thus forming an integral part thereof. (86)

(5) Exemption from Customs Duties

Each of the five Arab States being a contracting party to the Chicago Convention is bound by its Article 24 (a) to grant certain exemptions from customs duties in its territory to the aircraft of any other contracting State. These exemptions apply to the aircraft itself on a flight to, from, or across its territory. In addition to exemption from customs duties, fuel, lubricating oils, spare parts, regular equipments and aircraft stores retained on board the aircraft on arrival in and on departure from its territory are also exempted from inspection fees or similar national or local duties and charges. The supplies unloaded after arrival are subject to its national customs regulations.

The Chicago Standard Form, however, recommends the principle of national and most-favoured-nation treatment as to fuel, lubricating oils and spare parts introduced into the territory of a contracting party by the other contracting party and intended solely for use by the latter's aircraft.⁽⁸⁷⁾

In all bilateral agreements of the five Arab States a provision is found whereby certain reciprocal concessions are made by both parties regarding customs duties with the exception of the Agreement between Iraq and Egypt. Most of those agreements concluded before 1960 follow closely the formula recommended by the Chicago Standard Form.⁽⁸⁸⁾

Any how, the principle of most-favoured-nation is being gradually deserted in most of the agreements recently concluded. The latest formula used in most recent agreements follows the ECAC Standard Clauses.⁽⁸⁹⁾

The Agreement between Lebanon and Pakistan adds to the clause recommended by Article 4 (b) of the Chicago Standard Form, the following condition:

"...provided that neither Contracting Party shall be obliged to grant to the designated airlines of the other Contracting Party, exemption or remission of customs duty, inspection fees or similar national duties or charges unless such other Contracting Party grants exemption or remission of such charges to the designated airlines of the first Contracting Party."(90)

In one case, an interesting provision is the one found in the Agreement between Lebanon and Singapore which provides:

"Fuel, lubricating oils, spare parts, regular aircraft equipment and aircraft stores taken on board aircraft of one Contracting Party in the territory of the other Contracting Party and used solely on flights between two points in the territory of the latter Contracting Party shall be accorded with respect to customs duties, inspection fees and other similar national or local duties and charges treatment not less favourable than that granted to national airlines or to the most favoured airline operating such flights."(91)

(6) Facilitation

The contracting states of the Chicago Convention are under a duty to adopt all practicable measures to facilitate and expedite navigation by aircraft between their territories and to prevent unnecessary delays to aircraft, crews, passengers and cargo. In fact Chapter IV of this Convention is entirely devoted to set forth measures to facilitate air navigation.(92)

In the bilateral agreements of the five Arab States few concessions were made in respect of facilitation. It would seem

unnecessary among members of ICAO to include provisions in their bilaterals as to facilitation. However, some agreements stipulate that:

"Simplified procedure shall be used in the case of passengers in transit through the territory of either Contracting Party. Baggage and goods in direct transit shall be exempt from customs duties, import fees or other national duties and charges."(93)

Syria and the German Democratic Republic, in the agreement between them made the following concession:

"Aircraft crew members in possession of valid licences and crew member certificates from one Contracting Party shall not be required to carry passports or obtain visas for entering the territory of the other Contracting Party, provided they depart on the same aircraft or in the following scheduled flight of the Airline."(94)

As to concessions made in respect of assistance to aircraft operated on the agreed services there is no provision that deals with this subject in most of the bilaterals where the two contracting States are parties to the Chicago Convention. However, in the Agreement between Lebanon and Pakistan the following provision is found:

"Either Contracting Party undertakes to offer assistance in its territory to aircraft in distress of the other Contracting Party, used for the exploitation of specified air services, in the same measure as if it were concerning its own aircraft operating similar international services."(95)

The Chicago Convention sets forth an obligation on the contracting States to provide such measures of assistance to aircraft in distress in their territories.⁽⁹⁶⁾ This applies a fortiori to aircraft operated on the agreed services in bilateral agreements. Apart from the Chicago Convention, if not under international law at least for humanitarian reasons any State is under a duty to provide all possible assistance to any foreign aircraft in distress in its territory.

Frequently, a provision dealing with this subject is found in the agreements where one of the two contracting parties is not a member in ICAO, as for instance in the Agreements between Syria and respectively, Bulgaria, Germany (Eastern), Hungary, Romania, and U.S.S.R.⁽⁹⁷⁾ It is to be noticed that these Agreements speak of any aircraft of one contracting party operating in the territory of the other party and not only those aircraft operated on the agreed services. Principally, these Agreements follow the provision of Articles 25 and 26 of the Chicago Convention. The formula generally used expressly provides that:

"1. In case of a forced landing or an accident occurring to an aircraft of either Contracting Party on the territory of the other, the Contracting Party on whose territory the accident occurred shall inform immediately the other Contracting Party and take the necessary measures for investigating the causes of the accident, and shall provide without delay all needed assistance to members of the crew and passengers affected by the accident and shall safeguard the aircraft and protect mail bags, luggage and goods found on the site of the accident.

"2. The Contracting Party conducting the investigation shall communicate to the other Contracting Party the results of that investigation and provide it with a copy of

the report thereof. The Contracting Party to whom the inflicted aircraft belongs shall have the right to assign observers to follow the investigation process."(98)

(7) Transfer of Funds

In most of the bilateral agreements concluded before 1960, no concessions are exchanged regarding transfer of funds earned in the territory of one contracting party by the airlines designated by the other contracting party. Few agreements contain a provision for the grant of this right by stating that:

"Transfers of funds received by the airline or airlines designated by the Contracting Parties shall be made in accordance with the currency regulations in force in the two countries. The Contracting Parties shall do everything in their power to facilitate the transfer of such funds."(99)

In the agreements recently concluded, the inclusion of such a provision in bilaterals has become more important with the increase of currency regulations in most countries. The formula used in those agreements follows closely Article 8 of the ECAC Standard Clauses by providing that:

"Either Contracting Party undertakes to grant the other Party free transfer, at the official rate of exchange, of the excess of receipts over expenditure achieved on its territory in connection with the carriage of passengers, baggage, mail shipments and freight by the designated airline of the other Party. Wherever the payments system between the Contracting Parties is governed by a special agreement, this agreement shall apply."(100)

The Agreement between Kuwait and the United Kingdom seems to be very specific when it provides that each contracting party grants to the designated airlines of the other contracting party:

- "(a) the right to transfer to their head offices in the currency of Kuwait or sterling at the official rates of exchange all surplus earnings, whatever the currency in which they were earned, and
- "(b) so far as the currency regulations of the first Contracting Party in force at the time will allow, the right to transfer surplus earnings to their head offices in the currency in which they are earned."(101)

It is worth mentioning here that most of the bilateral agreements concluded with Eastern European countries contain a provision as to personnel necessary for operating the agreed services of the designated airlines of one contracting party who may be maintained in the territory of the other party, as for instance the Agreements between Syria and respectively, Bulgaria, Hungary, Romania, and the Soviet Union. Generally, the formula used provides that:

"The designated airlines shall be entitled to charge an agency with its representation in the territory of the other contracting Party or to maintain the personnel necessary for operating the specified routes.

The personnel shall consist only of nationals of either or both Contracting Parties; this personnel shall be subject to the legal provisions and regulations of the country in which they stay."(102)

This provision becomes more specific in some of the above agreements when it limits these personnel to "technical and commercial staff" the number of which shall be subject to further agreement

as in the Agreements between Syria and respectively Bulgaria and Romania. (103)

Other concessions are exchanged in some agreements whereby each contracting Party undertakes to exempt from taxes, revenues and profits accruing from the operation of aircraft on international air services by the designated airline of the other contracting Party. (104)

Chapter II

INAUGURATION OF SERVICES

The inauguration of the agreed services in effect gives life to the air transport agreement which otherwise remains on paper. Conversely it enters the phase of execution upon inauguration of the agreed services. Nothing in any agreement makes the contracting parties obliged to inaugurate their services. They may be inaugurated immediately or at a later date at the option of the contracting party to whom the rights are granted. In the two Agreements between the United States and respectively Lebanon and Syria it is stated that:

"It is understood that either Contracting Party granted commercial rights under this Agreement should exercise them at the earliest practicable date except in the case of temporary inability to do so."(1)

It is very interesting to know that the airlines of Lebanon and Syria have never operated scheduled services to the United States, or were expected to do so at the time the above two agreements were concluded.

Before starting the agreed services, any contracting party is required to designate an airline or airlines for this purpose. The airline(s) so designated is required to obtain the appropriate operating permission from the State granting the rights. Airlines designated by one contracting party may be required by the other party to satisfy its aeronautical authorities, under the laws and

regulations normally applied by these authorities before they could inaugurate their services. Each contracting party may refuse to grant the appropriate operating permission to any airline designated by the other party or withhold or revoke such permission or the rights granted under the agreement or impose such conditions as it may deem necessary, in case it is not satisfied that substantial ownership and effective control of that airline are vested in the State designating it, or in case of failure of that airline to comply with the laws and regulations of the State granting the rights or with the provisions of the agreement. These points are discussed in some detail hereinafter.

1. Designation of Airlines

Before inaugurating the agreed services under the bilateral air transport agreements of the five Arab States, the contracting parties are required to designate the airlines that are to operate such services. This designation must be communicated to the State granting the rights. Generally, a "designated airline", as used in those agreements, is taken to mean the airline that one of the contracting parties shall have designated in writing to the other party as the airline which is to operate the agreed services on the specified routes. Most of those agreements provide that the designation of an airline shall be made in writing. Some are silent on this point especially those agreements which follow the Chicago Standard Form when they provide that:

"Each of the air services so described shall be placed in operation as soon as the Contracting Party to whom the rights have been granted.... to designate an airline or airlines for the route concerned has authorized an airline for such route...."(2)

In practice, the designation of airlines in such a case is made in writing and no case has been reported to the contrary. It may be noted that the formula mentioned above treats the designation as a duty on the contracting party designating the airlines whereas the formula adopted by most agreements makes it clear that each contracting party shall have the right to make this designation which is to be made in writing:

"Each Contracting Party shall have the right to designate in writing to the other Contracting Party one or more airlines for the purpose of operating the agreed services on the specified routes."(3)

The fact remains, however, that no agreed service can be started before an airline has been designated by the contracting party to whom the rights were granted for this purpose.

The designation of airlines under most agreements has been made at a later date following their conclusion. There is no special form to be followed in making such designation. Usually it is made by exchange of notes. In some cases the designation of airlines is made in the agreement at the date on which it is signed in a separate Exchange of Notes. In the Agreement of 1966 between Syria and Czechoslovakia the designation of airlines was made in the Agreement itself where Syria designated the "Syrian Arab Airlines", and Czechoslovakia designated the "Ceskoslovenske Aerolinie, N.P." to operate the agreed services.(4)

In few cases, the right to designate the airlines has been directly given in the agreement to the aeronautical authorities of each contracting party. This practice actually brings no innovation in view of the fact that the government concerned has the decisive word in such a designation.(5)

2. The Operating Permission

After an airline has been designated by a contracting party it must obtain, prior to the inauguration of the agreed services, the appropriate operating permission from the other contracting party. This party is bound to grant the necessary operating permission otherwise the agreed services cannot be commenced. But before it grants such permission it may require that the designated airlines of the other party fulfil certain conditions laid down in the agreement.(6)

The requirement of the operating permission in those agreements which follow the Chicago Standard Form, especially those concluded in the early post-war years, is formulated as follows:

"... the Contracting Party granting the rights shall, subject to....., be bound to give the appropriate operating permission to the airline or airlines concerned;..."(7)

In more recent agreements, another formula giving the same effect is favoured whereby the agreed services may be inaugurated by the designated airlines of one contracting party "on condition that" or "but not before" or "as soon as":

"(b) The Contracting Party granting the rights has issued to the said airlines the appropriate operating permit, which, subject to the provisions of... it shall do without undue delay."(8)

The formula used in many other agreements, especially in most of those which have been concluded since 1960, corresponds to that of the ECAC clause whereby each contracting party shall have the right to designate in writing to the other party one or more airlines for the purpose of operating the agreed services:

"On receipt of the designation, the other Contracting Party shall, subject to the provisions of...., without delay grant to the airline or airlines designated the appropriate operating authorization."(9)

In few agreements, the aeronautical authorities of the contracting parties are directly authorized to grant the necessary operating permission.(10)

A number of agreements contains a provision to the effect that in areas of hostilities or of military occupation, or in areas affected thereby, the inauguration of the agreed services shall be subject to the approval of the competent military authorities.(11) This provision has disappeared in more recent agreements.

There is no specified period during which the operating permission is to be granted. But in general it must be granted without delay.(12) Also no particular form of the operating permission exists. It is a matter left to the discretion of the State granting the rights.

After the conditions stipulated in the agreement have been complied with by a designated airline and it had obtained the appropriate operating permission it may begin at any time to operate the agreed services. A further condition is made sometimes whereby the grant of the operating permission⁽¹³⁾ or the inauguration of the agreed services expressly depends on the existence of a tariff established in accordance with the terms of the agreement and is in force in respect of such services.⁽¹⁴⁾

3. Requisite Qualifications

Before placing into operation the agreed services, the designated airline may be required to satisfy the competent aeronautical authorities of the contracting party granting the rights that it is qualified to meet the conditions prescribed under the laws and regulations normally applied by these authorities.

If the air transport agreements are looked at from the view point of this requisite qualification, three main types may be distinguished. They are:

First: Those agreements which follow the Chicago Standard Form use a formula typical thereto by stipulating:

"provided that the airlines so designated may be required to qualify before the competent aeronautical authorities of the Contracting Party granting the rights under the laws and regulations normally applied by these authorities before being permitted to engage in the operations contemplated by this Agreement;"⁽¹⁵⁾

Second: Those agreements which follow the Bermuda clause use a text identical to that of Article 2 (2) of the Bermuda Agreement which text states that:

"The designated airline may be required to satisfy the aeronautical authorities of the Contracting Party granting the rights that it is qualified to fulfil the conditions prescribed by or under the laws and regulations normally applied by those authorities to the operation of commercial air carriers."(16)

Some agreements state further that the laws and regulations should also be "reasonably applied".(17) Others add to the above provision that these laws and regulations should be in conformity with the provisions of the Chicago Convention.(18)

Third: Those agreements which contain a clause typical to that of the ECAC Standard Form.(19) The following formula is found especially in most recent agreements:

"The Aeronautical Authorities of one Contracting Party may require the airline designated by the other Contracting Party to satisfy them that it is qualified to fulfill the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by such authorities in conformity with the provisions of the Convention."(20)

It will be noted that the material scope of the laws and regulations is not indicated in any agreement of the three types mentioned above. The requisite qualifications, which may be required before the inauguration of the agreed services, stand also at any time of the execution of the agreement.

4. Substantial National Ownership and Effective Control

In general, all air transport agreements concluded by the five Arab States contain a provision to the effect that each contracting party reserves the right to refuse to accept the designation of an airline and to withhold or revoke an operating permission or the rights granted to an airline designated by the other party in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the other party or in its nationals.

In this respect, a fair number of those agreements contain a provision similar in substance to that of the Chicago Standard Form but the formula used becomes sometimes more typical to that of Article 6 of the Bermuda Agreement. The formula provides that:

"Each Contracting Party reserves the right to withhold or revoke immediately the rights specified in the Annex to this Agreement in any case in which it is not satisfied that substantial ownership and effective control of the designated airline(s) of the other Contracting Party are vested in nationals of either Contracting Party...."(21)

Some of the aforementioned agreements stress on direct national ownership by the State designating the airlines, or by its nationals rather than on "nationals of either contracting party."(22)

Another formula has been used in a number of agreements. This formula slightly differs from the above by expressly stipulating that the contracting party shall have the right to refuse from the beginning to accept the designation of an airline, or to impose

such conditions as it may deem necessary on the exercise by an airline of the rights granted in the agreement. It also stresses on direct national ownership by the State designating the airline, in addition to ownership by its nationals more than on ownership by nationals of either contracting party. The formula in question provides that:

"Each Contracting Party shall have the right to refuse to accept the designation of an airline and to withhold or revoke the grant to an airline of the rights specified in... the present Agreement or to impose such conditions as it may deem necessary on the exercise by an airline of those rights in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in nationals of the Contracting Party designating the airline."(23)

The latest formula used in some recent agreements is identical to that of Article 3 of the ECAC Standard Form.⁽²⁴⁾ The formula seems to be more precise and clear although it yields the same result as that of the above provision. Such agreements, however, divide the subject into two phases. First, the designation of an airline is accepted but the grant of the operating permission may be refused, or the permission be given subject to such conditions as may be deemed necessary to impose on the exercise of the rights granted, in any case where the grantor state is not satisfied that substantial ownership and effective control of the airline are vested in the State designating it or in its nationals. Second, they provide:

"1. Each Contracting Party shall have the right to revoke an operating authorization or to suspend the exercise of the rights specified in... the present Agreement by the airline designated by the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of these rights:

- (a) in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in nationals of such Contracting Party, or"(25)

In the Agreement between Syria and Yugoslavia the aeronautical authorities are directly entitled to exercise this right according to the following text:

"The aeronautical authority of each Contracting Party shall have the right to refuse to grant or to revoke the operating authorization referred to..., in any case where it is not satisfied that majority ownership and effective control are vested in the Contracting Party designating the airline or in its nationals."(26)

Whether this formula or another is used, it remains true that one of the most important reservations in air transport agreements is that which requires substantial ownership and effective control of the airlines be vested in the State designating them, or in its nationals. Its importance lies in the fact that it prevents other than national airlines of the two contracting states to take advantage of the rights granted in the agreement. As Cheng says: "Its use enables the contracting States to bar flags of convenience from international air transport."(27) However, the State granting the rights may decide not to enforce this requirement. In some cases, especially where a joint operating organisation is designated

to operate the agreed services, this requirement is not enforced. For example the Agreements with respectively Denmark, Norway, and Sweden though they provide for such a requirement, yet the Arab States concerned has accepted by Exchange of Notes the designation of the Scandinavian Airlines System to operate the agreed services and the following understanding was reached:

"Det Danske Luftfartselskab (DDL) cooperating with Det Norske Luftfartselskap (DNL) and Aktiebolaget Aero-transport (ABA) under the designation of the Scandinavian Airlines System (SAS) - a joint operating organization constituted in accordance with the provisions of Chapter XVI of the Chicago Convention... may operate the routes specified in... the Annex to the Agreement notwithstanding the provisions of Article 6 of the Agreement, concerning the ownership and control of the designated airlines."(28)

It was furthermore agreed that the designated airline, cooperating with the two others under the designation of SAS, may operate the routes for which it has been designated under the agreement with aircraft, crews and equipment of either or both of the other two airlines. In this case the provisions of the agreement shall apply to such aircraft, crews and equipment as if they belong to the designated airline, and the State together with its designated airline shall accept full responsibility under the agreement thereof.(29)

In the Agreement between Lebanon and Australia, by Exchange of Notes, the Lebanese Government has accepted the parallel partnership arrangement between Qantas Empire Airways Limited and the British Overseas Airways Corporation to operate the agreed services.(30)

In the Agreement between Lebanon and the Ivory Coast, each contracting party reserves the right to itself, in advance, to designate a joint operating agency:

"...either Contracting Party may designate a joint aircraft operating agency constituted in accordance with Articles 77 and 79 of the Convention on International Civil Aviation signed at Chicago..., and such agency shall be accepted by the other Contracting Party."(31)

The Agreement between Syria and the Soviet Union goes even further than requiring a substantial national ownership and effective control by stipulating that the crew manning the aircraft operating the agreed services should be nationals of the State designating the airline.(32)

What is worthy of notice here is that no restriction is imposed on the actual nationality of the aircraft of the designated airlines while operating the agreed services. This indicates that the airline is at liberty to choose its aircraft for such an operation. The question whether a designated airline can use aircraft bearing a nationality other than that of either party depends on the local laws and regulations of the State granting the rights.

Besides the foregoing conditions governing the inauguration of the agreed services, we find in a number of agreements that each contracting party is under an obligation to cause its designated airlines to provide to the aeronautical authorities of the other party, as long in advance as practicable, copies of the time tables, rate schedules and all other similar relevant information concerning the operation of the agreed services.(33)

Some agreements require that such information be notified to the aeronautical authorities 30 days prior to the inauguration of the agreed services.⁽³⁴⁾ Few others go further by stipulating that the information should be submitted for approval:

"The designated airline of each Contracting Party shall communicate for approval to the Aeronautical Authorities of the other Contracting Party not less than thirty days prior to the inauguration of services on the routes specified in... the present Agreement the types of aircraft to be used and the flight schedules."⁽³⁵⁾

This additional requirement has become one of the conditions by which the inauguration of the agreed services is governed.

Chapter III

The Regulation of Capacity

At the Chicago Conference 1944 the most crucial problem was that of capacity regulation. The failure of the international community to reach a multilateral agreement on the economic regulation of air transportation left the problem to be solved by a world of bilateralism. Even in this world the problem is still a complicated one.

The Bermuda Agreement was the first bilateral to set up general principles governing capacity regulation, which principles became widely accepted.⁽¹⁾

The bilateral agreements of the five Arab countries concluded before 1960 may be classified with respect to regulation of capacity as the Bermuda type Agreements. Most of them, especially those concluded in the early post-war years, contain capacity clauses similar and sometimes identical to those of the Bermuda Agreement.

The purpose of capacity clauses is to determine the volume of air transport that may be offered by each designated airline in the operation of the agreed services. In the first place, capacity clauses are those provisions laying down certain conditions or limitations concerning the capacity the designated airlines can offer on the agreed services. It is seldom to find a definition of "capacity" in bilaterals dealing with this subject. In a few cases as in the Agreement between Lebanon and Pakistan, the following definitions are given:

"The term "capacity" in relation to an aircraft means the payload of that aircraft available on a route or section of a route.

The term "capacity" in relation to a specified air service means the capacity of the aircraft used on such service, multiplied by the frequency operated by such aircraft over a given period and route or section of a route."(2)

This latter meaning is of our concern in the present analysis of the regulation of capacity.

In those agreements containing capacity clauses three general principles are accepted by both contracting parties. The basic principle is that the air transport capacity to be offered to the public on the agreed services shall be adjusted to traffic requirements. The second principle is that the airlines designated by both contracting parties are entitled to fair and equal opportunity to operate the agreed services. The third principle is that in operating services on the same or common routes, the airlines designated by both contracting parties shall take into consideration their mutual interests so as not to affect unduly each other's services.

Speaking of the capacity clauses in the bilateral agreements of the five Arab countries, one at the first look may distinguish four main categories.

- (1) Agreements with the Bermuda-type capacity clauses.⁽³⁾
- (2) Agreements containing general principles.⁽⁴⁾
- (3) Agreements dealing with traffic of third countries.⁽⁵⁾
- (4) Agreements with no capacity clauses.⁽⁶⁾

In the biref analysis given below it should be noted that in formulating the principles governing the regulation of capacity various kinds of phraseology are used.

(1) Agreements with the Bermuda-type capacity clauses

Two main types may be distinguished:

First, those agreements containing typical Bermuda-clauses especially in the Agreements with respectively Greece, Turkey, United Kingdom, and the United States. These Agreements, after speaking of the desire of both contracting parties to foster and encourage the widest possible distribution of the benefits of air travel for the general good of mankind...etc, state the following:⁽⁷⁾

"It is the understanding of both Governments that the services provided by a designated airline under this Agreement and its Annex shall retain as their primary objective the provision of capacity adequate to the traffic demand between the country of which such air carrier is a national and the country of ultimate destination of the traffic. The right to embark or disembark on such services international traffic destined for and coming from third countries at a point on the routes specified shall be applied in accordance with the general principles of orderly development to which both Governments subscribe and shall be subject to the general principle that capacity should be related:

- a) to traffic requirements between the country of origin and the country of destination;
- b) to the requirements of through airline operation, and
- c) to the traffic requirements of the area through which the airline passes after taking account of local and regional services."⁽⁸⁾

Second, those agreements which contain a new improved formula of the Bermuda capacity clauses as in the Agreement between Lebanon and the United Kingdom which provides that:

"The agreed services provided by the designated airlines of the Contracting Parties shall bear close relationship to the requirements of the public for transportation on the specified routes and shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate to carry the current and reasonably anticipated requirements for the carriage of passengers, cargo and mail between the territory of the Contracting Party designating the airline and the country of ultimate destination of the traffic. Provision for the carriage of passengers, cargo and mail both taken up and put down at points on the specified routes in the territories of States other than that designating the airline shall be made in accordance with the general principles that capacity shall be related to:

- (i) traffic requirements between the country of origin and the country of destination of the traffic;
- (ii) traffic requirements of the area through which the airline passes, after taking account of other air transport services established by airlines of the States comprising the area; and
- (iii) the requirements of through airline operation." (9)

Analysis of the above provision shows that the capacity is governed by three main principles namely:

(a) That the air transport capacity provided by the agreed services "shall bear close relationship to the requirements of the public for transportation on the specified routes". Thus the basic criterion is that the air transport capacity provided shall be adjusted to traffic requirements.

(b) That the primary objective of the agreed services is

to carry, at a reasonable load factor,⁽¹⁰⁾ traffic with a capacity adequate to the current and reasonably anticipated requirements of third and fourth freedom traffic between the territory of the contracting party designating the airline and the country or countries of ultimate destination of the traffic. This of course includes in the first place traffic originating from or destined for the territory of the contracting party designating the airline and third country traffic in general.

(c) That the right to take up and put down traffic "in the territories of States other than that designating the airline" should be supplementary to that of third and fourth freedom traffic subject also to a reasonable load factor.⁽¹¹⁾

What is noticed here is that the new formula is more explicit than that used in the Bermuda Agreement dealing with the same subject. It seems also that the requirements of "through airline operation" is placed the last on the list of fifth freedom traffic.

(2) Agreements containing general principles

Actually most of these agreements contain general principles similar in substance to those of the Bermuda Agreement. The Agreement between Jordan and Egypt speaks of "fair and equal opportunity", "a reasonable load factor of capacity adequate to the current and reasonably anticipated traffic demand", and that the rights granted "shall not be exercised abusively to the detriment or disadvantage of any airline of the other Contracting Party". It

further provides that in the operation of the agreed services:

"the combined capacity provided by the designated airlines of both Contracting Parties for each sector of the specified air routes one end of which is in the territory of either Contracting Party, together with the capacity provided by other air services on the same sectors, shall be maintained in reasonable relationship to the requirements of the public for air transportation."(12)

The Agreements of each of Iraq and Lebanon concluded with Pakistan, although they are within the general capacity principles of the Bermuda Agreement, approach the subject by using a different formula where they provide that:

"In order to maintain equilibrium between the capacity of the specified air services and the requirements of the public for air transport on the specified air routes and in order to maintain proper relationship between the specified air services and other air services operating on the specified air routes...."(13)

The Agreement between Lebanon and Australia departs from the Bermuda capacity clauses and makes its primary concern in regulating the right of the contracting parties to carry third and fourth freedom traffic in reference to their respective territories, and the carriage of fifth freedom traffic is made in relation to these requirements and "shall have regard to the adequacy of the local and regional air services operated by the airlines of the other Contracting Party."(14)

The Agreement between Lebanon and the Ivory Coast provides for the principle of equality and reciprocity, equal distribution of available capacity and that:

"On routes common to both, they shall take their mutual interests into consideration so as not to affect unduly their respective services."(15)

In the Agreement between Iraq and India, the aeronautical authorities of both parties are charged with the task of determining the total capacity required for the carriage of all third and fourth freedom traffic to be operated during an "agreed period" on each of the specified air routes. These authorities shall then determine the capacities and frequencies to be provided by the designated airline of each of the contracting parties.(16)

The Agreement between Syria and Yugoslavia provides for a fair treatment and equal opportunity, the provision of capacity adequate to the normal and reasonably anticipated international air traffic requirements of third and fourth freedom, and that fifth freedom traffic shall be exercised within those limits after taking into account the requirements of air transport and regional services.(17)

A different technique has been adopted in most agreements with Eastern European countries. In the Agreement between Syria and Czechoslovakia, it seems that for the first time the problem of regulating the capacity to be provided is left to be determined by direct agreement between the designated airlines on their common routes subject to the approval of the aeronautical authorities of the two contracting parties.(18) This new method has been adopted in most of the bilateral agreements concluded with Eastern European countries, as for instance those between Syria and respectively Hungary, Poland, and Romania.

The Agreement between Syria and Germany(Eastern) does not require even the approval of the aeronautical authorities when it provides that:

"The transport capacity offered by the designated airlines on the routes agreed (or to be agreed) upon, shall be determined in agreement between them in the light of their mutual interests."(19)

(3) Agreements dealing with traffic of third countries

As those Agreements concluded between Lebanon and respectively Denmark, Norway, and Sweden. They follow the Bermuda capacity clause dealing with fifth freedom traffic when they provide that:

"The right of the designated airlines to pick up and set down at the points and on the routes specified international traffic destined for or coming from third countries shall be exercised in accordance with the general principles of orderly development to which both Governments subscribe, and in such a manner that capacity shall be related to:

- (a) Traffic requirements between the country of origin and the countries of destination.
- (b) The requirements of through airline operation; and
- (c) The traffic requirements of the areas through which the airline passes, after taking account of local and regional services."(20)

(4) Agreements with no capacity clauses

The omission of any reference in bilateral agreements to the

regulation of capacity to be provided by the agreed services does not mean that the matter is left in the air. In fact the problem of capacity in this case is left to be regulated by subsequent arrangements or agreement between the contracting parties concerned. As for instance in the case of the Agreement between Lebanon and Italy, the original Agreement of 1949, containing no capacity clause was amended in 1960 and certain capacity clauses were included therein. (21)

Speaking of the regulation of capacity it is worthy of mentioning that the change of gauge rarely occurs in the five Arab countries the reason which makes most of their bilaterals void of any provisions dealing with this subject. However, this right was first introduced in 1951 in the Agreement between Lebanon and the United Kingdom. Change of gauge oftenly occurs in Lebanon being a big center for international air transport. It occurs sometimes in Kuwait. According to the Agreement between Lebanon and the United Kingdom the term "change of gauge" is defined to mean "the operation of an air service by a designated airline in such a way that one section of the route is flown by aircraft different in capacity from those used on another section." (22) The exercise of this right is subject to the following conditions:

- "(a) that it is justified by reason of economy of operation;
- (b) that the aircraft used on the section more distant from the terminal in the territory of the former Contracting Party are smaller in capacity than those used on the nearer section;

- (c) that the aircraft of smaller capacity shall operate only in connexion with the aircraft of larger capacity and shall be scheduled so to do; the former shall arrive at the point of change for the purpose of carrying traffic transferred from, or to be transferred into, the aircraft of larger capacity; and their capacity shall be determined with primary reference to this purpose;
- (d) that there is an adequate volume of through traffic; and
- (e) that the provisions of (referring to capacity provisions) shall govern all arrangements made with regard to change of gauge."(23)

Chapter IV

The Regulation of Tariffs

While the Chicago Standard Form Agreement contains no provisions that deal with the problem of tariffs to be charged by the agreed services the Standard Clauses developed by ECAC make provisions for the regulation of tariffs. In most of the bilaterals of the five Arab countries provisions exist for the regulation of tariffs. Few agreements do not deal with the problem of tariffs.⁽¹⁾

The term "tariff" is used often in bilaterals. Some agreements use the term "rates". Only rarely a definition of the term "tariff" is given. In the Agreement between Syria and France it means:

"...prix à acquitter pour le transport des passagers ou des marchandises (y compris toute redevance pour le transport du courrier) ainsi que des conditions de leur application et, là où les prix à acquitter pour le transport des passagers et des marchandises sont fixés par la procédure de l'Association Internationale du Transport Aérien, ce terme inclut les résolutions appropriées mise en vigueur à l'occasion par ladite Association."⁽²⁾

The following meaning of "tariff" is found in the International Agreement on the procedure for the establishment of tariffs for scheduled air services of July 10, 1967:

"... the term "tariff" means the prices to be paid for the carriage of passengers, baggage, and freight and the conditions under which those prices apply, including prices and conditions for agency and other auxiliary services, but excluding remuneration or conditions for the carriage of mail."(3)

The air carriers of the five Arab countries are now members in the Arab Air Carriers Organisation (AACO).(4) They cooperate within this Organisation as to tariffs to be applied among the Arab countries, i.e., on regional services. However, one of the objectives of AACO, as we have seen before, is to study the tariffs and conditions of carriage between the Arab countries on the one hand, and America, Europe and other areas of the world on the other. AACO cooperates with IATA and both of them maintain contact with each other.(5) The future will show how far AACO can achieve its objectives and to what extent it can affect the tariffs applied in the Arab countries. Up till now it has been able to reduce fares and rates on regional services. This, of course, has a bearing on services provided by foreign airlines between points situated in the Arab countries.

Speaking of tariffs, it should be noticed that some agreements contain minimum principles governing the regulation of tariffs.(6) They follow in this respect the Bermuda Agreement when they provide that "rates shall be fixed at reasonable levels, due regard being paid to all relevant factors, such as economic operation, reasonable profit, the different characteristics of the services and aircraft with respect to speed and comfort, and the rates charged by any other airline operating on the same route."(7)

A majority of the bilateral agreements follow in substance the principles governing tariffs as recommended by ECAC. Some agreements speak of tariffs on the agreed services,⁽⁸⁾ while others deal with rates to be charged in respect of "traffic on any of the specified air routes between the territories of the two Contracting Parties, or between the territory of a third country and the territory of one of the Contracting Parties."⁽⁹⁾ Few agreements deal with tariffs together with the rates of agency commission used in conjunction with them.⁽¹⁰⁾ Some agreements do not even mention the scope of application of rates to be charged and only provide that rates to be charged by the airlines shall be agreed between them etc.⁽¹¹⁾

An analysis of the principles governing the regulation of tariffs shows that in all the bilaterals dealing with this subject, the basic principle is that the tariffs shall be established at reasonable levels after taking all relevant factors into consideration. Some factors are generally referred to such as economic factors, reasonable profit, differences of characteristics of services (including standards of speed and accommodation), and the tariffs charged by other airlines operating on the route.

The procedure followed in most agreements for determining the tariffs to be charged by the designated airlines passes generally through three stages: agreement between the designated airlines including consultation, if provided, with other airlines operating over the whole or part of the route; approval of tariffs by the aeronautical authorities of the two parties; and in case of dis-

agreement between the designated airlines or disapproval of the aeronautical authorities. These stages are discussed below:

(A) Agreement between airlines and consultation

Iraq: The majority of agreements concluded by Iraq provide that tariffs shall be fixed by agreement between the designated airlines and that regard shall be had to relevant rates adopted by IATA.⁽¹²⁾ In the Agreement with Czechoslovakia no reference is made to rates adopted by IATA.⁽¹³⁾ In the Agreement with Egypt rates are to be fixed either in accordance with such rate resolutions as may be adopted by an organisation in which both airlines are members and accepted by both parties, or else by agreement between the designated airlines.⁽¹⁴⁾ In the Agreement with the Netherlands rates to be charged shall be fixed through the machinery of IATA and in case of failure by the designated airlines.⁽¹⁵⁾ In the Agreement with the United Kingdom tariffs together with rates of agency commission used in conjunction with them shall, if possible, be agreed upon between the designated airlines in consultation with other airlines operating over the whole or part of the route, and such agreement shall, where possible, be reached through the rate-fixing machinery of IATA.⁽¹⁶⁾

Jordan: Some bilaterals follow the tariff provisions adopted by ECAC, as those with each of Denmark, Norway and Sweden, while the Agreements with each of Egypt and the Netherlands contain tariff provisions similar to those in the Agreement between Iraq and Egypt. On the other hand, the Agreement with France has provisions similar to those in the Agreement between Syria and France.

Lebanon: Apart from some changes, additions or omissions, several agreements contain tariff provisions similar to those adopted by ECAC, as for instance those Agreements with respectively Belgium, Ghana, Italy (1960), Ivory Coast, Singapore, and the United Kingdom. In the Agreement with Australia, the tariffs shall be agreed upon between the designated airlines in consultation with other airlines and "shall have regard to any relevant rates adopted by the International Air Transport Association".⁽¹⁷⁾ In the Agreements with each of Denmark and Sweden, the recommendations of IATA shall be taken into account as far as possible while fixing rates, and failing any such recommendations the designated airlines shall consult with airlines of third countries operating on the same routes.⁽¹⁸⁾ In the Agreement with Pakistan, the rates shall be agreed in the first place between the designated airlines and shall have regard to relevant rates adopted by IATA.⁽¹⁹⁾ The Agreement with Switzerland has only this to say:

"Rates shall be fixed at reasonable levels, due regard being paid to economy of operation, reasonable profit and the characteristics of each service, such as speed and accommodation. So far as possible, account shall also be taken of the recommendations of the International Air Transport Association (IATA)."⁽²⁰⁾

Syria: Some agreements provide that rates shall be fixed by the designated airlines either in accordance with such rate resolutions as may have been adopted by an airlines organisation of which the designated airlines are members provided it is accepted by both contracting parties, or else by agreement between these airlines.⁽²¹⁾ The Agreement with Cyprus provides that tariffs shall

be agreed in the first place between the designated airlines and (22)
no reference is made as to IATA or consultation with other airlines.
In the Agreement with France, the tariffs shall be fixed subject
to agreement between the two contracting parties in accordance with
the recommendations of IATA or any successor thereto where the desig-
nated airlines are members thereof, or else by direct understanding
between the enterprises accepted by the two contracting parties. (23)
In the Agreement with Switzerland, the same provision is found as in
the Agreement between Lebanon and Denmark. (24)

It should be noted that in many of the bilaterals of the
five Arab countries where one contracting party has not designated
an airline or airlines for any of the specified routes to which
rates have not been fixed, the airlines designated by the other party
to operate the air services on that route may fix the rates to be
charged thereby.

In no bilateral there is any time limit during which
agreement should be reached between the designated airlines on
tariffs to be charged on the agreed services.

(B) Approval of tariffs

With few exceptions, all bilaterals dealing with tariffs
provide that the tariffs agreed upon by the designated airlines
shall be submitted to the aeronautical authorities for their appro-
val. In the Agreement between Lebanon and Australia, the approval
of the aeronautical authorities of a contracting party shall not be

required in respect of tariffs "for a route or section in which no designated airline of that Contracting Party is concerned".⁽²⁵⁾ In the Agreement between Lebanon and Switzerland no provision is made as to whether tariffs are to be fixed by the designated airlines or be approved by the aeronautical authorities.⁽²⁶⁾ In this case tariffs are left to be determined by subsequent arrangement or agreement. The Agreement between Iraq and the Netherlands requires the approval of the two "Governments" when it provides that "this rate will be fixed by the respective designated air carriers under approval of their respective Governments".⁽²⁷⁾

In the majority of post-war agreements there is no time limit during which the proposed tariffs must be submitted for approval by the aeronautical authorities of the two contracting parties. Agreements providing for such a time limit differ in dealing with this point. Some of them require that the proposed tariffs be submitted for the approval of the aeronautical authorities of the contracting parties at least thirty days before the proposed date of their introduction.⁽²⁸⁾ The other agreements are different in that the proposed tariffs shall be submitted to the aeronautical authorities of both parties and will enter into force either (45)⁽²⁹⁾ days or (30)⁽³⁰⁾ days after their receipt by these authorities unless one of the contracting parties has notified its disapproval .

(C) Disagreement or Disapproval

With the exception of the agreements containing no provisions dealing with tariffs,⁽³¹⁾ and those containing minimum

principles regarding tariffs,⁽³²⁾ the majority of agreements contain a provision to the effect that if the designated airlines fail to reach agreement on tariffs then the "aeronautical authorities" of the two parties will endeavour to reach agreement on the tariffs to be charged on the agreed services.⁽³³⁾ And in case these authorities are unable to reach such agreement then the "two contracting parties" themselves will endeavour to reach agreement on the tariffs to be charged. In the event the two parties are unable to reach such agreement the issue will be settled according to the procedure of settlement of disputes provided for in the agreement concerned.

In other agreements⁽³⁴⁾ in case of any disagreement between the designated airlines concerned, or disapproval of their aeronautical authorities of tariffs submitted to them, the two contracting parties themselves will endeavour to reach agreement on the tariffs to be charged. In the event they are unable to reach such agreement the issue will be settled according to the procedure of settlement of disputes provided for in the agreement concerned. Most of these bilaterals, however, contain a provision to the effect that pending the settlement of the dispute by agreement between the two contracting parties or until it is decided under the procedure of settlement of disputes the rates already in force shall prevail. In some cases if no rates have been established, reasonable rates shall be charged by the airlines concerned.⁽³⁵⁾

Chapter V

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SETTLEMENT OF DISPUTES

1. Arbitration
2. The ICAO Council
3. The International Court of Justice
4. The Arab League
5. Constitution of Arbitral Tribunals
6. Procedure, and Expenses
7. Compliance with Interim Measures and Awards

Chapter V

Settlement of Disputes

All bilateral agreements concluded by the five Arab countries contain provisions for settlement of disputes.

Negotiation is the principle common to all of these agreements, that is to say, the two contracting parties should first endeavour to settle any dispute which may arise out of the interpretation or application of their agreement through direct negotiation.

In a number of bilaterals, direct negotiation constitutes the only means of settlement of disputes.⁽¹⁾ In such a case they provide that disputes shall be settled by direct negotiation between the aeronautical authorities of the two parties concerned, and failing to reach agreement the dispute shall be settled through diplomatic channels.

If a settlement cannot be reached through direct negotiation, one or more steps may be followed in the procedure of settlement of disputes. This procedure is explained in the following analysis.

1. Arbitration: The majority of agreements provide for arbitration as the first step after failure of direct negotiation. Any dispute may be referred for decision to an arbitral tribunal or to any other person or body by agreement between the two parties. This seems to be the only means in some agreements for settlement of disputes as for instance in the case of Kuwait with Japan; Lebanon with the Ivory Coast.⁽²⁾

In the Agreement between Syria and Yugoslavia, the only way to reach a settlement seems to be through an arbitral tribunal, after failure to settle the dispute through diplomatic channels.⁽³⁾

In case no agreement can be reached between the two parties on referring the dispute to an arbitral tribunal or to any other person or body, or in case they cannot agree on the composition of such tribunal, some agreements resort to another means for reaching a settlement by providing that the dispute may be submitted for decision to any "tribunal competent to decide it established within ICAO", or, if there is no such tribunal, "to the ICAO Council".⁽⁴⁾ And some others substitute such a tribunal by the ICAO Council itself.⁽⁵⁾

Some agreements refer the dispute to an arbitral tribunal or to any person or body, and in case the two parties cannot reach agreement on the matter, the dispute shall be referred to any tribunal competent to decide it which may be established within ICAO, or, if there is no such tribunal, to the "International Court of Justice".⁽⁶⁾ And if there is no such tribunal, the Agreement between Lebanon and Australia adds that the dispute may be referred to the ICAO Council, or, if the Council declines to consider such a dispute or is not empowered to do so, then the dispute may be referred to the "International Court of Justice".⁽⁷⁾

A number of agreements follows the ECAC clauses regarding settlement of disputes.⁽⁸⁾ In some agreements, arbitration constitutes the only resort for a settlement after failure to refer the dispute to the ICAO Council.⁽⁹⁾

2. The ICAO Council: Several agreements provide for arbitration as the step following failure of direct negotiation by referring the dispute for decision to the ICAO Council, unless the two parties concerned agree to settle the dispute through an arbitral tribunal or some other person or body.⁽¹⁰⁾ Thus the ICAO Council acts in this case as a judicial organ. Most of these agreements make no reference to the applicable articles of the Chicago Convention. In the case of Iraq with Pakistan, reference is made to Chapter XVIII of this Convention.⁽¹¹⁾ In the Agreement between Syria and Greece, it is stated that the Council "will deal with the matter in accordance with the provisions of its regulations governing such matters."⁽¹²⁾

In the Agreement between Syria and Greece, the only way to reach a settlement is by referring the dispute to the ICAO Council.⁽¹²⁾

In many other agreements, the ICAO Council forms a part of the agreed procedure for settlement of disputes.⁽¹³⁾

In the two Agreements between each of Lebanon and Syria with the United States, any disputes shall be referred to the ICAO Council only for "an advisory report".⁽¹⁴⁾ In this case it seems that the fate of such disputes will be left in the air if the advisory report rendered by the Council is not accepted by any of the two contracting parties concerned. In our opinion such a report should bind both parties.

In the agreements which follow the ECAC clauses of arbitration, and in some which do not,⁽¹⁵⁾ the ICAO Council through its

President is given the function of quasi-judicial organ where the latter may be asked to appoint an arbitrator or arbitrators as the case may require.

3. The International Court of Justice: In most agreements no resort to the International Court of Justice (ICJ) is made. However, in some cases it constitutes a part of the arbitration procedure. In a few cases resort to ICJ may constitute the only means for reaching a settlement:

Lebanon: In a few cases the disputes may be submitted to an arbitral tribunal or to ICJ where it is stated that:

"Any dispute between the Contracting Parties relating to the interpretation or application of this Agreement or its annex which cannot be settled by direct negotiation shall be submitted to an arbitral tribunal to be selected by the Contracting Parties or to the International Court of Justice. The Contracting Parties undertake to comply with the arbitration awards or with the decisions of the International Court of Justice, which shall in all cases be regarded as final."(16)

In some other agreements resort to ICJ constitutes part of the arbitration procedure where the disputes may be referred to ICJ as the last resort of arbitration.(17)

Jordan: In the two Agreements that with Belgium and the Netherlands, the disputes which cannot be settled by direct negotiation "shall be referred for decision to an Arbitral Tribunal appointed by agreement between the Contracting Parties or to the International Court of Justice."(18)

Iraq: In one Agreement that with India, any dispute may be referred to ICJ as the last resort of arbitration.(19)

Kuwait: Only the Agreement with Japan gives the right to the President of ICJ to appoint the presiding arbitrator in case of failure of the two parties to appoint such arbitrator, and

"If either of the Contracting Parties does not agree to refer the dispute to an arbitration tribunal or to a person or an organisation, the other Contracting Party shall have the right to submit the dispute to an arbitration tribunal appointed by the President of the International Court of Justice."(20)

Syria: In the bilateral practice of Syria there is no reference to ICJ.

4. The Arab League: In two Agreements that between Syria and each of Iraq and Saudi Arabia, the disputes may be referred for decision to an arbitral tribunal or to any other person or body.(21) In case of failure of the two parties to refer the dispute to arbitration or in case they are unable to agree on the composition of an arbitral tribunal, each contracting party may refer the dispute for decision to the Council of the Arab League. It is to be noted, however, that resort to the Arab League happens only among the Arab states.

5. Constitution of Arbitral Tribunals: All the bilateral agreements concluded before 1960 do not contain provisions regarding the composition of arbitral tribunals. Some of the recently

(22)
concluded agreements provide for the constitution of such tribunals. Apart from any time limits which may be specified for the appointment of the arbitrators, all of those agreements provide that the tribunal shall be composed of three arbitrators, two of them are to be appointed or selected respectively by the two contracting parties concerned, and the third is to be agreed upon who shall preside the tribunal. Some of these agreements, however, provide that in case one of the contracting parties fails to nominate its arbitrator, or the third arbitrator (chairman) cannot be agreed upon, the President of the Council of ICAO may be requested to make the necessary appointment,⁽²³⁾ or the President of ICJ in the case of Kuwait with Japan.⁽²⁰⁾ As to the chairman, all of these agreements provide that the two appointed arbitrators shall appoint a third arbitrator to act as a chairman of the tribunal who shall be a national of a third state. The Agreement between Kuwait and Japan provides that "the third arbitrator who shall preside shall be agreed upon between the Contracting Parties".⁽²⁰⁾

6. Procedure, and Expenses: Some of the agreements containing rules for the constitution of arbitral tribunals provide that:

"If the arbitral tribunal fails to settle the dispute by negotiation, it shall render its decision by majority vote. Unless the Contracting Parties agree otherwise, the tribunal shall draw up its own rules and choose its own venue."⁽²⁴⁾

As to expenses, some of the bilaterals containing rules for the constitution of arbitral tribunals make provisions regarding

the expenses of arbitration. In most cases each contracting party shall bear the expenses of its arbitrator and a moiety of the expenses of the chairman.⁽²⁵⁾ The Agreement between Syria and Yugoslavia is more specific at this point when it provides that the remaining costs of the arbitration tribunal shall be borne by both parties equally.⁽²⁶⁾ In the Agreement between Syria and Cyprus, the expenses of the arbitration will be equally shared by the two parties.⁽²⁷⁾

7. Compliance with interim measures and Awards: Several agreements provide that the two contracting parties undertake to comply with any provisional measures rendered in the course of arbitration.⁽²⁸⁾

All bilateral agreements provide that the two contracting parties undertake to comply with any decision given as a result of any kind of arbitration provided for in the agreement concerned. Some of them, however, stipulate that if and as long as either contracting party or a designated airline of either parties fails to comply with such decision, the other party may limit, withhold or revoke any rights it has granted by virtue of the agreement concerned.⁽²⁹⁾

Chapter VI

Entry into Force, Registration

Modification, Termination

1. Entry into Force

Every bilateral agreement of the five Arab countries comes into force in accordance with its own terms agreed upon between the two contracting parties. In many of them, the agreement enters into force on the date of the exchange of instruments of ratification.⁽¹⁾ Some require that instruments of ratification be exchanged through diplomatic channels.⁽²⁾ Others name the place⁽³⁾ where the exchange of instruments of ratification must take place.

In some cases the agreement enters into force on the date of its signature.⁽⁴⁾

In many cases the agreement comes into force provisionally on the date of its signature and enters into force definitely on the date of exchange of instruments of ratification.⁽⁵⁾ Such instruments, sometimes, should be exchanged through diplomatic channels.⁽⁶⁾ In the case of Lebanon with Czechoslovakia, the Agreement comes into force provisionally (15) days after the date of its signature and definitely (30) days after the exchange of diplomatic notes stating that the constitutional procedures for ratification have been accomplished.

In few cases the agreement shall come into force on a certain date to be fixed in an exchange of notes stating that the

formalities required by the national legislation of each contracting party have been accomplished.⁽⁷⁾

In few agreements of the early post-war years, a different procedure is followed, as in the Agreement between Lebanon and the United States:

"The provisions of this Agreement shall become operative from the day it is signed. The Lebanese Government shall notify the Government of the United States of approval of the Agreement by the Lebanese Parliament, and the Government of the United States shall consider the Agreement as becoming definitive upon the date of such notification by the Lebanese Government."⁽⁸⁾

In most cases there is no time limit within which the agreement should be ratified by the contracting parties. But in many bilaterals it is stated that the instruments of ratification shall be exchanged "as soon as possible"⁽⁹⁾ or "the agreement shall be ratified as soon as possible".⁽¹⁰⁾

In the Agreement between Lebanon and Belgium, it is stipulated that:

"If the exchange of the instruments of ratification does not take place within the two years following the date of signature, either Contracting Party may terminate the provisional application of the Agreement after giving six months' notice in writing to the other Contracting Party."⁽¹¹⁾

This procedure saves some agreements from remaining unratified for a long time.

2. Registration with ICAO

The five Arab States being parties to the Chicago Convention are bound to register with the ICAO Council all their aeronautical arrangements and agreements under Articles 81 and 83 of the Convention. And being parties to the United Nations Charter they are also bound to register:

"1. Every treaty and every international agreement entered into by any member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariate and published by it.

2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations."(12)

Members of ICAO, however, are relieved from the duty of such registration with the UN since the ICAO Council has taken this responsibility under Article 8 of the Rules for Registration adopted by the Council on April 1, 1949.(13)

Most of the bilateral agreements provide for registration with ICAO. Many follow the Chicago Standard Form by stating that the agreement and all contracts connected therewith shall be registered with ICAO.(14) Some add the qualification "exchange of notes"⁽¹⁵⁾ or "all agreed supplements and modifications".(16) While others provide that the annex together with the agreement shall be registered with ICAO.(17) Several bilaterals on the other hand omit any mention of registration with ICAO.(18)

It is of interest to notice here that while the Chicago Convention provides for immediate registration of aeronautical agreements, some bilaterals are not even registered with ICAO though they were concluded many years ago.

Also of interest to note is that the Pact of the Arab League provides in its Article 17 that each member State of the League shall deposit with the Secretariat-General one copy of every treaty or agreement concluded or to be concluded in the future between itself and another member state of the League or a third state. It seems that this duty is not fulfilled in many cases. (19)

3. Conformity with Multilateral Agreements

In many bilateral agreements a provision similar to the following is found:

"In the event of the conclusion of a multilateral convention or agreement concerning air transport to which both Contracting Parties adhere, this Agreement shall be modified to conform with the provisions of such convention or agreement." (20)

A number of bilaterals follow the ECAC clause by providing that the respective agreements will be amended so as to conform with any multilateral convention which may become binding on both contracting parties. (21)

Some bilaterals are more specific when they provide that: (22)

"If a general multilateral convention on traffic rights for scheduled international air services comes into force in respect of both contracting parties, the present Agreement shall be amended so as to conform with the provisions of such convention."

Some bilaterals are silent on this subject.⁽²³⁾ In any case members of ICAO undertake not to enter into any obligations and understandings which are inconsistent with the Chicago Convention. They have also accepted that this Convention abrogates all obligations and understandings which are inconsistent with its terms.⁽²⁴⁾

The five Arab States are also bound by the United Nations Charter which provides in its Article 103 that:

"In the event of a conflict between the obligations of the members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."

4. Modification

All bilateral agreements of the five Arab countries contain provisions for modification of the respective agreements or the annexes or schedules.⁽²⁵⁾ Apart from minor variations, many of them include a provision stating that

"If either of the Contracting Parties considers it desirable to modify any provision or provisions of the Agreement, or its Annex, the competent aeronautical authorities of the Contracting Parties shall consult in order to realise such modification(s). Such consultation shall begin within a period of 60 days from the date of the request. In case

the said authorities arrive at an understanding about the modifications to be made, said modifications shall come into force after having been confirmed by an exchange of diplomatic notes."(26)

A number of agreements provides only for modification of the annex or schedule but adopts a lengthy procedure such as the following:

"If either of the contracting parties considers it desirable to modify the terms of the Annex to this Agreement, it may request consultation between the aeronautical authorities of the two contracting parties, and in that event such consultation shall begin within a period of sixty days from the date of the request. Modifications agreed between these authorities will come into effect when they have been confirmed by an exchange of notes through diplomatic channels."(27)

There is another group of agreements dealing with this modification in a simplified procedure by requiring only direct agreement between the aeronautical authorities by stipulating that:

"If either of the Contracting Parties considers it desirable to modify any provision or provisions of the Annex to this Agreement, such modifications may be made by direct agreement between the competent aeronautical authorities of the Contracting Parties."(28)

Since these agreements remain silent as to the modification of the text of the agreement itself, one may infer that such modification is to be negotiated between the two contracting parties and effected through diplomatic channels.

Other agreements prefer the following provision:

"1) If either of the Contracting Parties considers it desirable to modify any provision of the present Agreement, it may request consultation with the other Contracting Party; such consultation shall begin within a period of sixty (60) days of the date of the request.

"2) Modifications to routes may be made by direct agreement between the competent Aeronautical Authorities of the Contracting Parties."(29)

A group of bilaterals makes a clear distinction between the modification of the agreement itself and its annex where the latter is given more simplified procedure:

"Either Contracting Party may at any time request consultation with the other Contracting Party for the purpose of amending the present Agreement. Such consultation shall begin within a period of 60 days from the date of receipt of such request. Any amendments of the present Agreement agreed to as a result of such consultation shall be approved by each Contracting Party in accordance with its constitutional procedures and shall enter into force on the date of exchange of diplomatic notes indicating such approval. If the amendment relates only to the Schedule, the consultation shall be between the aeronautical authorities of both Contracting Parties. When these authorities agree on a new or revised Schedule, the agreed amendments will not come into effect until after they have been confirmed by an exchange of diplomatic notes."(30)

In two cases, Kuwait with the United Kingdom; and Lebanon with the United Kingdom, the following simplified procedure is preferred:

"If either of the Contracting Parties considers it desirable to modify any provision of the present Agreement, such modification, if agreed between the Contracting Parties, shall come into effect when confirmed by an Exchange of Notes."(31)

In the Agreement between Syria and Yugoslavia a different provision containing some novel features is found in its Article 12

which provides that:

"1.- If either Contracting Party considers it desirable to modify any provision in the present Agreement such Contracting Party can at any time request through diplomatic channels consultation on the matter between the aeronautical authorities. Such consultation shall begin not later than 60 days, or such longer period as may be agreed between the Contracting Parties, from the date of the request. If the said authorities reach agreement on the modifications to be made, such modifications shall become effective when each Contracting Party notifies to the other that it has ratified or approved them, in accordance with its constitutional regulations.

"2. If the aeronautical authorities of either Contracting Party consider it desirable to modify or to make any additions to the provisions of the Annex to this Agreement, they can at any time request consultations with the aeronautical authorities of the other Contracting Party. Such consultations shall begin not later than 60 days, or such longer period as may be agreed between the aeronautical authorities, from the date of the request. If the said authorities agree on the proposed modifications or additions, such modifications or additions shall be brought into effect by a written arrangement between them, which will specify the date of their application, as well. Such arrangement cannot be contrary to the principles established in this Agreement."

Speaking of modifications of air services agreements, it should be remembered that under international law a treaty may not be unilaterally modified by any contracting party, unless so authorized by the treaty itself. In bilateral air services agreements this authorization is given to both contracting parties only with respect to minor route changes, including omission of points on the specified routes. Such right of omission of points is usually provided for in the annex of the agreement. As regards route changes in some cases it is expressly stated that:

"Changes made by either Contracting Party in the specified routes except the change of points served by its designated air carrier(s) in the territory of the other Contracting Party, shall not be considered as modifications of this Agreement. The aeronautical authorities of either Contracting Party may therefore proceed unilaterally to make such changes provided, however, that notice of any change shall be given without delay to the aeronautical authorities of the other Contracting Party."(32)

The Agreement between Iraq and India goes farther than the provision mentioned above to provide that:

"If such latter aeronautical authorities find that, having regard to the principles set forth in this Agreement, the interests of any of their airlines are prejudiced by the carriage by a designated airline of the first Contracting Party of traffic between the territory of the second Contracting Party, and the new point in the territory of a third country, the latter Party may request consultation in accordance with the provisions of paragraph (B) of this Article."(33)

5. Termination

All bilateral agreements of the five Arab States are concluded for an unlimited duration. Most of them follow the ECAC clause dealing with termination of agreements when they provide that:

"Either Contracting Party may at any time give notice to the other Contracting Party of its decision to terminate the present Agreement; such notice shall be simultaneously communicated to the International Civil Aviation Organisation. In such case the Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by agreement before the expiry of this period. In the absence of acknowledgement of receipt by the other Contracting Party, notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization."(34)

Some agreements substitute the period of "twelve months", provided for in the above provision, by the qualification "one year",⁽³⁵⁾ and in some cases in addition to using of the latter term the (14) days provided for in the above provision are made (15) days.⁽³⁶⁾

In the Agreement between Lebanon and Brazil the twelve months' notice is reduced to six months.⁽³⁷⁾

Some agreements do not require notification of ICAO and simply provide that either contracting party may terminate the agreement by giving one year's notice⁽³⁸⁾ to the other contracting party, and in some cases twelve months' notice is used.⁽³⁹⁾

C O N C L U S I O N

Despite the unstable political situation in this important part of the world, air transport, whether inter-regional or international, is making rapid progress in the Middle East. The features that characterize this area especially its geographic location, the historic and religious significance, the climatic conditions, and the important oil industry, all combine to give it tremendous possibilities for development.

In the Middle East, regional air transport achieves its greatest penetration in terms of passenger arrivals per capita, which makes the Middle East second only to Europe in this respect.⁽⁴⁰⁾

While internationally, traffic carried by the airlines of the Middle East grew at an annual rate of nearly 21 per cent between 1958 and 1968, well above the rate of 14 per cent for all ICAO States.⁽⁴¹⁾

On international services with one or both destinations in the Middle East, the size of passenger traffic carried between 1956-1966 by airlines registered in this area grew at a rate exceeding what was carried over the same span of time by airlines registered in other areas. Thus the share of the airlines of the Middle East in that traffic increased from 30 to 44%, while the share of the other airlines fell proportionately.

By 1969, scheduled international services to, from, and through the Middle East were conducted by 14 airlines registered therein and 33 airlines registered in other countries save Latin America.⁽⁴²⁾

The airlines of the five Arab states operate scheduled services for the carriage of passengers, mail and cargo to 46 airports in Africa, Europe, the Far East, and the Middle East. Of these 14 are in Europe, 10 in Africa, 3 in the Far East. The rest are in the area itself.⁽⁴³⁾

By the beginning of 1970, 41 airlines operated to and from Lebanon including two national and nine Arab. In Syria, 19 including one national and four Arab. In Iraq, 17 including one national⁽⁴⁴⁾ and six Arab. In Kuwait, 17 including one national and seven Arab. Some of these airlines operate under special authorizations from the States concerned.

The first regular services to the Middle East were transitting flights making use of the airports of the area mainly for technical and refueling purposes but eventually greater interest was displayed in the traffic potentials of the area, which developed quickly and attracted increasing number of other airlines and led to the conclusion of many air transport agreements before the national airlines were established or expanded into the international market. On the other hand, the foreign airlines rendered valuable assistance to the countries involved by placing at their disposal the quickest means of transportation and developing air traffic.

By the end of 1969, the airlines of the five States had a fleet of 48 aircraft 28 of which were jet.⁽⁴⁴⁾

The five Arab states have concluded up till now more than 70 bilateral agreements for the exchange of international air ser-

vices with other States, and more than 10 additional agreements with Arab states.⁽⁴⁵⁾ Before the national airlines were able to operate international services, the airlines of other contracting parties obtained most of the benefit from these agreements since they did not include any concessions outside the domain of civil aviation for the five countries.

Coordination hardly existed at the beginning among the five States when negotiating the agreements. But with the increase of their activities within the framework of the Arab League and its associated agencies, and their awareness of the potentialities of the location of their countries, further cooperation, coordination and support of national airlines became basic principles.

The five States had been generous in granting traffic rights to foreign airlines whether in agreements or authorizations but in the course of time they began to bargain in order to protect the interests of their growing airlines until they became somewhat strict in granting such rights to points in the Arab countries following their greater cooperation within the Arab League. Yet the five States have not hesitated to act individually by granting some concessions when they found that it is for their interest to do so.

National airlines are now sufficiently developed to extend their activities and take their share of world air trade, the thing that makes a balance between what their States can grant to and obtain from other States, although the pan titles are sometimes in favour of foreign States.

Conflict of interests among the five States appeared occasionally even in inter-regional field to the extent that some Arab air carriers have been debarred from fifth freedom privilege in order to protect traffic of third and fourth freedoms. What complicated matters further is the variety of equipment in possession of the national airlines. Bearing this in mind and the awareness of the facilities needed to face the supersonic and jumbo jet age, the airlines are attempting to group themselves within one organisation seeking by doing so greater strength and cooperation. The Arab countries in their turn are endeavouring also to reach a multilateral regional agreement on air transport.

In general, most of the bilateral agreements concluded by the five Arab states may be classified as being Chicago type agreements, especially those concluded before 1959. In many of them are seen provisions similar to those of the Bermuda Agreement. A little change began to be made in the bilaterals as of 1954 by the inclusion of some clauses adopted by the Strasbourg Conference. An important change has taken place since 1959 when the bilaterals have tended to adopt the ECAC Standard Clauses.

In the field of international relations an important change took place in the last decade and new friendships were formed. Many Arab states began to establish close relationships with Eastern European countries in the economic, cultural, and political fields. Consequently, bilateral air transport agreements were concluded and the airlines of these countries began to establish scheduled air services to Iraq, Lebanon, Syria, and recently

Kuwait. Thus a potential market of air transport was opened for the benefit of both sides although it is still in favour of the Eastern European side.⁽⁴⁶⁾

Progress in civil aviation in general and air transport in particular in this part of the world or in any other part can only be achieved by effective mutual efforts of those interested in facing the ever increasing needs of the traveling public which is expected to reach 273 millions of passengers in 1970.⁽⁴⁷⁾ If air transport could be capable of overcoming all existing difficulties and be freed from all restrictions then we have to imagine what volume of traffic could be expected.

In the world of aviation today, an important point to be noted by the five Arab countries which have small or medium airlines is the fact that the big airlines will equip themselves with supersonic and jumbo jet aircraft in the near future. It is therefore necessary for these countries to take this fact into consideration when planning for the future. The new requirements will not only affect the technical aspect of aircraft, airports, and ground facilities but also the greater competition their airlines will face from the bigger carriers. The only solution open to the air carriers of these countries is to seek closer cooperation with ultimate merger or unification through a carefully studied plan to overcome any arising difficulties and problems.

The extent of cooperation existing among the five Arab countries whether inside or outside the framework of the Arab League is limited by national considerations and different commer-

cial interests of their air carriers, which hinder many cooperative ventures in air transport with consequent harmful effects on the development and growth of civil aviation in general and air transport in particular.

For air transport to develop, a prospective plan has to be worked out. Full cooperation and more bilateral and multilateral air agreements are needed. International and regional services have to be expanded. Two big airlines for this purpose have to be established. Standardization of legal and technical aspects of civil aviation has to be accomplished. Economic waste has to be eliminated.

The five Arab States and their carriers have the potentiality and capability to form an integrated system of air transportation and coordinate their civil aviation policies thereby creating a nucleus for the integration of civil aviation in the Arab world. In a word, Bilateralism in the Arab Middle East should be sought within a unified air transport policy.

F O O T N O T E S

FOOTNOTES

PART ONE

Footnote No.

Page

Chapter I

Section 1

The Paris Conference 1910

1 - 13

228 - 230

Section 2

The Paris Convention 1919

14 - 41

231 - 237

Section 3

The Ibero-American Convention

1926

42 - 45

238

Section 4

The Pan American Convention

1928

46 - 58

239 - 241

Chapter II

The Chicago Convention 1944 and

International Air Transport

59 - 101

242 - 248

F O O T N O T E S

PART ONE - Chapter I - Section 1

- (1) See Cooper J. C., Explorations in Aerospace Law, edited by: Vlasic I. A., (1968), p. 106.
- (2) Ibid.
- (3) Ibid, "Between April and November of 1908, at least ten German balloons crossed the frontier and landed in France carrying over twenty-five aviators at least half of whom were German officers."
Although the French Ambassador in Berlin called the situation to the attention of the German Government in 1908, the French Government was still concerned and decided to invite the European powers to hold a diplomatic conference on the regulation of air navigation. However, nothing in the proceedings of the conference indicates that the French invitation resulted from the continued flight of German balloons into and over French territory.
- (4) Ibid., p. 105. See also:
Vlasic I. A., Air Transport-Passage and Commercial Rights, a thesis presented to McGill University-Montreal in 1955, p. 48, where he says: "Although air law is generally regarded as a product of the Twentieth Century, yet, the Franco-Prussian War of 1870-71 seems to mark the starting point of the practical legal treatment of flight." See also:
Tombs C. Laurance, International Organization in European Air Transport, (1936), p. 4, The first International Aeronautical Congress met in Paris in 1889 upon the invitation of the French Government charged a permanent international aeronautical commission to pursue the study of certain legal problems, including the use of dirigibles in war.
- (5) See Cooper, supra note (1) p. 105. The Conference had completed all but a few clauses of a draft convention that include subjects relating to the regulation of international air navigation. It is to be remembered that the German draft convention which was prepared before the Conference met as a reply to the French questionnaire became the real basis for discussion at the Conference. This draft is of great historical significance. See also:
Colegrove W. Kenneth, International Control of Aviation, (1930), p. 49, where he says that "Nevertheless, the conference broke up without the signing of a treaty. The rock on which it split was the question of sovereignty over the air."
- (6) The United States was not invited to the Conference as it was deemed to be out of the reach of flight incidents which took place in Europe before 1910.

- (7) See Cooper, supra note (1), p. 123. See for the draft convention: Conference Internationale de Navigation Aerienne, Proces-Verbaux, Paris (1910), pp. 188-205.
- (8) Ibid., Cooper, p. 115. Proces-Verbaux, pp. 322-323. These rules were adopted by the First Commission and ordered reported on its behalf to the Conference subject to reservations of the British, Austrian and Russian delegates. Cooper, p. 116.
- (9) See Proces-Verbaux, supra note (7), p. 191.
- (10) Ibid., p. 194.
- (11) The Conference also agreed that subjacent states may establish prohibited areas in their territories above which no international flight was lawful.
- (12) See Cooper, supra note (1), p. 124.
- (13) With the beginning of the Twentieth Century, prolonged debates and controversies took place in the field of air law as to the general question of the legal status of the airspace:
Is it freedom of the air? ... or
Sovereignty in the air?
Two main theories were in conflict, the theory of "freedom of the air" and, the theory of "sovereignty of the subjacent state". This question was the most crucial point at the Paris Conference and became the main reason of its failure to sign a convention. At the Conference, the French views, then affected by Fauchille's theory, were that "Air traffic is free; no restrictions may be adopted by States other than those necessary to guarantee their own security and that of the persons and goods of their inhabitants," which principle assumes the existence of a general international legal right of transit (innocent passage), entry and landing for every state through the air space over and into the territories of all other states. It seems that the advocates of the theory of "freedom of the air" looked at aircraft as being instruments of peace and human progress, and believed that such freedom helps to develop international civil aviation. In this context the advocates depended mainly on analogy of freedom of the high seas and the freedom of "innocent passage" in marginal sea in maritime international law. The British Government took the other position at the Conference "full sovereign rights in the airspace of the subjacent State." See Vlasic, supra note (4), p. 63, and Cooper, supra note (1), pp. 108-113. In this brief analysis of the Paris Conference 1910, one should not forget another but juridical congress on the regulation of air navigation held in the same year at Verona-First International juridical Congress for the Regulation of Air Navigation. The Congress reached almost unanimously an agreement on the basic question of the legal regime of flight space in the following statement:

"The Congress holds: that the atmospheric space above the territory and the territorial sea of each state has to be considered /"Si debba considerare"/ as a territorial space subject to sovereignty of a state and the space above unoccupied territories, or above the high seas has to be considered as free." The Congress recognized further the principle of free transit in the following words:

"In the territorial space, the transit and traffic of air vehicles have to be free, providing the necessary norms for protection of the public and private interests...", see Vlasic, supra note (4), pp. 68-70. See also: Congresso Giuridico Internazionale per il Regolamento della Locomozione Aerea, Atti e Relazioni, Verona, (1910).

"The Congress holds: that the atmospheric space above the territory and the territorial sea of each state has to be considered /"Si debba considerare"/ as a territorial space subject to sovereignty of a state and the space above unoccupied territories, or above the high seas has to be considered as free." The Congress recognized further the principle of free transit in the following words:

"In the territorial space, the transit and traffic of air vehicles have to be free, providing the necessary norms for protection of the public and private interests...", see Vlasic, supra note (4), pp. 68-70. See also: Congresso Giuridico Internazionale per il Regolamento della Locomozione Aerea, Atti e Relazioni, Verona, (1910).

PART ONE - Chapter I - Section 2

- (14) See Tombs, supra note (4), pp.6-7, some 200,000 aircraft and 250,000 engines were constructed in all camps between 1914-1918. In Great Britain alone, by November 1910 only 22 pilots' certificates had been issued; in August 1914 the British flying corps consisted of 1,844 officers and men, and 7 squadrons containing some 150 machines fit for warlike purposes; by November 1918 the Air Force had expanded to nearly 300,000 officers and men, and 201 squadrons consisting of 22,000 machines. In legal terms, however, as regards sovereignty over the airspace four competing theories were observed by McNair, until after the war of 1914-18: (1) That the airspace is free, subject only to the rights of states required in the interests of their self-preservation. (2) That upon the analogy of the maritime belt or territorial waters there is over the land and waters of each state a lower zone of territorial airspace, and a higher, and unlimited, zone of free airspace. (3) That a state has complete sovereignty in its superincumbent airspace to an unlimited height. (4) The third theory with the addition of a servitude of innocent passage for foreign non-military aircraft. See: The Law of the Air by Lord McNair, 3rd ed., (1964), pp.4-5.
- (15) Ibid, Tombs, p.7, "From the technical point of view, perhaps the most significant progress was that reached in engine construction, with accompanying influence upon the speed, range, height, and useful load. By November, 1918, engines were unquestionably greatly superior, both as to reliability and performance, and much lighter in weight per horse power, than those of August, 1914." See also Wilson G. L. and Bryan L.A., Air Transportation, (1949), pp.29-30.
- (16) See:
Tombs, supra note (4), pp.42-43.
Vlasic, supra note (4), p.76.
Shawcross and Beaumont on Air Law, (1966), pp.5 and 13.
The Convention is of great significance in public air law for the following reasons:
(1) It laid down international rules for regulation of civil aviation.
(2) It eliminated most of the controversy which took place prior to its conclusion.

(3) It affected later the Chicago Convention 1944.

(4) It reflected in national legislations of a considerable number of states.

For participation of the United States in drafting the Paris Convention see Cooper, supra note (1), pp. 138-155. The United States, however, never ratified the Convention but it contributed in determining the principles and language of the Convention through the draft convention prepared by its delegation which, with other drafts, was actually used and influenced the final text.

See for the text of the convention and its Annexes in English and French:

Convention for the Regulation of Aerial Navigation, 13 October 1919, London, Air Ministry, (1920).
Air Laws and Treaties of the World, vol.3, (1965), pp.3085-3093.

- (17) See Vlasic, supra note (4), p.76 and Tombs, p.42. The Commission was partly inspired by the Inter-Allied Aviation Committee created during the war in 1917. The Commission was charged by the Supreme Allied Council's Resolution of March 12, 1919, to "examine": (a) aviation questions resulting from the work of the preliminary Conference of Peace; and (b) the preparation of an air navigation convention for peacetime. See also Lupton W. George, Civil Aviation Law, (1935), p.18. The Convention came into force on July 11, 1962, after ratification and adherence of fourteen States.
- (18) See Cooper, supra note (1), pp. 143-144, and Vlasic, supra note (4), pp.79-80, for the text of these articles.
- (19) See Cooper, supra note (1), pp. 149-150. The British proposal was opposed by the delegations of France, Italy, and the United States. The vote of the United States was controlling on this critical question.
- (20) Ibid, p.150.
- (21) Warner E., The International Convention for Air Navigation: And the Pan American Convention for Air Navigation: A Comparative and Critical Analysis, Air Law Review, vol.3, No.3, (1932), p.226, commenting on Article 1 of the Paris Convention he says: "Obviously, nothing is left of the doctrine, once espoused by many international lawyers... of the freedom of the air. Experience during the war did away with all that." See also Slotemaker L.H., Freedom of Passage for

International Air Services, (1932), p.3. Two main theories before 1914, were in conflict, the "freedom of the air", and "sovereignty over the air." For the text of the Convention and as amended by the Protocol of June 15, 1929, see pp. 101-113.

- (22) See La Paix de Versailles, Aeronautique (1919), p.19, Vlasic, supra note (4), pp.82-83. The Convention clearly declared that such sovereignty belongs to 'every Power'. The Aeronautical Commission unanimously adopted the following provisional text at its third session (March 17, 1919): "Recognition: (1) of the principle of the full and absolute sovereignty of each state over the air above its territories and territorial waters, carrying with it the right of exclusion of foreign aircraft; (2) of the right of each State to impose its jurisdiction over the air above its territory and territorial waters."
- (23) See Lissitzyn O.J., International Air Transport and National Policy, (1942), pp.2 and 366.
- (24) In practice, the different interpretations of Article 15 caused serious difficulties to many international airlines of several parties to the Convention especially (Great Britain, France and the Netherlands). Tombs, supra note (4), pp.63-65, writing on the subject gives many examples of which the following are quoted: "Iran (Persia), which denounced the Convention only in 1933, interpreted Article 15 so strictly that the operation of the proposed British line from Cairo to Karachi was held up for over two years. A three years' authorization to fly along the Persian coast, subject to certain restrictions, was given in 1929... In October, 1932, Imperial Airways shifted its route to the Arabian coast of the Persian Gulf... The French and Dutch services to the East still operate through Iran on what appear to be short-time renewable permits, which were not acceptable to the British... Turkey has consistently declined to authorize international airlines to cross its Asiatic territory... The Italian government would not permit Imperial Airways to enter Italy by sea from France although French and, later, Dutch aircraft were using this particular air route." France also did not permit Imperial Airways until late in 1934 to fly across its territory beyond Paris.
- (25) See Slotemaker, supra note (21), pp.18-19 and 37-60, for the different interpretations of Article 15 and its application. See also: Tombs, supra note (4), p.61, and Vlasic, pp.85-87.

- (26) See Minutes of the Extraordinary Session, I.C.A.N., Annex L, Paris, (1929), pp.3-6. The International Commission for Air Navigation (ICAN) held an extraordinary session in June 1929, and unanimously adopted, among other subjects, the new text of the last paragraph of Article 15. It also unanimously adopted the following recommendation:
"The International Commission for Air Navigation should call the attention of the Governments... to the spirit in which the conference has framed the new text of the fourth paragraph of Article 15 of the Convention, recommending the Contracting States not to refuse the authorization provided for in the said paragraph except on reasonable grounds." See also, Tombs, supra note (4), p.62.
- (27) See Cooper J.C., Some Historic Phases of British International Civil Aviation Policy, International Affairs, (1947), vol.23, No.2, p.193. See also, Tombs, supra note (4), p.62, where he says that Article 15 has always tended to restrict the freedom of international air transport.
- (28) See for the text of Article 3 of the Convention, supra note (16).
- (29) See Tombs, supra note (4), pp.56-57. Good examples of the exercise of this right were those prohibited areas established by each of Italy, Yugoslavia, Sweden and Finland.
In Italy flight was prohibited over its entire north-western, northern, and northeastern frontiers, where flight was permitted only within six air corridors over this extensive but largely mountainous territory. Twelve other Italian prohibited areas were established. In Yugoslavia extensive prohibited areas were established. Air entry into its territory was to be made only at one point on each of its seven land frontiers. There was not even one air corridor up and down the long Yugoslav littoral, with the necessary exception of Zera, an Italian enclave.
In Sweden flight was prohibited over the entire Finish-Swedish land frontier.
In Finland flight was barred over the Finish-USSR southeastern land frontier by a considerable Finish prohibited area.
Commenting on Article 3 of the Convention as amended by the Protocol of June 15, 1929, Vlasic, supra note (4), pp.88-89, even contends that "The provision of para.2 cannot be understood otherwise than as the expression of discrimination against foreign aircraft,

whereas the provision of para.4 opened up to the full extent possibilities for uncontrolled unilateral action which at any moment, could stop international flight over whatever state should take advantage of this unwise and too vaguely defined right."

- (30) See for the text of Article 16 of the Convention, supra note (16).
- (31) Bearing in mind the definition of "territory" provided in Articles 1 and 40, some states benefited from the provisions of Article 16 of the Convention. Air transport between France and Indo-China was reserved to the French aircraft. The British did not benefit from this right in relation to their Dominions and India because, according to Article 40, they were deemed to be States for the purposes of the Convention. Furthermore, the freedom of passage over Indo-China (then a French territory) was a bargaining point for France.
- (32) See Tombs, supra note (4), p.69, and Vlasic, p.89.
- (33) Commenting on this point, Vlasic, supra note (4), p.89, says that "It seems to be rather doubtful whether this conventional concept of reservation of air cabotage, still in full force at the present time, entirely corresponds to the requirements of a sound international air transport policy."
- (34) See for the text of Article 27 of the Convention, supra note (16).
- (35) The Aeronautical Commission included jurists and civilian experts but actually it was dominated largely by war time pilots.
Vlasic, supra note (4), p.90, contends that "Nevertheless, a grave error was made in associating this work with the preparations of peace treaties. A document prepared under such circumstances could not but bear a strong imprint of the spirit which dominated the victorious powers."
- (36) It is clear that after the First World War there was an immediate necessity for a multilateral agreement to regulate international air navigation and to lay down the basic rules and conditions under which future air commerce would be established.
- (37) See Fixel W. Rowland, The Law of Aviation, (1945), p.33. See also:

Tombs, supra note (4), pp.42-43, where he says that "The principle of state sovereignty and other provisions of the Convention rendered it far less liberal than the Convention envisaged in 1910; nevertheless, a definite advance had been made in the establishment of a basis of international public air law, which was not to be confined to Europe but from the outset was to reach out to other continents, with universality as its ultimate goal."

See also, Thomas A.J., Economic Regulation of Scheduled Air Transport, (1951), p.176.

- (38) The Convention created the International Commission for Air Navigation as a permanent body to be charged with technical aviation matters (chapter VIII of the Convention). This was the first real step for better international cooperation in the field of civil aviation.
- (39) Tombs, supra note (4), pp.68-69, quoting G.E. Woods Humphery, Managing Director of Imperial Airways, Ltd., Shell Aviation News, London, September 1934, who says: "Unfortunately, the predominant note in the European orchestra during the last decade has been extreme nationalism, and this has undoubtedly militated against the successful growth of air transport. Unhappily, each national reservation or restriction invariably leads to a corresponding reprisal..."
Slotemaker, supra note (21), p.5, says that the conflict was confined mainly to the question in how far, under the principle of sovereignty as recognized by the Convention, innocent and unhampered air navigation particularly international air services, is to be agreed upon.
Vlasic, supra note (4), p.92, says:
"Moreover, the Convention failed to take into account the close connection between freedom of passage for international air traffic and the necessities of international regulation of civil aviation in the economic sphere."
However, it seems quite clear that the Paris Convention worked less effectively for the air transport operator than for the private owner.
- (40) Roper Albert, Secretary General of the ICAN, Recent Developments in International Aeronautical Law, Journal of Air Law, Chicago, (1930), vol.1, p.406, says that: "Among these conditions, a great number are intended to ensure the uniformity of aerial law and to facilitate air traffic, and it is these that give the Convention its value; but certain among them limit the freedom of passage to such an extent that it is possible, by a strict interpretation, to reduce it to almost nothing."

Tombs, supra note (4), p.54, says that:

"It has been suggested, but without effect, that this freedom of innocent passage conveys by implication the right of establishing and operating international airways and lines in those cases where it is unnecessary to provide any recognizable ground organization."

Vlasic, supra note (4), p.88, says that if freedom of innocent passage would have been granted on a world-wide scale since the Paris Convention, air transport would have given better results today. Unfortunately the privilege of innocent passage could be assumed only by casual or special flights not operated as regular services.

(41) Tombs, supra note (4), p.63, says that:

"In practice, the establishment of international airways and lines continues to be a matter of negotiation between the governments of the states concerned, whether or not these states are parties to the Convention."

However, the Paris Convention 1919 has been superseded by the Chicago Convention 1944, Article 80 of which provides:

"Each contracting State undertakes, immediately upon the coming into force of this Convention, to give notice of denunciation of the Convention relating to the Regulation of Aerial Navigation signed at Paris on October 13, 1919 or the Convention on Commercial Aviation signed at Habana on February 20, 1928, if it is a party to either. As between contracting States, this Convention supersedes the Conventions of Paris and Habana previously referred to."

See for this Article, Convention on International Civil Aviation, ICAO Doc 7300/3, (1963), p.36.

See also Wassenbergh H.A., Post-War International Civil Aviation Policy and the Law of the Air, (1962), the Hague, p.4.

PART ONE - Chapter I - Section 3

(42) Slotemaker, supra note (21), p.31, says:

"Moreover, at that time, Spain had just withdrawn from the League of Nations; in conclusion it desired to give evidence of the ties that existed between the Iberian Peninsula and the Latin American States."

See also:

Colegrove, supra note (5), pp.88-90.

Cooper J.C., Backgrounds of International Public Air Law, Yearbook of Air and Space Law, (1965), McGill University-Montreal, p.21.

Lupton, supra note (17), p.25.

Tombs, supra note (4), p.50.

Warner, supra note (21), p.222.

(43) Ibid. For an English translation of this convention see: I.C.A.N. Minutes, 16th Session, Extraordinary Session of June 1929, Draft Minutes, Annex C, pp. 1-10.

For the Spanish text see:

Gaceta de Madrid, April 23, 1927, as referred to by

Colegrove, supra note (5), p.89.

For the French text see:

Roper Albert, La Convention Aerienne Internationale de 13 October, 1919, Paris, (1930), pp.316-325.

According to Cooper, supra note (42), p.21, Annexes A, B, C, D, and E to the Paris Convention 1919 were included in the Madrid Convention while Annexes F, G, and H were omitted.

(44) See:

Cooper, supra note (42), p.21. The Convention technically came into force on 18 March, 1928.

Fixel, supra note (37), p.38.

Tombs, supra note (4), p.50.

Warner, supra note (21), p.222.

(45) See:

Warner, supra note (21), pp.222-223.

Lissitzyn, supra note (23), p.372.

Tombs, supra note (4), p.51.

However, the Ibero-American Convention ceased to have political importance when Spain finally adhered to the Paris Convention in 1935. See Cooper, supra note (42), p.21.

PART ONE - Chapter I - Section 4

(46) See:

Warner, supra note (21), pp.223-308.
Fixel, supra note (37), p.39.
Lupton, supra note (17), p.15.
Roper, supra note (40), p.403.

(47) See Vlasic, supra note (4), p.99, "(b) Although signed initially by 21 American States, it has never received more than 12 ratifications which fact restricted even more the area of its application;" According to Cooper, the following states have since ratified the Habana Convention: Costa Rica, Dominican Republic, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Chile, Equador, and the United States, see, Cooper, supra note (42), p.22.

(48) See:

Warner, supra note (21), p.224.
Roper, supra note (40), p.411, where in his opinion the Convention was justified "by the special political situation of the American continent, it can quite well subsit by the side of the Convention of October 13, 1919,..."

(49) Article 1 provided as follows:

"The High Contracting Parties recognize that every State has complete and exclusive sovereignty over the air space above its territory and territorial waters."

Actually, Article 1 of the Paris Convention provided for the same principle but it was more specific.

See for the text of the Pan American Convention:

Hotchkiss G. Henry, The Law of Aviation, 2nd ed., (1938), pp.129-139.

- American Journal of International Law, vol.22, supplement, (1928), pp.124-133.

- Air Laws and Treaties of the World, supra note (16), pp.3094-3102.

- League of Nations, Treaty Series, 128-129, (1932), No.2963, pp.224-265, (text in English, French and Spanish).

- United States Treaty Series, vol.4, No.840, pp.4729-4737. The Convention came into force on 26 August, 1931.

(50) Ibid, for the text of Article 4 of the Convention.

(51) This Article is almost identical to Article 2 of the Paris Convention.

- (52) Warner, supra note (21), p.226, attributes this omission to the specific geo-political conditions of the American continent where freedom of innocent passage is generally of much less importance than it is in Europe. See also: Vlasic, supra note (4), p.95.
- (53) See Hackworth G.H., Digest of International Law, vol.IV, Department of State Publication 1756, Washington, (1942), p.366. The position of the United States was clear in its interpretation to Article 4 of the Convention, that it was unnecessary to obtain special permission for transit flights with the exception of regular air transport services. See also: Latchford S., The Right of Innocent Passage in International Civil Air Navigation Agreements, Dep. of State Bulletin, July 2, 1944, vol. XI, No.262, p.20. To Latchford, the right of innocent passage granted by Article 4 was generally interpreted to mean "as in the case of the bilateral air navigation agreements and the Paris Convention, that the civil aircraft of each contracting state making special flights and not operated on regular service may fly into and away from the territory of any other contracting state without the necessity of obtaining prior flight authorization from such other state."
- (54) See for the text of Article 5, supra note (49).
- (55) See Latchford, supra note (53), p.23.
See for the text of Article 21, supra note (49).
- (56) In fact, Article 16 of the Paris Convention provided for the same principle. See for the text of Article 22 of the Habana Convention supra note (49).
- (57) The Convention was purely regional in scope. Unlike the Paris Convention, the Habana Convention lacked a permanent body for coordination and technical appendices which actually gave life to the Paris Convention. However, one should bear in mind that the Habana Convention was concluded at the time when trans-Atlantic commercial flights were almost unknown. It is noted that the Habana Convention was superseded by the Chicago Convention 1944 (Article 80), see supra note (41).
Today the value of the Habana Convention lies mainly in the past.
According to Fixel, the Habana Convention "dated February 20, 1928, ratified by the United States on July 17, 1931 and proclaimed by the President of the United States, July 27, 1931, was entered into by Peru, Uruguay, Panama,

Ecuador, Mexico, Salvador, Guatemala, Nicaragua, Bolivia, Venezuela, Colombia, Honduras, Costa Rica, Chile, Brazil, Argentina, Paraguay, Haiti, Dominican Republic, the United States of America and Cuba.", see supra note (37),p.27.

- (58) In practice, the Habana Convention did not offer better treatment than that of previous conventions to regular air transport services and the difference in wording between Habana and Paris Conventions could not prevent the same result from occurring again, thus regular services were once more put at the mercy of national policies.

Ecuador, Mexico, Salvador, Guatemala, Nicaragua, Bolivia, Venezuela, Colombia, Honduras, Costa Rica, Chile, Brazil, Argentina, Paraguay, Haiti, Dominican Republic, the United States of America and Cuba.", see supra note (37),p.27.

- (58) In practice, the Habana Convention did not offer better treatment than that of previous conventions to regular air transport services and the difference in wording between Habana and Paris Conventions could not prevent the same result from occurring again, thus regular services were once more put at the mercy of national policies.

PART ONE - Chapter II

- (59) See ICAO Secretariate Paper, Discussions of Commission 3 of the First Assembly, vol.III: Distinction between scheduled and Non-Scheduled Operations in International Civil Air Transport, Doc 4522, A1-EC/74,(1947),p.15.
See also:
Cheng Bin, The Law of International Air Transport,(1962), p.9.
- (60) See Cooper J.C. The Right to Fly,(1947),p.160.
The Minister of Munitions and Supply presenting on March 17,1944, to the Canadian Parliament, a draft convention outlining a bold scheme for world-wide civil aviation control, said:
"Some countries refused to permit airlines to cross the air space above their territory, necessitating costly detours. Others refused landing rights, as well as transit rights. The necessity for hard and persistent bilateral bargaining resulted, especially in Europe, in the establishment of so many competing national services that air transport became highly uneconomic, and lines were heavily subsidized at the expense of national taxpayers."
- (61) See Proceedings of the International Civil Aviation Conference, Chicago, Illinois, Department of State(1944), vol.I,pp.1,2,11,and 12.
- (62) As Cooper, supra note (60), p.163, has put it, it is meant by the "economic regulation" of international air transport, he says:
"To understand the general background of what is meant by the economic regulation of international air transport, it may be said that every international agreement now in force and every plan proposed to solve the economic difficulties of international air transport involves one or more of the following factors: Routes to be operated by the nations concerned (sometimes generally expressed and sometimes in detail); Privileges accorded to an air carrier of one nation in the airspace of a second (usually called the "Five Freedoms"); Rates to be charged the public; Frequency of aircraft operation on each route by each nation; Capacity of aircraft (for example, number of passenger seats) offered the public in some unit of time such as the number per week; Powers of economic control (if any) accorded to an international authority such as PICA0."
- (63) See supra note (61), 2nd Plenary Session and Committees I,III,and IV. This proposal was presented jointly by

Australia and New Zealand, mostly affected by the Agreement between their respective Governments, signed at Canberra, January 21, 1944. See also, Cooper, supra note (1), pp. 399-401. See also the same writer, supra note (60), pp. 159-160 and 168-169.

- (64) Supra note (61), 2nd Plenary Session and Committees I, III, and IV. This proposal was presented to the Conference separately by Canada and Great Britain. Basically, the two proposals were in accord on the main issues. Canada proposed the creation of an international authority to fix routes, frequencies and rates, to issue permits for international civil aviation operators, and that the nations should exchange transit and certain trading privileges. The British position was not, however, in favor of strict control of international air transport. "The British Government clearly indicated its insistence on certain principles to govern international collaboration in the economic field of air transport; to 'maintain broad equilibrium between the world's air transport capacity and the traffic offering'; to 'ensure equitable participation by the various countries engaged in international air transport'; to 'eliminate wasteful competitive practices and, in particular, to control subsidies'; 'in general, to contribute to world security.' To obtain these results, the White Paper (presented to the British Parliament and later placed before the Conference) suggested that a new convention be adopted which should, among other things, define international routes, determine frequencies ('total services of all countries operating on any international route'), distribute these frequencies between the countries concerned, fix rates, provide for licensing of international air operators. An 'International Air Authority' was proposed whose task should be, among other things, to determine and distribute frequencies and fix rates. Such was the British position." See, Cooper, supra note (60), pp. 161-162 and 166-168.
- (65) Supra note (61), 2nd Plenary Session and Committees I, III, and IV. See also: Cooper, supra note (60), pp. 164-166. This proposal was supported by the United States which opposed economic and political control through an international organization at that time. And such an organization "in economic and political fields must be primarily consultative, fact-gathering, and fact finding, with power to bring together the interested states when friction develops; with power to suggest to the countries possible measures as problems existing and unforeseen come up; and designed to set up a system of periodic conferences which may lay out and agree upon and continuously develop the necessary rules as experience and prudence shall indicate their possibility and gathering custom make them feasible."

- (66) The Conference adopted also, a number of resolutions and recommendations, see: Proceedings of the International Civil Aviation Conference 1944, United States Department of State (1948), pp.113-131. See also: Cheng, supra note (59), p.24.
As Cooper, supra note (60), p.174, said: "Fundamentally, therefore, the legal position since the Chicago Conference and World War II continues as before."
- (67) See Wheatcroft Stephen, Air Transport Policy,(1964), pp.67-68, "In many respects the Chicago Conference was highly successful. The Chicago Convention laid the foundation for a commendable degree of international standardization in operating practices and air navigation." As to the Transit Agreement, it has been accepted by a majority of states. The Agreement came into force on January 30,1945. By July 31,1969, seventy-four states have notified ICAO their acceptance of the Transit Agreement, see: ICAO, Doc 7965, July 1969. See also for the text of the Agreement: Proceedings of the International Civil Aviation Conference, supra note (66), pp. 175-178.
- (68) See Lissitzyn O.J., Freedom of the Air: Scheduled and non-scheduled air services, edited by: McWhinney Edward and Bradley A. Martin in, The Freedom of the Air, (1968),p.90. The Conference could not achieve a wide measure of freedom for international air transport. Unsuccessful efforts were made to win general acceptance of the "five freedoms" of the air for scheduled international air services and to include them in the Chicago Convention. See also: Wheatcroft, supra note (67), p.68, "Nevertheless, in matters concerning the economic regulation of air transport the Chicago Conference made relatively little progress."
- (69) See Lissitzyn, supra note (66), p.91. For the text of the Transport Agreement, see: Cheng, supra note (66), pp.539-543, Proceedings of the International Civil Aviation Conference, supra note (66), pp.179-183.
Shawcross and Beaumont on Air Law, supra note (16), vol.2, Issue No.0,(1966),pp.137-141.
By July 31,1969, only twelve states have accepted the Agreement, see ICAO Doc 7965, July,1969, supra note (67).
- (70) See Lissitzyn, supra note (68), p.91.
For the text of the Standard Form, see: Final Act, Proceedings of the International Civil Aviation Conference, supra note (66),VIII,p.127-129, and Cheng, supra note (66), pp.536-539.

- (71) See the Preamble of the Chicago Convention, supra note (41), Doc 7300/3, p.7.
- (72) Article 1, the key provision of the Chicago Convention reads:
"The contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory." See Doc 7300/3, supra note (41), p.8. The Chicago Convention came into force on April 4, 1947, the thirtieth day after deposit with the Government of the United States of America of the twenty-sixth instrument of ratification thereof or notification of adherence thereto, in accordance with Article 91(b). For a list of the states parties to the Convention see Doc 7965, July, 1969, supra note (67), by July 31, 1969, 116 states have ratified or adhered to the Convention. The USSR and Communist China are still outside the Convention.
- (73) The Chicago Convention makes a fundamental distinction between scheduled and non-scheduled international air services. According to Article 5 of the Convention certain transit and commercial rights for non-scheduled flights are mutually exchanged on a multilateral basis among the states parties to the Convention. The Convention, however, refrains from dealing with transit and traffic rights for scheduled international air services as is expressly provided in its famous Article 6. Thus leaving to each state (unless otherwise committed by a special agreement) complete authority to permit or not to permit a scheduled international air service to be operated into or over its territory.
For an analysis of the rights conferred by Article 5 of the Chicago Convention, see:
ICAO, Definition of a Scheduled International Air Service
Doc 7278-C/841, (10/5/1952), pp. 7-12. This document is produced in English, French, and Spanish.
- (74) See Article 7 of the Convention, Doc 7300/3, supra note (72), p.9.
- (75) In certain cases the exercise of this right may create serious international disputes. The best example is the one that took place between India and Pakistan. For a good analysis of this dispute and of Article 9 of the Convention, see: Prohibited Areas in International Civil Aviation, The India Pakistan Disagreement, U.S. and Canadian Aviation Reports, March, 1953, pp. 109-134.
For the text of Article 9, see Doc 7300/3, supra note (72), p.10.
- (76) See Article 15 of the Convention, Doc 7300/3, supra note (72), pp. 12-13.

- (77) Ibid, for Article 68, p.33.
- (78) Ibid, Articles 81 and 83 of the Chicago Convention, pp.36-37. According to Article 82, the contracting states accept the Chicago Convention as abrogating all obligations and understandings between them which are inconsistent with its terms, and undertake not to enter into any such obligations and understandings.
- (79) By 31 July 1969, 74 states have accepted the Agreement. For a list of those states and dates of their ratification or adherence, see, Doc 7965, supra note (67).
- (80) Section 1 of Article I of the Agreement further provides that "The privileges of this section shall not be applicable with respect to airports utilized for military purposes to the exclusion of any scheduled international air services. In areas of active hostilities or of military occupation, and in time of war along the supply routes leading to such areas, the exercise of such privileges shall be subject to the approval of the competent military authorities." See International Air Services Transit Agreement, ICAO, Doc 7500, 1954, p.3. see also: McNair, supra note (14), pp.8 and 12-13.
- (81) Ibid, Doc 7500, Section 3 of Article I, p.3, "Such requirement shall not involve any discrimination between airlines operating on the same route, shall take into account the capacity of the aircraft, and shall be exercised in such a manner as not to prejudice the normal operations of the international air services concerned or the rights and obligations of a contracting State."
- (82) Ibid, Doc 7500, Section 4 of Article 1, p.4.
- (83) Ibid, Doc 7500, Section 5 of Article I, p.4.
- (84) Ibid, Doc 7500, Section 1 of Article II, p.4, it also authorises ICAO to suspend the guilty state if corrective action is ordered and not taken.
- (85) The Transport Agreement came into force on 8 February, 1945. For a list of states parties see ICAO Doc 7965, supra note (67). For its text see: Shawcross and Beaumont, supra note (69), pp.137-141. McNair, supra note (14), pp.8-13. ICAO Doc 2187, Final Act. The five freedoms are included in Article 1 (Section 1) of the Agreement.
- (86) Ibid, Shawcross and Beaumont, Section 1 of Article 1 of the Agreement.

- (87) Under (a), (b), (c), and (d). See Articles 1 (Sections 3, 5 and 6) and 4 (Section 2).
- (88) See Article 3 of the Agreement.
- (89) See Section 4 of Article 1 of the Agreement.
- (90) See Section 1 of Article 4 of the Agreement.
- (91) See ICAO, Doc 7965, supra note (67) for a list of these states.
- (92) "The United States did not, however, insist that the Transport Agreement be accepted as a permanent solution- quite the contrary. In presenting the United States proposal, which was adopted, Mr. Burden stated: A year and a half ago the United States assumed the responsibility of initiating a multilateral agreement, known as the Air Transport Agreement. The passage of time and further study of the problem by many nations led them to reject it for a variety of reasons. In fact it has been accepted by such a small number of countries that it can no longer be considered as the basis of a worldwide scheme for international civil aviation." See Cooper, supra note (60), pp.176-177.
- (93) Cooper, supra note (60), p.176.
- (94) By July 31, 1969, only the following twelve states have accepted the Agreement: Bolivia, Burundi, Costa Rica, El Salvador, Ethiopia, Greece, Honduras, Liberia, Netherlands, Paraguay, Sweden, and Turkey. See Doc 7965, supra note (67).
- (95) Lissitzyn, supra note (68), p.90.
- (96) PICA0, is the Provisional International Civil Aviation Organization.
- (97) See ICAO Doc 5230, A2-EC/10, (1948), Records of the Commission on Multilateral Agreement on Commercial Rights in International Air Transport.
See also:
Multilateral Agreement on Commercial Rights in International Civil Air Transport-Final Report of ICAO Commission, Journal of Air Law and Commerce, Vol.15, (1948), pp.92-96.
Lissitzyn, supra note (68), p.91.
McClurkin Robert, The Geneva Commission on a Multilateral Air Transport Agreement, Journal of Air Law and Commerce, Vol. 15, (1948), pp.39-46, where he says (p.40) that:

"The discussion at the conference ranged over the same major topics as had previous conferences on this subject:

1. The method of determining what rates may be charged in international air transportation.
2. The procedure for settling any disputes which might arise over the interpretation or application of the agreement.
3. The method by which nations would grant or exchange the rights to operate on specific routes.
4. The general principles governing the capacity which an airline may provide on an international route."

- (98) See ICAO Doc 7417, A7-P/3, 27 August 1953, 7th Session of the Assembly, Resolutions and Indexes to Documentation, Resolution A7-15, pp.27-28. This resolution was adopted unanimously on July 6, (1953), ICAO, 7th Session of the Assembly, (1953), p.67. See also: Gazdik J.G., ICAO Meetings, Journal of Air Law and Commerce, (1953), pp.308-309.
Lissitzyn, supra note (68), p.91.
Wheatcroft, supra note (67), p.68, where he says:
"There were high hopes when the Conference was convened that it would be possible to agree upon a general system for the exchange of commercial rights which would be multi-lateral in its application. Conflicts of national interests made this impossible, however, and each state was able to fall back upon the principle of sovereignty of airspace to protect its own national interests."
- (99) See Cheng, supra note (59), pp.189-193.
Lissitzyn, supra note (68), pp.93-94.
See for the text of this Agreement:
The Paris Multilateral Agreement on Commercial Rights of Non-Scheduled Air Services in Europe, 310 United States Treaty Series, p.229.
ICAO Doc 7695, (1956).
ICAO Doc 7696, ECAC/IMI, (1956), Annex 3, pp.15-24 (the text is tri-lingual).
- (100) Endeavouring within the Arab League for many years, the Arab countries could not reach a multilateral agreement on air transport.
- (101) McNair, supra note (80), pp.8-9.
For the characteristic features of the restrictions on the freedom of air commerce, a good analysis is given by: Lissitzyn, supra note (68), pp.92-95.

F O O T N O T E S

P A R T T W O

Footnote No. P a g e

Chapter I

Development of Air Transport in
the Middle East

1 - 45 250 - 254

Chapter II

Status of Multilateral Agreements
International and Regional

1 - 66 255 - 262

PART TWO - Chapter I

- (1) The Middle East is generally regarded as that area of southwest Asia and East of Mediterranean Sea. It was included sometimes in great empires such as Egyptian, Hellenestic and Roman. Perhaps the creation first began in what is called Mesopotamia (Tigris-Euphrates) some 5,000 years B.C. Most competent scholars consider the Nile and Tigris-Euphrates valleys as probably the centers of the oldest civilizations.
Burns E. McNall, Western Civilizations: Their History and Their Culture, 5th ed., (1958), New York, p.28.
- (2) The Middle East witnessed the most important civilizations of the world: Egyptian, Babylonian, Sumerian, Hettite, Hebrew, Assyrian, Persian, Hellenestic, Roman, Arab, and Ottoman. See for details: Burns, supra note (1), pp.34-237.
- (3) See Lilienthal M. Alfred, There Goes the Middle East, (The Bookmailer, Inc. New York), (1958), p.16 and 17.
- (4) This is due to its climate of, long summers, mild winters, long dry season, and clear sky almost all the year round.
- (5) The Middle East attracts tourists mostly because of its archaeological sites, oriental nature and good weather.
- (6) The Middle East is a good market for western products and the place of the most important oil companies of the world.
- (7) The Middle East contains the holy places of Christians, Jews, and Moslems.
- (8) See Encyclopedia Britanica (1968), for more details on these countries under, Iraq, Jordan, Kuwait, Lebanon, Syria.
- (9) The Convention on Arab Economic Unity establishes an Arab Common Market similar to that of Europe. The Convention was signed on 6 June, 1962 by: Jordan, Kuwait, Morocco, Syria, and the United Arab Republic. It was further signed by Iraq on 9 December, 1963; Yemen on 27 December, 1963. It was ratified by: Kuwait, 9 June, 1962; United Arab Republic, 25 May, 1963; Iraq, 30 January, 1964; Syria 22 February, 1964; Jordan, 1 June, 1964. The Convention came into force three months after Iraq has deposited its instrument of ratification.

- (10) By joining international conventions and agreements on civil aviation for the purpose of unification and standardization of their technical procedures in the international field.
- (11) A step should be taken by the five states to adopt uniform clauses in air agreements and unify their air transport policies.
- (12) One airline system similar to that of the Scandinavian Airlines, may be suggested as a first step for these homogeneous five countries.
- (13) Modern airports were recently built in Lebanon, Kuwait and Jordan. In Syria, the new Damascus International Airport, which is believed to be the most important in the area, was inaugurated on 15 September, 1969. In Iraq, a new airport (at Baghdad) was inaugurated on January 8, 1970. In Lebanon there is a trend to enlarge the existing airport at Beirut or to build a new airport.
- (14) It is still not too late that their airlines sit together to put a plan for choosing the adequate equipment needed for their services and to get rid of the inadequate.
- (15) They should take advantage of their being a natural market for tourism to attract as many as possible of tourists from all over the world. All endeavours then should be aiming to provide more and more touristic facilities.
- (16) In fact this should be done for all Arab countries. It is worthwhile to mention here that an ad hoc committee (of which the present writer was elected as its reporter) of Arab experts in air law held under the auspices of the League of Arab States could formulate, after holding four meetings between 1966-1968, a final draft of a unified air law for all Arab countries. Studies are still being made for the adoption of such recommended air law. Up till now the Sudan and the United Arab Republic have declared their acceptance of such an air law.
- (17) This can be achieved on a partnership basis. It seems to be the only way to eliminate economic waste and unfair competition on regional services. Airlines of most Arab countries felt that the immediate action would be to enter pooling agreements on their regional services. For this purpose and others a good step was made in 1965 by establishing an "Arab Air Carriers Organization."

- (18) This can be achieved by reducing fares and rates, increasing frequencies and eliminating entry and departure formalities.
- (19) For figures of 1951, see ICAO Doc, Digest of Statistics No.135, Traffic 1960-1967, p.81. The following ICAO states or their territories are included in the Middle East: Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Saudi Arabia, Syria, Turkey, Yemen and (the territory of the United Kingdom).
For figures of 1968, see ICAO Doc, Digest of Statistics No.142, Traffic 1960-1968, series T-No.28, p.86. In addition to the states mentioned above, Cyprus is included here.
- (20) Ibid, Doc No.142, p.86. The exact number of passengers carried in 1960 is (1,412,183) and in 1968 is (3,799,148).
- (21) For figures of 1951, see supra note (19), Doc No.135, p.81. For figures of 1968, see, Doc. No.142, p.86.
- (22) See Doc No.142, p.86. The exact number of passengers carried in 1960 and 1968 is respectively (733,992) and (2,045,117).
- (23) See supra note (20). The exact number of passengers carried in 1960 and 1968 is respectively (678,191) and (1,754,031).
- (24) Except for Syria in respect of figures of 1961 instead of 1960.
- (25) See Doc No.142, supra note (19). For figures of 1960 see p.104. For figures of 1968, see p.88.
- (26) Due to lack of correct airport traffic statistics in 1960 in Iraq, international operations may give a clear idea of the development of scheduled international services in this country. For figures of 1960 and 1968, see supra note (19), Doc No.142, p.122 and p.106 respectively.
- (27) See Aeronautical Information Publication of Iraq, December 1967, AGA, P.3-1. These aerodromes are (Ain Zalah, Kirkuk/K1, K/2, K/3 and T/1). The authority supervising these aerodromes is the Iraq Petroleum Company.
- (28) See Doc No.142, supra note (19), for figures of 1960 and 1968 at p.104 and p.88 respectively.

- (29) See ICAO Doc, Digest of Statistics No.104, Airport Traffic, (1962), series AT-No.3 p.22, for figures of 1962. ICAO Doc, Digest of Statistics No.133, Airport Traffic 1966, series AT-No.7, p.19, for figures of 1966.
- (30) See Aeronautical Information Publication of Jordan, for technical details. Jerusalem was occupied by Israel after the war in June, 1967.
- (31) See ICAO Doc, Digest of Statistics No.137, Fleet-Personnel, (1967), series FP-No.21, p.77. The data are given for financial year ended 31.12.1967.
- (32) See ICAO Doc, Digest of Statistics No.136, Financial Data 1967, series F-No.21, p.146.
- (33) See supra note (28), under Kuwait.
- (34) See supra note (29), under Kuwait. The figure of freight and mail of 1962 covers only freight.
- (35) See Aeronautical Information Publication of Kuwait, for technical details.
- (36) See ICAO Doc No.137, supra note (31), p.78.
- (37) See supra note (28), under Lebanon.
- (38) See supra note (29), under Lebanon.
- (39) See Aeronautical Information Publication of Lebanon, for technical details.
- (40) For fleet and personnel, see supra note (31), at pp.80-82. Eight MEAL aircraft were destroyed by Israeli raid on Beirut International Airport on 28 December, 1968. The destroyed aircraft were, one (Boeing 707), one (VC-10), three (Comet 4C), two (Caravelle 6N), and one (Viscount 754). Three LIA aircraft were also destroyed, two (Coronado 990), and one (DC-7). Two TMA aircraft were also destroyed: one (DC-6) and one (DC-4). See "Bardawil Middle East Aviation Newsletter", letter 402, sheet No.1, January 2, 1969.

- (41) See supra note (32), at pp. 148-153.
- (42) See supra note (28), at p.103 and p.89.
It will be noted that the year 1961, is chosen for Syria because in 1960 it was included in the United Arab Republic during the period between 23 February, 1958 and 28 September, 1961.
- (43) See supra note (29), at p.23 and p.20.
- (44) All airports in Syria are state owned airports. For technical details see, Aeronautical Information Publication of Syria.
- (45) See supra note (31), under Syrian Arab Republic, p.99.

PART TWO - Chapter II

- (1) See ICAO Doc, Doc 7965, (July 1969), pp.1-4. The other Arab States parties to the Chicago Convention are: Algeria, Libya, Morocco, Saudi Arabia, Sudan, Tunisia, United Arab Republic, and the Yemen.
- (2) In a note dated 10 February, 1962, the Government of Lebanon declared itself bound by the Warsaw Convention, to which the mandatory authorities had adhered on its behalf on 26 October, 1932. See Schawcross and Beaumont on Air Law, vol.2, Issue No.0, app.A, p.7, supra note (16) in Part One above.
- (3) Ibid, p.6. Jordan accession to the Warsaw Convention was made by Great Britain.
- (4) Ibid, p.8. In a letter to the Government of the Polish People's Republic the Government of the Syrian Arab Republic declared itself bound by the ratification of the Warsaw Convention and the Hague Protocol made by the United Arab Republic.
- (5) Ibid, p.8. No ratification dates were made available. The Hague Convention referred to here is "The International Sanitary Convention for Aerial Navigation", which came into force on 1 August, 1935. France then the mandatory authority, declared this Convention applicable to Lebanon and Syria.
- (6) Ibid, p.24. The Protocol referred to here is "The Protocol to Prolong the International Sanitary Convention for Aerial Navigation 1944 (The Washington Convention). This Protocol entered into force on 30 April, 1946.
- (7) See for the text of the Alexandria Protocol: Arab League, Cairo, a booklet printed by (Alaa Eddine el Chiaty & Co.), Cairo pp.1-9. Macdonald W. Robert, The League of Arab States, (1965), pp.315-318. Attempts to unify the Middle East go back deep in history. According to Boutros, "Efforts to unify the Middle East can be traced back several thousand years. Tuthmosis III (circa 1450 B.C.) of Egypt was the first Pharaoh to introduce a formal and consistent policy of military alliances with the various Asian Kingdoms in the Middle East." See: Boutros-Ghali, The Arab League: Ten Years of Struggle, International Conciliation, No.498 (May 1954), p.387.
- (8) The League of Arab States is generally called the "Arab League". See an article written on the Arab League by Boutros, supra note (7), pp.387-448.

- (9) See for the text of the Pact, the booklet published by the Arab League at pp.9-27 and, Macdonald, at pp. 319-326, supra note (7).
- (10) See Macdonald, supra note (7), p.42.
- (11) Ibid.
- (12) Ibid. It will be noted that Jordan was then, "Trans-Jordan."
- (13) Ibid.
- (14) In an article written by Paul Seabury, in 1949, at the time the Arab League was still in its infancy and the concept of regional organizations was still new in the field of international organization, the writer says "The League, in its efforts to create an exclusive, self-sufficient Arab world in the Near Eastern cauldron of great power rivalries, has had neither the resources nor the requisite strength to accomplish its tasks. The League's failures must not be considered merely the failure of the Arab States alone, but also of a too wide spread belief that such local arrangements, by themselves, can form the basis for regional peace and stability."
See Seabury Paul, The League of Arab States: Debacle of a Regional Arrangement, International Organization, vol.3,(1949), pp.641-642.
The Arab views in 1945 may be taken from the following definition of regional arrangements proposed by the Arab League States to be included in the United Nations Charter:
"There shall be considered as regional arrangements organizations of a permanent nature grouping in a given geographical area several countries which, by reason of their proximity, community of interests or cultural, linguistic, historical or spiritual affinities, make themselves jointly responsible for the peaceful settlement of any disputes which may arise between them and for the maintenance of peace and security in their region, as well as for the safeguarding of their interests and the development of economic and cultural relations.", see Macdonald, supra note (7), p.10.
- (15) See Seabury, supra note (14), p.639.
- (16) All information on these conferences and meetings were collected from the Library of the (Directorate General of Civil Aviation in Syria), summarized and translated from Arabic into English by the present writer. It will be noted, however, that discussions at the Committee covered other aspects of transportation.

- (17) The First Conference of the Permanent Committee of Transportation was held in 1946. This Committee was not active between 1946 and 1953, perhaps because of political reasons affected the League specially the Palestine question.
- (18) Recommendations are usually adopted by majority of member states represented at the meeting. All recommendations adopted by the subcommittee, however, were to be adopted also by the Committee or included in its report to the League's Council for examination preparatory to their submission to the member states.
- (19) The same recommendation further provides that the Arab states concerned must also invest money in such an airline in order that they can control it. However, it seems that the idea of establishing Pan-Arab Airlines was not yet clear, is it by incorporating the existing airlines?, or by establishing a new independent airline?
- (20) In fact, the proposed draft convention deals with civil aviation in general and contains certain provisions dealing with commercial air transport. Most of its provisions are similar to those of the Chicago Agreements of 1944, i.e., the Chicago Convention, the International Air Services Transit Agreement, and the International Air Transport Agreement.
- (21) SAS, is the Scandinavian Airlines System.
- (22) See Cheng, supra note (59) in Part One above, pp.205-206, for Strasbourg Conferences.
- (23) This is due to failure of the subcommittee to agree on such a multilateral agreement. This reminds us with the failure of the Chicago Conference 1944 to agree on a multilateral agreement on international air transport.
- (24) The problem of "joint registration" or "international registration" of aircraft was subject to lengthy discussions in ICAO. See on this subject the following:
Fitz Gerald F. Gerald, Nationality and Registration of Aircraft operated by International Operating Agencies and Article 77 of the Convention on International Civil Aviation, 1944, 5 The Canadian Yearbook of International Law, (1967).
ICAO, Doc 8704 LC/155, Summary of the work of the Legal Committee During its Sixteenth Session (Paris, September 1967).
ICAO, Doc 8722-C/976, Resolution Adopted by the Council on Nationality and Registration of Aircraft Operated by International Operating Agencies (20.2.1968).

- (25) The airline is called "World Arab Airlines." Syria signed this Convention on February 27, 1964.
- (26) See ICAO, Doc 7695, Multilateral Agreement on Commercial Rights of Non-Scheduled Air Services in Europe (Trilingual).
- (27) Such as, fair and equal opportunity, traffic requirements traffic pooling etc.
- (28) The idea behind this is to leave the right of fifth freedom for regional services. In any case it is a strict recommendation if enforced by the Arab States concerned.
- (29) The result was the conclusion of a Convention on the first and second freedoms of Arab Civil Aircraft as we will see later.
- (30) The question of first freedom referred to here should be left, in our opinion, to the discretion of the state flown over.
As to the question of fifth freedom in foreign countries, it seems that the Arab States felt that if they are to refrain from granting such freedom they will receive a similar treatment from foreign countries. Obviously, it is a matter of reciprocity to be carefully studied before any decision could be made in this respect. These two questions, however, were to be studied in a following meeting.
- (31) This is perhaps to avoid unfair competition between Arab airlines operating regional services.
- (32) The Arab air carriers with their limited capacities fear of strong competition from big airlines.
- (33) It seems the only way to minimize and unify procedures of entry and departure of passengers, cargo and mail.
- (34) It will be noted that these principles are derived from the provisions of Article 2 of the Multilateral Agreement on Commercial Rights of Non-Scheduled Air Services in Europe, 1956 supra note (26). However, it is intended to avoid any "regulations, conditions or limitations" which may be imposed under Article 5 of the Chicago Convention on such flights. It seems that all endeavours made to reach an agreement on non-scheduled flights in the Arab countries were unsuccessful.

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- (35) It may be observed that the subcommittee adopted all recommendations made by the Heads of civil aviation authorities and air carriers of the Arab states at their meeting in August, 1961.
- (36) IATA, is the "International Air Transport Association", see its Tenth Publication-1968, for its Act of Incorporation, Articles of Association, Rules and Regulations. The Arab Organization was established in 1965.
- (37) Thus after prolonged discussions, the establishment of this airline passes through its final stage.
- (38) See below, the meeting of Arab air carriers held at Cairo in August, 1965.
- (39) Thus after prolonged discussions, the so long sought council was to be born. The Convention was signed in 1965.
- (40) In practice the work of the League covered almost all aspects of administrative, commercial, general, and technical aviation of common interest to the Arab countries.
- (41) Such as an ad hoc committee of Arab experts to unify air laws of the Arab countries. After four meetings between 1966 and 1968 the committee prepared an important draft air law which meets the requirements of recent developments of civil aviation. Another committee charged with the task of translating and unifying terminology used in civil aviation has accomplished much of its work.
- (42) However, such achievements within the League still do not satisfy, in our opinion, the persistent needs of a closer Arab integration of civil aviation. It is hoped that at least the immediate needs of civil aviation will be satisfied with after the Arab Council of Civil Aviation was founded in 1965.
- (43) Endeavours within the League failed in many instances to achieve an agreement on commercial air transportation for the Arab world. In fact it is not the failure of the League machinery itself. Conflicting interests of the Arab countries, their independent national air transport policies, and the decision-making process of the League are responsible for any failure.
- (44) It is beyond doubt that the Arab League was generally successful in its mission. A comprehensive study of

the Arab League is made by Dr. Macdonald in his book "The League of Arab States." The author is well acquainted with the Arab World and other areas of the Middle East. In his book, Macdonald reaches the conclusion that:

"To a large extent, the Arab League has been the instrument through which the Arab nationalist movement has successfully asserted its dignity and power on the world scene. The urgent need now is for regional action to realize the full potential of the power over their own destinies acquired by the Arab states since 1945. The existing machinery of the Arab League is capable of directing this new national power into constructive channels for economic and social modernization in the Arab world if it is properly employed." See Macdonald, supra note (7), p.312.

- (45) The League is indispensable to the Arab states where they can sit and discuss their common interests. As the Syrian Minister in Cairo said in May 1949: "The League is indispensable to us. It is the symbol of Arab authority and the center of our political life. Its unifying spirit is more important than all other things. The strengthening of relations between member states should make all amendments unnecessary." See Seabury, supra note (14), p.641. The League Pact, however, does not clearly state as its purpose to unify the Arab countries. If this unity is to be sought then a complete revision of the Pact is an urgent necessity. All independent Arab states are now members in the Arab League: Algeria, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Saudi Arabia, Sudan, Syrian Arab Republic, Tunisia, United Arab Republic, Yemen, and South Yemen.
- (46) The dates of deposit of instruments of ratification are as follows: Iraq, 17 May, 1965. Jordan, 10 March, 1963. Kuwait, 18 May, 1965. Lebanon, 26 June, 1968. Syria, 4 October, 1966. United Arab Republic, 20 April, 1964. The Convention was signed by Morocco on 4 November, 1968. Source of the information is the library of the Directorate General of Civil Aviation in Syria.
- (47) See ICAO, Doc 7965, January 1969, containing a list of the states parties to the Agreement up to January 1969. The dates of notification of acceptance of the Agreement by these Arab States are as follows: Algeria, 16.4.1964; Iraq, 15.6.1945; Jordan, 18.3.1947; Kuwait, 17.6.1960; Morocco, 26.8.1957; Tunisia, 26.4.1962; United Arab Republic, 13.3.1947.
- (48) The translation of this Convention is My Translation.

- (49) The dates shown in the table were collected from the library of the Directorate General of Civil Aviation in Syria. For Iraq, Lebanon, Sudan and Yemen, the dates of signature are unknown. Kuwait did not yet ratify the Convention. Lybia has declared its intention to adhere to the Convention.
- (50) The recommendations were summarized and translated from Arabic into English, and selected by the present writer. See for source supra note (49).
- (51) The terminology under the letters "A" and "C" has been completed by the committee charged with this task. It is expected to finish the translation of the aviation terminology in March 1970.
- (52) The proposed Law is based on the most modern air laws of the world. It is also based on the existing international conventions and agreements. Iraq and the United Arab Republic have so far declared their acceptance of the proposed Law in its present form. Should it be accepted by all Arab states it would solve any problem connected with civil aviation among them.
- (53) Some Arab states have already responded to the request and rendered a good technical assistance to both countries.
- (54) To this effect, the council gets in contact with the Arab League, the Arab Union of Tourism, The Arab Union of Tourist agencies, and the Arab Air Carriers Organization, and sends delegations to attend the meetings of these bodies. The Council established close contacts with the Regional Office of ICAO in Cairo and the African organizations for the purpose of creating a form of cooperation between the Arab states and the African states in the field of civil aviation.
- (55) It is worth mentioning that some Arab states and air carriers still wish to review the entire project of the airline while the Council calls upon the Arab states to bring the airline into existence.
- (56) It is still hoped that the good efforts of the Council will result in the adoption of such a multilateral agreement by the Arab states in the near future.
- (57) The Tokyo Convention is the "Convention on Offences and Certain Other Acts Committed on Board Aircraft" signed at Tokyo on 14 September, 1963. See for its text, ICAO Doc 8364, 1963. This Convention is necessary to complement the existing air laws of the Arab States.

- (58) This translation is My Translation.
- (59) They are: Royal Jordanian Airlines, Sudan Airlines, Iraqi Airways, Saudi Arabian Airlines, Syrian Arab Airlines, United Arab Airlines, Misrair, Yemen Airlines, Kuwait Airways, Middle East Airlines Air Leban, Lebanese International Airways, and Trans-Mediterranean Airways. It will be noted that the Lebanese International Airways was merged in 1967 with the Middle East Airlines Air Leban.
- (60) The reduction of regional tariffs has a bearing on foreign airlines exercising fifth freedom on points between Arab countries. It is however a good step towards encouraging air travel between the Arab countries.
- (61) This translation is My Translation.
- (62) The Economic Council of the Arab League approved the project convention in its ordinary seventh session by decision No.181 dated 17 April, 1961.
- (63) See for source supra note (49).
- (64) The percentage assigned to Kuwait is (15%) and to the United Arab Republic is (20%). Syria has not yet allotted its contribution though it has ratified the convention.
- (65) The convention shall come into force after Kuwait and the United Arab Republic allot their contributions in the airline's capital.
- (66) The first Arab Conference of Ministers of Communications held in November 1964 in Beirut rendered a decision calling upon the Arab States who did not sign, ratify or adhere to the Convention to do so as soon as practicable. Lebanon made a reservation on this decision, and Morocco and Tunisia felt that it would be better to start with establishing of smaller regional associations.

F O O T N O T E S

P A R T T H R E E

Footnote No. P a g e

Chapter I

Section 1

The Five Freedoms of the Air	1 - 23	263 - 264

Section 2

Scheduled International Air
Services

24 - 30	265

Chapter II

The Bermuda Agreement

1 - 37	266 - 272

PART THREE - Chapter I

- (1) See Cribbett G., The Influence of Bilateral Agreements, Tariffs and Subsidies on International Air Transport, 3 J. Ae. s. India, (1951), as referred to by Cheng, supra note (59) in Part One above, p.9.
- (2) This right is based on Art.5 of the Chicago Convention and subject to the right of the state flown over to require landing.
- (3) Art. 6 of the Chicago Convention.
- (4) This freedom of transit for scheduled international air services is exchanged between states parties to the International Air Services Transit Agreement.
- (5) See Frederick H. John, Commercial Air Transportation, (1961), p.279.
- (6) This right is based on Art. 5 of the Chicago Convention.
- (7) According to Art. 6 of the Chicago Convention such services need a prior authorization or permission from the state concerned.
- (8) See Frederick, supra note (5), p.280.
- (9) This privilege is granted by the provisions of the second paragraph of Art. 5 of the Chicago Convention.
- (10) Frederick, supra note (5), p.281.
- (11) See Art. 5 of the Chicago Convention.
- (12) See Lissitzyn, supra note (68) in Part One, p.90. ICAO, Doc 7278-C/841, (10.5.1952), pp.7-12, for an analysis of the rights conferred by Article 5 of the Chicago Convention.
- (13) Article 6 of the Chicago Convention.
- (14) The International Air Transport Agreement, Proceedings of the International Civil Aviation Conference 1944, supra note (61) in Part One.
- (15) This right is based on the last paragraph of Article 5 of the Chicago Convention.

- (16) See Cheng, supra note (1), p.11, where he says:
"In general, the airlines of a country are considered as having almost a birthright to carry third- and fourth-freedom traffic between their home State and any given foreign country, and agreement between States mutually to exchange the third and the fourth freedoms for their respective airlines is comparatively easy to secure."
- (17) See Cheng, supra note (1), pp.11-12, where he distinguishes three types of fifth freedom: (a) Anterior-point fifth freedom; (b) Intermediate - point fifth freedom; (c) Beyond - point fifth freedom.
- (18) See Frederick, supra note (5), p.281.
- (19) "Thus arises the conflict between the states desiring to perform long-range transportation services, which require fifth freedom privileges from a number of other states, and the other states who seek to preserve their right to supply local or regional services by granting the fifth freedom only in exchange for equivalent advantages."
See Little Virginia, International Organization, vol.3, (1949), p.31.
- (20) To Cheng, this freedom in its present meaning "is merely a combination of the third and fourth freedoms secured by the flag-State from two different countries producing the same effect as the fifth freedom vis-a-vis both foreign countries." See, supra note (1), p.13.
- (21) See ICAO, Records of the Commission on Multilateral Agreement on Commercial Rights in International Air Transport, Doc 5230, A2-EC/10(1948), vol.I, p.17.
Cheng, describes this freedom as follows:
"Right, for a carrier operating entirely outside the territory of the flag-State, to fly into the territory of the grantor State and there discharge, or take on, traffic coming from, or destined for, a third State or third States." See supra note (1), p.15.
- (22) See Cheng, supra note (1), p.17.
- (23) See Rosevear, in McWhinney and Bradley, supra note (68) in Part One, p. 125, where he says:
"It would seem that for the foreseeable future, the third, fourth and fifth freedom rights of scheduled international air carriers will depend for their validity on bilateral air transport agreements and upon the good offices of ICAO, IATA and interested governments."

See also for other writings on the freedoms of the air, the following:

McWhinney and Bradley, supra note (68) in Part One, pp.89-103 and 124-127.

Cheng, supra note (1), pp.8-18.

Frederick, supra note (5), pp.279-281.

Thomas, supra note (37) in Part One, pp.184-185.

Little, supra note (19), pp.30-31.

Wilson and Bryan, supra note (15) in Part One, pp.621-623.

- (24) See ICAO Doc 7300/3, supra note (41) in Part One, p.9.
- (25) ICAO, Discussions of Commission No.3 of the First Assembly, vol.1: Development of a Multilateral Agreement on Commercial Rights in International Civil Air Transport, Doc 4510, AI-EC/72,1947, see also: Cooper J.C., The Proposed Multilateral Agreement on Commercial Rights in International Air Transport, 14 Journal of Air Law and Commerce, 1947, pp.128-129.
- (26) See ICAO, Doc 5230, A2-EC/10, supra note (97) in Part One, and see also McClurkin, pp. 39-46.
- (27) ICAO, Records of the Second Session of ECAC,1957, vol.I: Report, Doc 7799, ECAC/2-1 (1957), p.35.
- (28) See "Economic Commission Has Four Resolutions Passed by the Assembly", ICAO Bulletin, vol.14, Nos.7-8,(1959), p.143.
- (29) ICAO, Doc 7278-C/841, supra note (73) in Part One, p.3 The document contains also notes on the application of the definition and an analysis of the rights conferred by Article 5 of the Chicago Convention.
- (30) "One of the permanent objectives of ICAO in the air transport field is to find a multilateral basis for the exchange of commercial rights for international air transport, whether scheduled or non-scheduled, operating in or making transit flights across the territory of Contracting States." See: ICAO Bulletin, vol. 14, No.5 (1959), pp.71-79 and 94-96, Air Transport Activities, Exchange of Commercial Rights, at p.77.

Part Three - Chapter II

- (1) See:
Cooper, supra note (60) in Part One above, pp. 177-178.
On February, 26, 1946, President Truman made a special statement expressing his satisfaction with the Bermuda Agreement. Two days later, Lord Swinton, speaking in the House of Lords called the Agreement as "probably the most important civil aviation agreement that this country has entered into."
Vlasic, supra note (4) in Part One above, p. 195, where he refers to the French Author, Verdurand, who considers the Bermuda Agreement as a "turning-point in the history of air transport."
Adriani P. Tuuk, The "Bermuda" capacity clauses, Journal of Air Law and Commerce, Vol. 22, (1955), p. 406, where he says that the Bermuda Agreement sets a pattern to be followed all over the world and could even become quite a definite conception.
McCarroll C. John, The Bermuda Capacity Clauses in the Jet Age, Journal of Air Law and Commerce, Vol. 29, (1963), p. 116, In his article, McCarroll says that the Agreement "provided the model for a network of bilateral Agreements..."
- (2) The American views were then aiming at free competition on rates and services whereas the British views were supporting direct international control of traffic and frequencies and capacities. See Cooper, supra note (1), p. 177.
Wheatcroft, considers the Agreement as a compromise between the United States which changed its mind about the desirability of controlling fares and rates and the United Kingdom which abandoned its demand for predetermination of the capacity to be operated.
Stoffel W. Albert, American Bilateral Air Transport Agreements on the Threshold of the Jet Transport Age, Journal of Air Law and Commerce, Vol. 26, No. 2, (1959), p. 122, where he says that the Agreement constituted a compromise between the liberal American and the restrictive British concepts.
Billyou De Forest, Air Law, (1963), New York, p. 466, where he says that a major concession made by the United States was to agree with the British that international air rates and fares would be subject to agreements through IATA.
- (3) See Adriani, supra note (1), p. 406.
- (4) See Cheng, supra note (59), p. 555.
For the text of the agreement (the Final Act, the Agreement

and the Annex) with the exchange of notes, see Appendix D, pp. 554-573. See also: Department of State Publication No. 2565, Treaties and other International Acts, Series 1507.

- (5) See Cheng, for the Annex of the Bermuda Agreement, supra note (4), p. 562.
For the first time in the history of the United States, foreign air carriers are granted fixed routes across its territories. See Cooper, supra note (1), p. 180.
- (6) For the text of Final Act see Cheng, supra note (4), pp. 554-556.
- (7) See:
Frederick, supra note (5) in Chapter II above, p. 284.
Adriani, supra note (1), p. 409.
- (8) See Adriani, supra note (1), p. 410.
- (9) It will be noted that "The capacity clauses in the Bermuda Agreement establish a firm relationship between the capacity provided by a carrier and the traffic requirements of the routes served by that carrier."
See Frederick, supra note (7).
- (10) The most important provision of the Bermuda Agreement is that contained in paragraph (6) of the Final Act.
See Cheng, supra note (4), p. 555.
- (11) "The basic unit of airline routes is the permission to carry traffic between pairs of countries - the third and fourth freedoms (permission to discharge passengers from the home country and land passengers for the return trip, respectively."
See McCarroll, supra note (1), p. 118.
- (12) The Bermuda Agreement does not provide a definite number for the amount of fifth freedom traffic to be carried in relation to the quantity of third and fourth freedom, as Adriani says and: "The fixing of such a relation would be contrary to the very spirit of the Bermuda principles which allow a certain amount of latitude and flexibility, which is a "condition sine qua non" for the young and dynamic mode of transport, civil aviation represents."
See supra note (1), p. 408.

It seems that the only real restriction the Bermuda Agreement places on the carriage of fifth freedom traffic on through services is that account must be taken of the interests of local and regional airlines (as it is provided in para. 6(C) of the Final Act).

Wassenbergh, suggests that "By requiring carriage statistics to be produced, it is possible to ascertain the proportion of 3rd and 4th freedom traffic as compared with 5th freedom traffic over a given period."

The same writer adds that "If a tighter control is desired, a certain proportion is laid down in advance, for instance, a maximum of 40% 5th freedom traffic ("predetermination of traffic")." See Wassenbergh, supra note (41) in Part One above, p. 56.

The Bermuda provisions provide for an ex post facto review of the traffic carried over a given period and make the traffic offering along the entire route decisive for the ex post facto control of the capacity operated and the traffic taken up. See also Wassenbergh, p. 57.

As McCarroll, says "Until recently there has been no systematic application of any definition for determining the amount of fifth freedom traffic carried by a carrier or for enforcing the relation between primary justification traffic and fifth freedom passengers.... . The CAB has now begun to formulate its interpretation of Article Ten. According to this definition, a passenger's ultimate destination is the furthest point on the trip measured by a great circle route... . Once the statistics are available, an attempt can be made to police the ratio of fifth freedom to primary justification traffic.", see supra note (1), p. 121.

(13) See Frederick, supra note (7), p. 283.

(14) See Adriani, supra note (1), p. 411.

(15) See Final Act, paragraph (3), supra note (4).

(16) See Final Act, Paragraph (6), supra note (10).

(17) See Adriani, supra note (12), p. 408.

(18) See Frederick, supra note (7), p. 284.

See Adriani, supra note (1), p. 409.

The Bermuda Agreement provides that "if either party felt itself injured by what is regarded as excessive capacity, it would have the right to request consultation.", see Billyou, supra note (2), p. 467.

(19) See Adriani, supra note (1), p. 410.

(20) See Frederick, supra note (7), p. 284.

(21) See Wheatcroft, supra note (2), p. 75.

(22) See the Annex of the Bermuda Agreement, Cheng, supra note (4).

(23) See Cooper, supra note (1), p. 182.

(24) By this way the CAB has indirect powers to control international fares. It will be recalled, however, that under the American legislation the CAB has no direct control over the setting of fares in international air transportation. See Wheatcroft, supra note (2) pp. 75-76, and Stoffel, supra note (2), p. 134.

- (25) Formerly, the Provisional International Civil Aviation Organization.
- (26) See Cooper, supra note (1), p. 183.
- (27) See Stoffel, supra note (2), p. 130, where he says that "The United States, nevertheless, continues to promote the concept that predetermination of capacity is contrary to liberal development of international air transportation and that ex post facto review provides an adequate safeguard."

It means that the reason why Bermuda does not provide for predetermination of capacity, frequencies or carriage of long-distance services is, as Wassenbergh believes, "to counteract any abuses of a free development, to eliminate uneconomic practices, and to regulate 5th freedom traffic in a way which would do justice to all...", see supra note (12), p. 58.

The United States has always opposed any predetermination of capacity. In an official statement it was said that "Our policy, then, will be to oppose both arbitrary capacity restrictions and the stretching of those principles to the point of abuse. We shall continue to take the initiative in resisting predetermined capacity levels.", see Lissitzyn O. J., Bilateral Agreements on Air Transport, Journal of Air Law and Commerce, Vol. 30, 1964, p. 261.

According to Billyou, "At Bermuda, the United States insisted that there be no predetermination of capacity to be offered by either contracting party.", see supra note (2), p. 467.

- (28) See Cooper, supra note (1), p. 185. See also Vlasic, supra note (1), p. 194.

It was indicated in the Joint Statements by the United States and the United Kingdom in 1946 that the Bermuda Agreement did not imply any allocation of frequencies but recognized as its basic principle "the elimination of formulae for the predetermination of frequencies or capacity..." See Wassenbergh, supra note (12), p. 58.

- (29) See Wheatcroft, supra note (2), p. 72.
- (30) Ibid.
- (31) Ibid., p. 73.

- (32) This is due to the fact that "All the aviation nations of the world are interested in the continued development of their own airlines, and this has been taken to mean that they must be assured a reasonable share of the total market on the routes to and from their countries." See Wheatcroft, supra note, (2), p. 73. The same writer finds that "The difference between 'liberal' and 'protectionist' policies may therefore be thought of as a willingness

on the one hand, to compete for 20 per cent of the total market, compared with an insistence upon a 50/50 division of traffic, on the other hand.", p. 74. See also: Bacelli Guido Rinaldi, Standardization of Bilateral Agreements, (1963), Padova, p. 29,

"Since the air transport industry operates under different conditions all over the world, every sovereign State claims a satisfactory share of traffic, in so far as its own airline is concerned."

- (33) See Wheatcroft, supra note (2), p. 73.
Stoffel, writing on sixth freedom traffic says that "This problem will remain with us since the Bermuda principles are deliberately vague and their application continues to be not wholly satisfactory to any party to this agreement.", see supra note (2), p. 130.
- (34) The United States and the United Kingdom undertook to adopt the Bermuda principles in their subsequent negotiation of air transport agreements, see Wheatcroft, supra note (2) p. 71.
- (35) Stoffel, writing on the Bermuda principles has this to say:
"In many ways they have served us well though they now appear to be too vague and too general for the sharp competition which has developed." He adds that "Compromises may be possible by a further spelling-out and clarification of the Bermuda principles." The same author quotes the following French comment which indicates the problems which were to be faced by the United States in trying to defend and sustain the Bermuda principles:
"... Since the spirit, if not the letter, of the Bermuda Agreement is no longer respected by those who conceived it and imposed it on their partners, it is not sure that the rather platonic principles of 1946 will stand up to the hard facts and necessities of 1960. The combined application of the capacity clause of Bermuda type agreements, and of the change of gauge clause which in practice will go hand in hand with it as far as the main long-haul air routes are concerned, will inevitably give rise to clarifications and adjustments, which are likely to be all the more imperative as the wording of the clause is the vaguer (and some of the change of gauge clauses are extremely vague). However, the importance of such an adaptation of capacity provisions to the new requirements, and multiplication of problems by the very nature of the bilateral system, will probably prevent their examination before operating conditions and programs for the new flight equipment become clear. For the Bermuda principles as for many other things the critical time is likely to be 1960.", supra note (2), pp. 135-136.

- (36) To Frederick, "the Bermuda Agreement is likely to hold its position as the standard blueprint for all bilaterals in the foreseeable future.", see supra note (7), p. 284.

To Wheatcroft, the Bermuda Conference "proved to be one of the most important events in international aviation history." He adds that "and from Bermuda emerged, not merely a bilateral agreement between the two major air transport nations, but a general philosophy on the way in which the economic regulation of the industry should be achieved.", see supra note, (2), p. 70.

To Cooper, "No one questions the importance of the Bermuda Agreement.", supra note (1), p. 177. The same authority calls it (together with the Transit Agreement) the "Bermuda Plan.", p. 178.

President Truman in a special statement in 1946, expressed his satisfaction with the Bermuda Agreement.

To Adriani, the Bermuda principles "have a sound conception reasonableness as their basis.", see supra note (1), p. 413.

The United States in an official statement in 1963, in the White House it was said that:

"We believe that the 'Bermuda' principles accommodate, to the general good, the legitimate economic interests of all nations engaged in international air transport.", see Lissitzyn, supra note (27), p. 261.

To Vlasic, the Bermuda Agreement "really can be called a model agreement.", see supra note (1), p. 196.

To Wassenbergh, "The value of the Bermuda Agreement may have been superseded by subsequent developments in civil aviation, particularly as regards local and regional air services; but let us not forget that the development of trunk services has assumed at least equally large proportions. In our view, therefore, the Bermuda Agreement has fully preserved its value as a compromise.", see supra note (12), p. 59.

Kittrie N. Nicholas, United States Regulation of Foreign Airlines competition, Journal of Air Law and Commerce, Vol. 29, (1963), p. 3, on the Bilateral Aviation Agreements has this to say:

"Of the bilateral agreements providing for the freedom of aviation the earliest and the one which has served as a prototype for all others is the 1946 Bermuda Agreement..."

As to Cheng, "There is little doubt that among all the United Kingdom bilateral agreements the most important is that concluded with the United States at Bermuda on February 11, 1946. It represents the culminating point in the protracted efforts to reconcile two opposing views.", see, supra note (4), p. 238.

- (37) In his judgement, Cooper believes that the Bermuda Plan (both the Bermuda and the Transit Agreement) except in extraordinary circumstances, will "be sufficient to meet the requirements of world organization without unduly limiting the activity of a growing and vigorous industry which must be kept sufficiently fluid to meet changing conditions of international trade.", see supra note (1), p. 186.

There were hopes that the compromise solution reached in 1946 might provide a basis for a multilateral agreement. See Wheatcroft, supra note (2), p. 71.

According to Bacelli, supra note (32), p. 32:

"The Bermuda Agreement was received with general enthusiasm, and raised hope of a wide multilateral agreement in the near future... The reason for considering the Bermuda Agreement as the basis for a multilateral approach was its regulation of the problem of capacity, which is set out in Articles 3-6 of the Final Act."

FOOTNOTES

PART FOUR

Chapter I

The Grant of Rights

15 - 104

276 - 283

Chapter II

Inauguration of Services

1 - 35

284 - 286

Chapter III

The Regulation of Capacity

1 - 23

287 - 288

Chapter IV

Regulation of Tariffs

1 - 35

289 - 290

Chapter V

Settlement of Disputes

1 - 29

291 - 292

Chapter VI

Entry into Force, Registration

Modification, Termination

1 - 39

293 - 295

Conclusion

40 - 47

296

PART FOUR - Chapter I

- (1) See Article 1 of the Convention.
The national laws of the five Arab states reaffirm this principle.
- (2) The national laws of the five Arab states provide for the same principle:
In Iraq: the following rules of entry, transit and departure of scheduled flights operated by foreign airlines shall apply:
The airline must have been designated pursuant to the provisions of the International Air Services Transit Agreement, or the International Air Transport Agreement, provided that the state in which the airline is registered is a contracting party to either or both Agreements.
The airline must have been designated pursuant to a bilateral or multilateral agreement signed by Iraq and the state in which the airline is registered.
The airline must have a permit to operate into or in transit across Iraq. See the Aeronautical Information Publication of Iraq (Fal 1-1), October 1, 1968.
In Jordan: the Civil Aviation Law No.55 of 1953 provides in its Article 41 that:
"No scheduled international air service can be established and exploited except in accordance with international agreements duly ratified.
Nevertheless, the Council of Ministers upon a recommendation of the Minister (referring to the Minister of Transport) may grant temporary authorizations for operation and exploitation of scheduled international air services."
The above provision is my translation taken from a booklet published by the Ministry of Transport in Jordan and printed by the Industrial Printing Company in Amman.
The existing regulations for the operation of scheduled flights provide as follows:
"For regular international scheduled flights into or in transit across Jordan, operated by foreign airlines, the following requirements exist:
The airline must have been designated pursuant to a bilateral or multilateral agreement signed by Jordan and the State of Registry.
The airline must have been designated by the State of Registry in accordance with the International Air Services Transit Agreement provided that the State of Registry is a contracting party to either of these agreements."
The airline must have a permit to operate into or in transit across Jordan." See the Aeronautical Information Publication of Jordan (Fal 1-1), October 1, 1967.

In Kuwait: the Kuwait Air Navigation Regulations, issued by Decree No.(30) 1960, provides that:

"An aircraft other than an aircraft registered in the territories of Kuwait shall not fly over or land in the territories of Kuwait except under an authorisation granted by his Highness the Emir." See Article 1(a) of these Regulations. The Decree was published in an annex to the journal "Kuwait Today", No.286, pp.17-31, August 1, 1960.

In Lebanon: The Aviation Law, promulgated on 11 January, 1949 provides in its Article 29 that:

"The establishment and exploitation of regular international airlines are subject to a prior authorisation from the Council of Ministers." This Law was published by the Ministry of Public Works in a booklet printed by Dabbour Printing in Beirut. See also for the text of this Law, Air Laws and Treaties of the world, printed for the use of the Committee on Science and Astronautics, U.S. House of Representatives, 87th Congress, 1st Session, May 11, 1961, by U.S. Government Printing Office, Washington:1961 (at pp.922-942).

The existing regulations in Lebanon provide that:

"Regular International Air Services shall operate into or over Lebanese territory by virtue of a bilateral agreement or a temporary permit.

The initial request for operating and the designation of airlines shall be submitted through diplomatic channels. Airline representatives shall notify, in adequate time, to the Directorate of Civil Aviation, the intended schedules or any modifications thereto, with a view to obtaining written approval thereof. Operators shall endeavour to avoid any conflicting times with Lebanese carriers at Lebanese airports. Any increase in capacity offered has to be justified and is subject to approval. Civil Aircraft shall keep to the approved schedules." See the Aeronautical Information Publication of Lebanon (Fal 1-1), January 1, 1965. It is further provided that: "All flights shall be carried out in accordance with ICAO regulations, Standards and Recommended Practices, and any other regulations in force in the Lebanon. Aircraft operators shall be properly insured against damage to third parties."

In Syria: The Legislative Decree No.101 of 28 November, 1949 provides in its Article 20 that:

"No scheduled international air services can be established and operated except in accordance with duly ratified international agreements. The Council of Ministers, however, may grant temporary permission for the establishment and operation of scheduled international services upon the proposal of the Minister of Defence." The Decree is published in the Official Gazette No.66 dated 12 December, 1949. It is printed in a booklet in English by the Printing Company of the Syrian Republic.

- (3) See for more details on this subject:
Azzie Ralph, in his lecture given to the Institute of Air and Space Law - McGill University, 13 January, 1967, pp. 9-11.
- (4) The analysis does not cover agreements which are not registered with ICAO, agreements between a state and airlines, agreements between aeronautical authorities of two states, and other arrangements between two airlines or more.
- (5) This is in order to facilitate reference to them.
It will be noted that many bilateral agreements have not yet been registered with ICAO.
- (6) For the text of the Standard Form Agreement, see ICAO, circular 63-AT/6, 1962, at pp. 113-115. For the ECAC standard clauses, see the same circular at pp. 116-120.
- (7) See the following ICAO Documents for a list of Agreements registered with ICAO:

Doc 8473	-	LGB/215,	January 1965.
Doc 8563	-	LGB/228,	January 1966.
Doc 8648	-	LGB/239,	January 1967.
Doc 8727	-	LGB/252,	January 1968.
Doc 8789	-	LGB/265,	January 1969.

The above documents show also the number of registration of the agreements with ICAO and whether they are published in the United Nations Treaty Series. The text of these agreements of the five Arab States were taken from the ICAO (Legal Bureau).

- (8) Source is the Directorate General of Civil Aviation in Iraq (Ministry of Communications).
- (9) Source is the Directorate General of Civil Aviation in Syria.
- (10) In the two Agreements, Lebanon with USA, and Syria with USA, it is expressly stated that the contracting parties: "Having in mind the resolution... for the adoption of a standard form of agreement for provisional air routes and services...", see the Preamble.
See for a study on Chicago Type Agreements, ICAO Doc 4798, AT/526 (23.10.1947). The study was prepared by the Legal Studies Section of ICAO.
- (11) See Article 1 of the Agreement between Jordan and the Netherlands.

- (12) e.g., Kuwait with: Japan, United Kingdom; Lebanon with: Australia, Belgium, Czechoslovakia, Ghana, Singapore, United Kingdom; Syria with: Cyprus, France, United Kingdom.
- (13) A similar provision is included in Article 1 of each of the following Agreements:
Jordan with: Denmark, Norway, Sweden; Syria with: Czechoslovakia, Norway, Sweden.
- (14) A similar provision is found in the Agreement between Lebanon and Denmark.
- (15) See Cheng, on this point, supra note (59) in Part One, p.290.
- (16) Article 2 of the Agreement between Syria and the United States.
- (17) Those conditions will be discussed below under "The inauguration of services."
- (18) e.g., Iraq with: Egypt, Netherlands; Jordan with: Belgium, Egypt, Netherlands; Lebanon with: Denmark, Ghana, Netherlands, Norway, Sweden, Switzerland; Syria with: Czechoslovakia, Denmark, Egypt, Norway, Sweden.
- (19) e.g., Iraq with: Turkey, U.K.; Jordan with: Denmark, Norway, Sweden, Turkey; Kuwait with: Japan, U.K.; Lebanon with: Australia, Belgium, Brazil, Italy, Ivory Coast, Singapore, Turkey, Yugoslavia; Syria with: Cyprus, Greece, Netherlands, Turkey, U.K., Yugoslavia.
- (20) e.g., Iraq with: India, Pakistan; Jordan with France; Lebanon with Pakistan ("with the least possibly delay").
- (21) As in the Agreement between Iraq and Czechoslovakia.
- (22) As in the Agreement between Syria and Switzerland.
- (23) As in the Agreements: Lebanon with the United States; Syria with the United States.
- (24) This provision is included in Article 2 of each of the Agreements between Iraq and respectively Denmark, Norway, and Sweden.
- (25) e.g., the Agreement Iraq with Denmark (see the Annex).

- (26) See Article 2 of the Agreement between Lebanon and Belgium.
- (27) As mentioned previously under this title.
- (28) It will be noted that the Arab Transit Convention is opened only to Arab States.
- (29) This Agreement has been replaced by the Agreement of 1966.
- (30) See Exchange of Notes of 30 July, 1957.
- (31) See the Annex of the Agreement between Syria and Greece (para.5).
- (32) See Article 2 of the Agreement between Lebanon and Belgium.
- (33) See Article 1 Section 1 of the International Air Transport Agreement.
- (34) See the Annex para.5(A) of the Agreement between Syria and the Netherlands.
- (35) The following Agreements contain a similar provision:
Iraq with: Denmark, Norway, Sweden, Switzerland, Turkey, United Kingdom; Jordan with: Turkey; Lebanon with: Australia, Brazil, Denmark, Greece, Netherlands, Norway, Sweden, Switzerland, Turkey, United States; Syria with: Denmark, Norway, Sweden, Switzerland, Turkey, United Kingdom, United States.
- (36) See Article 3 of the Agreement between Lebanon and Pakistan. A similar version is found in the following bilaterals: Kuwait with: Japan, United Kingdom; Lebanon with: Ghana, Ivory Coast, Singapore; Syria with: Cyprus, Yugoslavia.
- (37) See the Annex of the Agreement between Jordan and Belgium. The following bilaterals use a similar version: Iraq with: Egypt, India; Jordan with: Egypt, Netherlands.
- (38) It is rare to find in the bilateral agreements concluded by the five Arab countries the expression "fifth freedom." It would seem that for the first time this expression was used in the text of the Agreement between Syria and Pakistan, Article 4(1) of which provides among other things that: "Where traffic is of the nature of 5th freedom to one Contracting Party but 3rd and 4th freedom to the other Contracting Party..."

The same expression was used in the case of Lebanon with respectively Italy (1960) and Czechoslovakia in the Annex of both Agreements. Sometimes it is officially used in exchange of letters or notes, as for instance in the Exchange of Notes dated August 11, 1946 between Lebanon and the United States. See also, Exchange of Letters dated 20 September, 1949 between Lebanon and Netherlands.

- (39) See Exchange of Notes dated 1.5.1955.
- (40) See Section I of the Annex of the Agreement.
- (41) The Agreement is not yet registered with ICAO. See for source supra note (8).
- (42) This Agreement is not yet registered with ICAO. See for source supra note (8).
- (43) This Agreement is not yet registered with ICAO. The same is true in the Agreement between Iraq and Luxembourg of 1961 for these points. See for source supra note (6).
- (44) See the Annex of this Agreement.
- (45) See the Annexes of these Agreements.
- (46) See Section I of the Schedule of the Agreement.
- (47) See Section II of the Schedule of the Agreement.
- (48) See Section I of the Annex of this Agreement.
- (49) For Brazil see Exchange of Letters dated 26 June, 1952 and 28 June, 1952. For Norway see "Lettre Annexe" No.3 and No.4 of 2 February, 1956. For Sweden see Exchange of Letters of 14 and 23 February, 1955.
- (50) See Section II of the Annex of the Agreement.
- (51) See para.3 of the Annex of the Agreement.
- (52) See para. (D) of the Annex of the Agreement.
- (53) See Exchange of Notes dated 30 July, 1957. The Agreement of 1957 is replaced by that of 1966.
- (54) See para. B of the Annex of the Agreement.
- (55) See Route No.1 of France in the Annex of the Agreement.

- (56) This Agreement is not yet registered with ICAO. See for source *supra* note (9).
- (57) See the Civil Aviation Law No.55 of 1953 published in the Official Gazette No.1135 dated 1.3.1953. This translation of Art.42 is My Translation. The expression "cargo" as defined in the same Law includes mail and animals.
- (58) This Law was promulgated by a Legislative Decree No.101 of 28 November, 1949 and published in the Official Gazette No.66 dated 12 December, 1949.
- (59) See Cheng, *supra* note (15), p.317.
- (60) See para. 2 of Article 5 of the Agreement between Iraq and the United Kingdom.
- (61) The following Agreements for instance provide for cabotage in the body of the agreement: Iraq with Egypt; Jordan with Egypt; Kuwait with Japan; Lebanon with Belgium; Syria with Cyprus. The following Agreements provide for cabotage in the Annex: Jordan with respectively Denmark, Norway, and Sweden; Lebanon with Turkey; Syria with Netherlands.
- (62) See para. 3 of the Annex of this Agreement.
- (63) See para. 4(a) of the Annex of this Agreement.
- (64) See Article 2(1) of this Agreement.
- (65) See the Preamble of this Agreement.
- (66) See Article 5(a) of the Agreements between: Lebanon and U.S.A.; Syria and U.S.A. The same is true in the Agreements, Lebanon with: Ivory Coast, Netherlands.
- (67) See Article 4(1) of this Agreement. The following Agreements, e.g., contain a similar provision : Iraq with: United Kingdom (Art.2 refers to the application of Art.11 of the Chicago Convention); Jordan with: Denmark, Netherlands, Norway, Sweden (all these Agreements add the expression "shall be equally applied"); Lebanon with: Denmark, Netherlands, Norway, Sweden, Switzerland.
- (68) See Article 6(3) of this Agreement.

- (69) See Cheng, supra note (15), p.328.
- (70) See Article 15 (para.1) of the Chicago Convention.
- (71) See Article 1(B) of this Agreement.
- (72) See also, Exchange of Notes dated 15 August, 1951 between Lebanon and United Kingdom, where a similar reservation was made.
- (73) This provision constitutes para.1 of Article 8 of this Agreement which is not yet registered with ICAO. See for source supra note (9).
- (74) The same source as in supra note (9).
- (75) See Article 15 (para 2) of the Chicago Convention.
- (76) See Article 3 of the Agreement between Iraq and Denmark. The following Agreements for instance contain a similar provision: Iraq with: Norway, Sweden, Switzerland, Turkey; Jordan with: Turkey; Lebanon with: Brazil, Italy, Singapore, Turkey, Yugoslavia; Syria with: Greece, Netherlands, Switzerland, Turkey, United Kingdom, Yugoslavia.
- (77) See article 4(a) of the Chicago Standard Form Agreement. The following Agreements follow this Form: Iraq with: Czechoslovakia; Kuwait with: Japan; Lebanon with: Denmark, Greece, Netherlands, Norway, Sweden, Switzerland, U.S.A.; Syria with: Czechoslovakia, Denmark, Norway, Sweden, U.S.A.
- (78) See Cheng, supra note (15), p.331.
- (79) Article 33 of the Legislative Decree No.101 of 1949 provides:
"With respect to their regulations and administration, aerodromes shall be divided into the following three categories:
 - a) Public Aerodromes administered by the State or Municipality, the conditions of use and exploitation of which shall be specified by a decree to be issued by the Council of Ministers.
 - b) Aerodromes open to the public, licensed in accordance with the provisions of Articles 34 and 35 below.
 - c) Private landing grounds, licensed in accordance with the provisions of Article 36 below."
- (80) See Article 4 of the Agreement between Syria and U.S.A. It will be noted that the second sentence covers certificates and licenses granted by "another State"

whereas in the Chicago Convention this covers only "another Contracting State."

The following Agreements contain an identical clause to that of article (5) of the Chicago Standard Form: Iraq with: Denmark, Norway, Sweden; Lebanon with: Netherlands, Norway, U.S.A., Yugoslavia; Syria with: U.S.A., Yugoslavia (by other States).

- (81) The following bilateral Agreements follow the Chicago Standard Form with the addition of the qualification "still in force" or "still valid" to the first sentence of article (5) of the Standard Form: Iraq with: Switzerland, Turkey; Jordan with: France, Turkey; Lebanon with: Denmark, Greece, Italy, Ivory Coast, Norway, Pakistan, Singapore, Sweden, Switzerland, Turkey; Syria with: Denmark, France, Greece, Netherlands, Norway, Sweden, Switzerland, Turkey.
- (82) e.g., Lebanon with: Ivory Coast, Pakistan; Syria with: Cyprus, Czechoslovakia, Denmark, Norway, Sweden, Switzerland.
- (83) See Cheng, supra note (15), pp.343-344, for a detailed discussion on this subject.
- (84) As in the following Agreements: Lebanon with respectively Italy and Singapore; Syria with France.
- (85) e.g., Iraq with: Czechoslovakia, Egypt, India, Netherlands, Pakistan; Jordan with: Belgium, Denmark, Egypt, Netherlands, Norway, Sweden; Kuwait with: Japan; Lebanon with: Australia, Belgium, Brazil, Ghana, United Kingdom; Syria with: Egypt.
- (86) See supra note (64). We do not agree with Cheng, when he classifies the Agreements between the United Kingdom and respectively Iraq and Kuwait among "those agreements where there is no undertaking mutually to recognise each other's certificates of airworthiness and personnel licences for the purpose of the agreed services," as these two Agreements in fact incorporate Articles 31, 32, and 33 of the Chicago Convention in the said Agreements. See for this classification, Cheng, supra note (15), at p.345, where Iraq and Kuwait are included in Footnote (64). For Kuwait, the entire Agreement with the United Kingdom according to its Preamble was considered as "supplementary" to the Chicago Convention which Convention was given effect as to Kuwait by the said Preamble.

- (87) See article 4 (b) of the Chicago Standard Form, supra note (6).
- (88) See article 4 (b) and (c) of the Standard Form, supra note (6), e.g., Iraq with Sweden; Kuwait with United Kingdom; Lebanon with U.S.A., Syria with Netherlands.
- (89) As in the following Agreements: Jordan with: Denmark, France, Norway, Sweden; Lebanon with Ghana, Ivory Coast, Singapore; Syria with: Cyprus, Yugoslavia.
- (90) See Article 7 of this Agreement.
- (91) See Article 4(4) of this Agreement.
- (92) See also Annex 9 (Facilitation) of the Chicago Convention.
- (93) Article 6(3) of the Agreement between Lebanon and Sweden. The following bilateral Agreements contain a similar provision: Iraq with Switzerland; Jordan with respectively, Denmark, Norway, and Sweden; Lebanon with respectively, Denmark, Singapore, Sweden, and Switzerland; Syria with Cyprus. It will be noted that all these Agreements follow in this respect Article 6 of the ECAC Standard Clauses.
- (94) Article 9(3) of this Agreement. See supra note (9).
- (95) See Article 9 of this Agreement. This provision seems to exclude other aircraft not "used for the exploitation of specified air services" from the same treatment. We believe that assistance should be provided to any aircraft in distress.
- (96) Article 25 of the Chicago Convention.
- (97) Bulgaria, adhered to the Chicago Convention on 8 June, 1967 and Romania on 30 April, 1965. See ICAO, Doc 7965 of January, 1969. The same case with the Agreement between Lebanon and Yugoslavia, the latter was then not a party to the Chicago Convention.
- (98) Article 17 of the Agreement between Syria and Germany (eastern). See for source supra note (9).
- (99) Article 8 of the Agreement between Lebanon and Denmark.

- (100) See Article 12 of the Agreement between Syria and Cyprus. The following bilateral Agreements contain a similar provision except for the last sentence: Jordan with respectively Denmark, Norway, and Sweden; Lebanon with Ghana; Syria with France. Even in Agreements with many Eastern European countries the ECAC clause is used. It will be noted that the Agreement, Lebanon with Ghana provides that such transfer shall be subject of an Exchange of Notes through diplomatic channels.
- (101) Article 8 of this Agreement.
- (102) Article 7 Of the Agreement between Syria and Germany (Eastern), see supra note (9).
- (103) For Bulgaria see Article 13 of the Agreement. For Romania see Article 14 of the Agreement between the United Arab Republic and Romania of 1958 which is registered with ICAO under No.1524 (see ICAO Doc 8473-LGB/215, p.65 under United Arab Republic). This Agreement was concluded during the unity between Egypt and Syria and is still valid for the latter.
- (104) As provided in Article 15 of the Agreement between Syria and Germany (Eastern), see supra note (9). A similar provision is found in the Agreement between Syria and Poland.

Part Four - Chapter II

- (1) See Article 2(b) of both Agreements.
- (2) Ibid. In Articles 2(a). A little improvement in wording on the corresponding clause of the Chicago Standard Form is found in the following Agreements: Iraq with: Denmark, India, Netherlands, Norway, Pakistan, Sweden; Jordan with: Belgium, Netherlands; Kuwait with Japan; Lebanon with: Australia, Denmark, Italy, Netherlands, Norway, Sweden, Switzerland; Syria with: Czechoslovakia, Denmark, Greece, Netherlands, Norway, Sweden, Switzerland.
- (3) See Article 3(1) of the Agreement between Kuwait and the United Kingdom. The following Agreements adopt the same procedure: Iraq with: Czechoslovakia, Egypt, UK; Jordan with: Denmark, Norway, Sweden; Lebanon with: Belgium, Ghana, Ivory Coast, UK; Syria with: Cyprus, UK. It will be noted that the provision used in these Agreements is identical to that of Article 2(1) of ECAC Standard Form.
- (4) See the Annex of this Agreement. The same procedure is followed in the case of Syria with the Soviet Union.
- (5) See Article 2(1) of the Agreement between Syria and Yugoslavia. Similarly in the case of Jordan with Egypt.
- (6) These conditions are discussed below.
- (7) See Article 2(a) of the Agreement between Lebanon and USA. The same is true, e.g., in the following Agreements except for some minor variations:
Iraq with Turkey; Jordan with Turkey; Lebanon with: Australia, Greece, Turkey, Italy; Syria with: Greece, Netherlands, Turkey, USA.
- (8) See Article 3(1)(b) of the Agreement between Syria and Denmark. The following Agreements, e.g., adopt the same formula except for some minor variations and different wording:
Iraq with: India, Netherlands, Pakistan; Jordan with: Belgium Netherlands; Kuwait with Japan; Lebanon with: Denmark, Netherlands, Pakistan, Sweden, Switzerland; Syria with: Czechoslovakia, Denmark, Norway, Sweden, Switzerland.
- (9) See Article 3(2) of the Agreement between Kuwait and UK. Apart from some minor variations especially in wordings, the following Agreements, e.g., adopt the same formula:
Iraq with: Egypt, UK; Jordan with: Denmark, Norway, Sweden; Lebanon with: Belgium, Ghana, Ivory Coast, Singapore, UK; Syria with: Cyprus, Egypt, UK.
- (10) See Article 2(2) of the Agreements between Jordan and Egypt; Syria and Yugoslavia.

- (11) e.g., Iraq with Turkey; Lebanon with: Denmark, Greece, Netherlands, Sweden, Switzerland, USA; Syria with: Netherlands, Turkey, USA. The provision in question corresponds to that of the Chicago Standard Form.
- (12) For different wordings used see above "The Operating Permission" under the "Grant of Rights".
- (13) See Article 4(1)(b) of the Agreement between Kuwait and Japan.
- (14) e.g., Jordan with: Denmark, Norway, Sweden; Lebanon with Ghana.
- (15) See Article 2(a) of the Agreement between Lebanon and USA. The same is true in the case of Jordan with Turkey; Lebanon with Turkey; Syria with USA.
- (16) See Article 2(C) of the Agreement between Iraq and Pakistan. This formula is used by many agreements such as: Iraq with: Denmark, India, Netherlands, Norway, Sweden, Turkey; Jordan with: Belgium, France, Netherlands; Lebanon with: Australia, Brazil, Denmark, Greece, Italy, Netherlands, Norway, Pakistan, Sweden, Switzerland; Syria with: Czechoslovakia, Denmark, France, Greece, Netherlands, Norway, Sweden, Switzerland, Turkey, Yugoslavia. Some different wordings, however, may be seen in these agreements.
- (17) Such as: Iraq with Czechoslovakia; Kuwait with Japan.
- (18) Such as: Iraq with: Egypt, UK; Jordan with Egypt; Lebanon with Belgium; Syria with Egypt.
- (19) Article 2(3) of the ECAC Standard Form.
- (20) See Article 3(3) of the Agreement between Syria and Cyprus. The same formula is used in the Agreements: Jordan with: Denmark, Norway, Sweden; Kuwait with UK; Lebanon with: Ghana, Ivory Coast, Singapore, UK; Syria with UK.
- (21) See Article 6 of the Agreement between Iraq and Denmark. A similar provision is found in many agreements especially in most of the early post-war agreements: Iraq with: Norway, Sweden, Switzerland, Turkey; Jordan with: France, Netherlands, Turkey; Lebanon with: Brazil, Denmark, Greece, Italy, Netherlands, Norway, Sweden, Switzerland, Turkey, USA; Syria with: Czechoslovakia, Denmark, France, Greece, Netherlands, Norway, Sweden, Switzerland, Turkey, USA.
- (22) e.g., Iraq with Switzerland; Jordan with: France, Netherlands, Turkey; Lebanon with: Brazil, Greece, Turkey; Syria with: Czechoslovakia, France, Netherlands, USA.
- (23) See Article 3(1) of the Agreement between Jordan and Egypt.

- (11) e.g., Iraq with Turkey; Lebanon with: Denmark, Greece, Netherlands, Sweden, Switzerland, USA; Syria with: Netherlands, Turkey, USA. The provision in question corresponds to that of the Chicago Standard Form.
- (12) For different wordings used see above "The Operating Permission" under the "Grant of Rights".
- (13) See Article 4(1)(b) of the Agreement between Kuwait and Japan.
- (14) e.g., Jordan with: Denmark, Norway, Sweden; Lebanon with Ghana.
- (15) See Article 2(a) of the Agreement between Lebanon and USA. The same is true in the case of Jordan with Turkey; Lebanon with Turkey; Syria with USA.
- (16) See Article 2(C) of the Agreement between Iraq and Pakistan. This formula is used by many agreements such as:
Iraq with: Denmark, India, Netherlands, Norway, Sweden, Turkey;
Jordan with: Belgium, France, Netherlands; Lebanon with:
Australia, Brazil, Denmark, Greece, Italy, Netherlands, Norway, Pakistan, Sweden, Switzerland; Syria with: Czechoslovakia, Denmark, France, Greece, Netherlands, Norway, Sweden, Switzerland, Turkey, Yugoslavia.
Some different wordings, however, may be seen in these agreements.
- (17) Such as: Iraq with Czechoslovakia; Kuwait with Japan.
- (18) Such as: Iraq with: Egypt, UK; Jordan with Egypt; Lebanon with Belgium; Syria with Egypt.
- (19) Article 2(3) of the ECAC Standard Form.
- (20) See Article 3(3) of the Agreement between Syria and Cyprus. The same formula is used in the Agreements: Jordan with: Denmark, Norway, Sweden; Kuwait with UK; Lebanon with: Ghana, Ivory Coast, Singapore, UK; Syria with UK.
- (21) See Article 6 of the Agreement between Iraq and Denmark. A similar provision is found in many agreements especially in most of the early post-war agreements:
Iraq with: Norway, Sweden, Switzerland, Turkey; Jordan with: France, Netherlands, Turkey; Lebanon with: Brazil, Denmark, Greece, Italy, Netherlands, Norway, Sweden, Switzerland, Turkey, USA; Syria with: Czechoslovakia, Denmark, France, Greece, Netherlands, Norway, Sweden, Switzerland, Turkey, USA.
- (22) e.g., Iraq with Switzerland; Jordan with: France, Netherlands, Turkey; Lebanon with: Brazil, Greece, Turkey; Syria with: Czechoslovakia, France, Netherlands, USA.
- (23) See Article 3(1) of the Agreement between Jordan and Egypt.

A similar formula is found in the case of:
Iraq with: Czechoslovakia, Egypt, Netherlands, UK; Jordan
with Egypt; Lebanon with: Belgium, Ghana, Singapore, UK;
Syria with: Egypt, UK.

- (24) See Articles 2(4) and 3(1)(a) of the ECAC Standard Form.
- (25) See Article 6(1)(a) of the Agreement between Syria and Cyprus. See also Article 3(4) of the same Agreement. It will be noted that the subject is dealt with into two separate articles. The same procedure is followed in the case of: Jordan with: Denmark, Norway, Sweden; Lebanon with the Ivory Coast (the two provisions are included in Article 12).
- (26) See Article 3(1) of this Agreement.
- (27) See Cheng, supra note (15) in Chapter I above, p. 375.
- (28) See Exchange of Notes dated 18 November, 1951 in the Agreement between Iraq and Denmark. The same understanding is found in other agreements concluded with respectively Denmark, Norway, and Sweden.
- (29) See Exchange of Notes dated 7 December, 1961 in the Agreement between Jordan and Denmark. The same is true in the case of Jordan with Sweden, and in other agreements concluded with the Scandinavian countries.
- (30) See Exchange of Notes dated 29 September, 1953 between the two States.
- (31) See Article 14 of this Agreement.
- (32) See Article 4(4) of this Agreement. It was further agreed that the airline designated by Syria may temporarily employ crews in its aircraft while operating the agreed services, in addition to crews from among nationals of both parties, from among nationals of States the aircraft of which operate to the Soviet Union in accordance with agreements relating to air transport. This was agreed upon by Exchange of Notes dated 27 December, 1962.
- (33) e.g., Iraq with: India, Pakistan; Jordan with Egypt; Kuwait with Japan; Lebanon with: Ghana, Pakistan; Syria with: Czechoslovakia, Egypt, Romania.
- (34) e.g., Lebanon with: Italy(1960), Ivory Coast.
- (35) See Article 5(1) of the Agreement between Syria and Cyprus. A similar provision is found in Article 6(1) of the Agreement between Syria and the German Democratic Republic.

Part Four - Chapter III

- (1) For the text of the Bermuda Agreement, see Cheng, supra note (15) in Chapter I above, pp. 554-566. See for a detailed discussion on the Bermuda capacity clauses, the analysis made under the Bermuda Agreement (Part Three - Chapter II of this thesis).
- (2) Article 14(C)(D) of this Agreement.
- (3) e.g., Iraq with: Netherlands, Pakistan, Switzerland, Turkey, UK; Jordan with Turkey; Kuwait with: Japan, UK; Lebanon with: Belgium, Brazil, Czechoslovakia, Ghana, Greece, Italy (as amended in 1960), Pakistan, Singapore, Turkey, UK, USA; Syria with: Cyprus, Greece, Netherlands, Denmark, Norway, Sweden, Switzerland, Turkey, UK, USA.
- (4) e.g., Iraq with: Czechoslovakia, Egypt, India; Jordan with Egypt; Lebanon with: Australia, Ivory Coast, Switzerland, Yugoslavia; Syria with: Czechoslovakia, Egypt, France, Yugoslavia.
- (5) e.g., Lebanon with: Denmark, Norway, Sweden.
- (6) The following Agreements, e.g., contain no capacity clauses: Iraq with: Denmark, Norway, Sweden; Jordan with: Denmark, Netherlands, Norway, Sweden; Lebanon with the Netherlands.
- (7) Apart from minor variations.
- (8) See the Annex (para. 2) of the Agreement between Syria and Greece.
- (9) See Article 3(3) of this Agreement. A similar provision is found in the following bilaterals: each of Iraq, Kuwait, Syria, with the United Kingdom.
- (10) It would seem that there is no established rule for this reasonable load factor in the bilateral practice of the five Arab States. It is believed, however, that a sound load factor should not be more than 60 or 70 per cent of the capacity of the service operated. See Cheng, supra note (15) in Chapter I above, pp. 412-413.
- (11) Ibid, according to Cheng, the carriage of supplementary traffic would only amount to 25 or 30 per cent of the total capacity, see pp. 415-416.
- (12) See Articles 6 and 7 of this Agreement. The same is true in the Agreements: Iraq with Egypt; Syria with Egypt.
- (13) See Article 4 of the Agreement between Lebanon and Pakistan.

A similar approach is found in Article 4 of the Agreement between Iraq and Pakistan.

- (14) See Section 3 of the Annex of this Agreement. The Agreement between Lebanon and Switzerland has only this to say; "There shall be a fair and equal opportunity in the territory of the Contracting Parties for the designated airlines to operate the agreed services." See Article 4 of this Agreement.
- (15) See Article 15(2)(3) of this Agreement.
- (16) See Article 4(A)(B) of this Agreement. The "agreed period" was 12 months from the date of the coming into force of the Agreement and thereafter every succeeding period of 12 months unless otherwise agreed.
- (17) See Article 4 of this Agreement.
- (18) Article 2 of this Agreement provides that:
"The capacity provided by each of the airlines designated to operate the agreed services shall be related to the traffic demand; it shall be determined by direct agreement between the designated airlines in the case of common routes and shall be subject to approval by the aeronautical authorities of the two Contracting Parties."
Almost the same provision is found in Section 3 of the Annex of the Agreement between Iraq and Czechoslovakia.
- (19) Article 5(2) of this Agreement. Source is the Directorate General of Civil Aviation in Syria.
- (20) See Article 1(2) of the Agreement between Lebanon and Sweden. Apart from minor variations the same provision is found in the Agreements between Lebanon and respectively, Denmark, and Norway (Article 1(2) of both).
- (21) See Article (1 bis) of the Protocol of 1960 amending the original Agreement.
- (22) See Article 1(d) of this Agreement.
- (23) See Article 6 of the Agreement between Kuwait and the United Kingdom. The same definitions and conditions regarding change of gauge are found in the following Agreements: Kuwait with: Japan, UK; Lebanon with: Belgium, Singapore, UK. See also an article on this subject written by: Lissitzyn O. J., Change of Aircraft on International Air Transport Routes, Journal of Air Law and Commerce, Vol. 14, 1947, pp. 57-67.

Part Four - Chapter IV

- (1) e.g., Lebanon with: Greece, Italy(1949), Netherlands, USA.
- (2) See Article 17(1) of the Agreement.
- (3) See Article 2(1) of the Agreement. See for the text of this Agreement ICAO Doc 8681, Paris, (19 July 1967). The text is trilingual.
- (4) Most of the Arab air carriers are also members in IATA.
- (5) IATA Bulletin, 36, 24th Annual General Meeting, October 1968, Munich, p. 81, under "Regional Developments".
- (6) As those Agreements concluded with Turkey.
- (7) See para. 3(f) of the Annex of the Agreement between Lebanon and Turkey.
See also Section II(h) of the Annex of the Bermuda Agreement. The same is true in the case of Syria with the Netherlands. Also Syria with Greece, but on the same day this Agreement was signed, an Exchange of Letters was made to the regulation of rates and certain principles were agreed upon.
- (8) e.g., Iraq with: Czechoslovakia, UK; Jordan with: Netherlands; Kuwait with: Japan, UK; Lebanon with: Australia, Belgium, Ghana; Syria with: Denmark, France, Norway.
- (9) See Article 10(2) of the Agreement between Jordan and Egypt. The same is true, e.g., in the following bilaterals: Iraq with Egypt; Syria with: Denmark, Egypt, Norway, UK.
- (10) e.g., Iraq with UK; Kuwait with: Japan, UK; Lebanon with: Ghana, Singapore, UK.
- (11) e.g., Iraq with: Denmark, Norway; Lebanon with Sweden; Syria with Switzerland.
- (12) e.g., Iraq with: Denmark, India, Norway, Pakistan, Sweden, Switzerland.
- (13) See Section 4 of the Annex of this Agreement.
- (14) See Article 10 of this Agreement.
- (15) See Article 7 of this Agreement.
- (16) See Article 8 of this Agreement.
- (17) See Section 4(B) of the Annex of this Agreement.
- (18) See Article 7 of both Agreements.
- (19) See Article 6(B) of this Agreement.

- (20) See Article 3 of this Agreement.
- (21) e.g., Syria with: Czechoslovakia, Egypt, Denmark, Norway, Sweden, UK.
- (22) See Article 11(2) of this Agreement. The same is true in the case of Yugoslavia.
- (23) See Article 17(3) of this Agreement.
- (24) See Article 6(1) of the Agreement between Syria and Switzerland and Article 7 of the Agreement between Lebanon and Denmark, with the difference that "if the designated airlines belong to this Association" in the first Agreement.
- (25) See Section 4(B) of the Annex of this Agreement.
- (26) See Article 3 of the Agreement, in supra note (20).
- (27) See Article 7 of this Agreement. This is in case a conference of IATA is unable to agree on a rate.
- (28) e.g., Jordan with: Denmark, Norway, Sweden; Lebanon with: Italy(1960), Ivory Coast; Syria with: Cyprus, Yugoslavia (the time limit may be reduced in the last two Agreements, see Article 11(3) for Cyprus and Article 6(3) for Yugoslavia).
- (29) e.g., Jordan with the Netherlands; Syria with: Denmark, France, Norway, UK.
- (30) As in the Agreements: Iraq with Egypt; Jordan with Egypt; Syria with Egypt.
- (31) See for Agreements which do not deal with tariffs, supra note (1).
- (32) e.g., Iraq with: Netherlands, Turkey; Jordan with Turkey; Lebanon with: Switzerland, Turkey; Syria with: Netherlands, Turkey.
- (33) e.g., Iraq with: Czechoslovakia, Switzerland, UK; Jordan with: Denmark, Norway, Sweden; Kuwait with: Japan, UK; Lebanon with: Belgium, Brazil, Denmark, Ghana, Italy(1960), Ivory Coast, Norway, Singapore, Sweden, UK; Syria with: Cyprus, Switzerland, Yugoslavia.
- (34) e.g., Iraq with: Denmark, Egypt, India, Norway, Pakistan, Sweden; Jordan with: Egypt, France; Lebanon with: Australia, Pakistan; Syria with: Czechoslovakia, Denmark, Egypt, France, Norway, Sweden, UK.
- (35) e.g., Iraq with Egypt; Jordan with Egypt; Syria with: Czechoslovakia, Denmark, Norway.

Part Four - Chapter V

- (1) e.g., Iraq with Czechoslovakia; Syria with: Czechoslovakia (1966), Bulgaria, Germany(eastern), Hungary, Poland, Romania, USSR. The Agreement, Syria with Poland gives 90 days for negotiations between the aeronautical authorities before the dispute can be referred to be solved through diplomatic channels. The Agreement, Syria with Romania gives a period of 60 days.
- (2) Article 13 of the first, Article 9 of the second.
- (3) See Article 13 of this Agreement.
- (4) e.g., Iraq with: Netherlands, UK; Kuwait with UK.
- (5) e.g., Iraq with Egypt; Jordan with Egypt; Syria with Denmark.
- (6) e.g., Iraq with India; Lebanon with: Belgium, Denmark, Pakistan. The Agreement, Lebanon with Denmark omits the qualification "any person or body".
- (7) Article 7 of this Agreement.
- (8) e.g., Jordan with: Denmark, Norway, Sweden.
- (9) As in the case of Iraq with respectively Denmark and Norway.
- (10) e.g., Iraq with: Denmark, Norway, Pakistan, Sweden, Turkey; Lebanon with: Greece, Turkey; Syria with Turkey.
- (11) See Article 10 of this Agreement. See on this subject an article written by:
Hingorani R. C., "Dispute Settlement in International Civil Aviation", Arbitration Journal 1959, pp. 14-25.
- (12) See Article 9 of this Agreement.
- (13) e.g., Iraq with: Egypt, UK; Jordan with Egypt; Kuwait with UK; Lebanon with: Australia, UK; Syria with: Denmark, Egypt, UK.
- (14) See Article 10 of both Agreements.
- (15) e.g., Lebanon with: Ghana, Ivory Coast; Syria with Yugoslavia.
- (16) See Article 9 of the Agreement between Lebanon and the Netherlands. The same provision is found in the Agreement with Italy (1949). A similar provision in the case of Yugoslavia.
- (17) e.g., Lebanon with: Australia, Belgium, Denmark, Italy(1960), Norway, Pakistan. It will be noted that Lebanon is a party to the ICJ Statute. It seems that Lebanon is the first of the Arab countries which bases itself on international law.

The Lebanese Delegate speaking in the Legal Commission of the Assembly of ICAO in 1968 says that:

"His Government, which had always based itself upon the law to strengthen and enforce international law, had always believed in multilateralism the only means whereby a certain amount of order could be introduced among the international community, without thereby preventing the inclusion of bilateral agreements and arrangements within the State's own international law." See:

ICAO Doc 8774, A16-LE, Report and Minutes of the Legal Commission, 16th Session of the Assembly, September 1968, p. 33.

- (18) See Article 9 of both Agreements.
- (19) See Article 11(B)(ii) of this Agreement.
- (20) See Article 13 of this Agreement.
- (21) See Article 13(2) for Iraq, and 21(2) for Saudi Arabia.
- (22) e.g., Jordan with: Denmark, France, Norway; Kuwait with Japan; Lebanon with: Italy(1960), Ivory Coast; Syria with: Cyprus, France, Yugoslavia.
- (23) As in the bilaterals which follow the ECAC arbitration clauses. The same is true in the case of Lebanon with the Ivory Coast; Syria with Yugoslavia.
- (24) See Article 9(3) of the Agreement between Lebanon and the Ivory Coast. A similar provision is found in the Agreements Jordan with France; Syria with France.
- (25) e.g., Jordan with France; Lebanon with the Ivory Coast; Syria with: France, Yugoslavia.
- (26) See Article 13(4) of this Agreement.
- (27) See Article 17(4) of this Agreement.
- (28) e.g., Iraq with: Egypt; Jordan with Egypt; Lebanon with: Ghana, Ivory Coast; Syria with: Denmark, Egypt.
- (29) e.g., Iraq with: India, Netherlands; Jordan with Egypt; Kuwait with UK; Lebanon with Singapore; Syria with UK.

The Lebanese Delegate speaking in the Legal Commission of the Assembly of ICAO in 1968 says that:

"His Government, which had always based itself upon the law to strengthen and enforce international law, had always believed in multilateralism the only means whereby a certain amount of order could be introduced among the international community, without thereby preventing the inclusion of bilateral agreements and arrangements within the State's own international law." See:

ICAO Doc 8774, A16-LE, Report and Minutes of the Legal Commission, 16th Session of the Assembly, September 1968, p. 33.

- (18) See Article 9 of both Agreements.
- (19) See Article 11(B)(ii) of this Agreement.
- (20) See Article 13 of this Agreement.
- (21) See Article 13(2) for Iraq, and 21(2) for Saudi Arabia.
- (22) e.g., Jordan with: Denmark, France, Norway; Kuwait with Japan; Lebanon with: Italy(1960), Ivory Coast; Syria with: Cyprus, France, Yugoslavia.
- (23) As in the bilaterals which follow the ECAC arbitration clauses. The same is true in the case of Lebanon with the Ivory Coast; Syria with Yugoslavia.
- (24) See Article 9(3) of the Agreement between Lebanon and the Ivory Coast. A similar provision is found in the Agreements Jordan with France; Syria with France.
- (25) e.g., Jordan with France; Lebanon with the Ivory Coast; Syria with: France, Yugoslavia.
- (26) See Article 13(4) of this Agreement.
- (27) See Article 17(4) of this Agreement.
- (28) e.g., Iraq with: Egypt; Jordan with Egypt; Lebanon with: Ghana, Ivory Coast; Syria with: Denmark, Egypt.
- (29) e.g., Iraq with: India, Netherlands; Jordan with Egypt; Kuwait with UK; Lebanon with Singapore; Syria with UK.

Part Four - Chapter VI

- (1) e.g., Iraq with: Czechoslovakia, Denmark, Egypt, India, Sweden, Switzerland, Turkey; Jordan with: Egypt, Turkey; Kuwait with Japan; Lebanon with: Brazil, Ghana, Pakistan, Singapore, Turkey, UK; Syria with: Czechoslovakia, Denmark, Egypt, Norway, Sweden, Switzerland, Turkey, UK. The Agreement, Lebanon with the Ivory Coast comes into force (30) days after the exchange of instruments of ratification, and the Agreement, Lebanon with Switzerland comes into force on the day following the date of exchange of instruments of ratification.
- (2) e.g., Iraq with Czechoslovakia; Kuwait with Japan; Lebanon with the Ivory Coast; Syria with Switzerland.
- (3) e.g., Iraq with: Denmark, India, Sweden, Turkey; Jordan with Turkey; Lebanon with: Turkey, UK; Syria with: Denmark, Norway.
- (4) e.g., Iraq with: Pakistan, UK; Jordan with France; Kuwait with UK; Lebanon with Greece.
- (5) e.g., Jordan with: Belgium, Denmark, Netherlands, Norway, Sweden; Lebanon with: Belgium, Denmark, Italy(1949), Netherlands, Norway, Sweden; Syria with: France, Greece. It will be noted that the Agreement, Jordan with the Netherlands comes into force definitely on a date to be laid down in an exchange of notes.
- (6) As in the case of Jordan with: Norway, Sweden.
- (7) e.g., Iraq with the Netherlands; Syria with: Cyprus, Yugoslavia.
- (8) See Article 11 of the Agreement between Lebanon and USA. The same procedure is followed in the case of Lebanon with Australia; Syria with: Netherlands, USA.
- (9) e.g., Iraq with: India, Turkey; Lebanon with: Greece, Ivory Coast, Turkey, UK; Syria with: Greece, Turkey, UK.
- (10) As in the case of Syria with: Denmark, Norway, Sweden.
- (11) See Article 15(3) of this Agreement.
- (12) Article 102 of the UN Charter.
- (13) ICAO Circular 63 - AT/6, 1962, pp. 121-124, for the text of these rules.
- (14) e.g., Iraq with: Netherlands, Pakistan, Switzerland, Turkey; Jordan with: Netherlands, Turkey; Lebanon with: Greece, Netherlands, Turkey, USA; Syria with: Turkey, USA.

- (15) e.g., Kuwait with: Japan, UK; Lebanon with: Belgium, Czechoslovakia, Ghana, UK; Syria with: Cyprus, UK, Yugoslavia.
- (16) e.g., Lebanon with: Denmark, Norway, Sweden; Syria with: Czechoslovakia, Denmark, Norway, Sweden. Sometimes the word "additions" is used.
- (17) e.g., Jordan with France; Lebanon with the Ivory Coast; Syria with France.
- (18) e.g., Iraq with Czechoslovakia; Jordan with Sweden.
- (19) See Article 17, under the "Pact of the Arab League".
- (20) See Article 13 of the Agreement between Iraq and India. A similar provision is found in the following Bilaterals: Iraq with: Denmark, Norway, Pakistan, Sweden; Kuwait with: Japan, UK; Lebanon with: Australia, Belgium, Brazil (aviation), Czechoslovakia, Ghana, Greece (civil aviation), Ivory Coast, Pakistan, Singapore, UK; Syria with: Greece, Netherlands, UK. The Agreement between Lebanon and the Ivory Coast provides in its Article 20 that:
"If the two Contracting Parties adhere to a general multilateral convention on air transport, the provisions of the latter shall have precedence over this Agreement. Negotiations for the purpose of establishing the extent to which a multilateral convention abrogates, supersedes, amends or complements this Agreement shall take place in conformity with Article 7." Article 7 referred to here provides for consultation between the competent authorities of the two parties concerning interpretation, application or amendment of the Agreement.
Some agreements, however, use the qualification "a general multilateral air convention" as in the following:
Jordan with Turkey; Lebanon with: Italy, Turkey.
- (21) e.g., Iraq with: Turkey; Jordan with: Denmark, Norway, Sweden; Lebanon with: Denmark, Norway, Sweden, Turkey; Syria with: Cyprus, Denmark, Norway, Sweden, Switzerland. See Article 11 of the ECAC Standard Clauses.
- (22) See Article 13 of the Agreement between Iraq and Egypt. A similar provision is found in the following bilaterals: Iraq with UK; Jordan with Egypt; Syria with Egypt.
- (23) e.g., Iraq with Czechoslovakia; Jordan with the Netherlands; Lebanon with the Netherlands; Syria with the United States.
- (24) See Article 82 of the Chicago Convention.
- (25) Some agreements do not expressly provide a procedure for the modification of the agreement itself as we will see later.
- (26) See Article 9 of the Agreement between Iraq and the Netherlands.

See also the following bilaterals: Iraq with: Pakistan, UK; Jordan with: Belgium, France, Netherlands; Lebanon with: Australia, Belgium, Czechoslovakia, Denmark, Ghana, Italy, Netherlands, Norway, Sweden, Switzerland, Yugoslavia; Syria with: Czechoslovakia, Denmark, Netherlands, Norway, Switzerland, UK.

- (27) See Article 14 of the Agreement between Iraq and Egypt. A similar provision is found in the following bilaterals except for minor variations: Iraq with Turkey; Jordan with: Egypt, Turkey; Lebanon with: Brazil, Turkey, USA; Syria with: Greece, Turkey, USA.
- (28) See Article 8 of the Agreement between Iraq and Denmark. The same procedure is true in the following bilaterals: Iraq with: Czechoslovakia, Norway, Sweden, Switzerland; Lebanon with Greece.
- (29) See Article 10 of the Agreement between Jordan and Denmark. The same is true in the Agreements, Jordan with: Norway, Sweden.
- (30) See Article 12(2) of the Agreement between Kuwait and Japan. A similar procedure except for some minor variations is followed in the Agreements: Lebanon with: Pakistan, Singapore; Syria with: Cyprus, Denmark, Egypt, France, Sweden.
- (31) See Article 11(1) of the Agreement between Kuwait and UK. The same provision is included in Article 11(1) in the case of Lebanon.
- (32) See Article 8(b) of the Agreement between Jordan and Belgium. The same provision is found in Article 8(b) of the Agreement between Jordan and the Netherlands.
- (33) See Article 9(C) of this Agreement.
- (34) See Article 12 of the Agreement between Jordan and Denmark.
- (35) e.g., Iraq with: India, Pakistan, UK; Kuwait with Japan; Lebanon with Pakistan.
- (36) e.g., Jordan with France; Lebanon with the Ivory Coast; Syria with France.
- (37) See Article 7 of this Agreement.
- (38) e.g., Iraq with Switzerland; Lebanon with: Denmark, Norway, Sweden, Switzerland, USA; Syria with USA.
- (39) e.g., Iraq with: Czechoslovakia, Turkey; Jordan with Turkey; Lebanon with: Turkey, Yugoslavia; Syria with: Czechoslovakia (the notice is to be given through diplomatic channels), Greece, Turkey, Yugoslavia.

- (40) See ICAO Bulletin Vol. 24 - No. 12, December 1969, Middle East Travel Study, p. 6.
- (41) Ibid. pp. 7-8.
- (42) Ibid. p. 7.
- (43) In 1969 the following points in Africa: Abidjan, Accra, Addis Ababa, Benghazi, Cairo, Freetown, Kano, Khartoum, Lagos, and Monrovia. In Europe: Athens, Berlin(east), Brussels, Copenhagen, Frankfurt, Geneva, London, Munich, Paris, Prague, Rome, Vienna, Warsaw, and Zurich. In the Far East: Bombay, Delhi, and Karachi. In the Middle East: Abadan, Abu Dhabi, Aden, Amman, Ankara, Baghdad, Bahrain, Basrah, Beirut, Dahrhan, Damascus, Doha, Dubai, Istanbul, Jeddah, Kuwait, Nicosia, Sharjah, and Tehran.
- (44) Source of all the information is the Directorate General of Civil Aviation in Syria.
- (45) The numbers given include all agreements whether registered with ICAO or not. Some of them are not ratified or replaced by new agreements.
- (46) Only few Arab air carriers could recently operate to certain points in these countries.
- (47) The number given is for scheduled air traffic of IATA Member airlines. See IATA News, December 29, 1969, No. 32, p. 1.

A P P E N D I X I

CONVENTION

on

THE ESTABLISHMENT OF WORLD ARAB AIRLINE

APPENDIX I

"CONVENTION" *

ON THE ESTABLISHMENT OF
WORLD ARAB AIRLINE

The Governments of... complying with the Pact of the Arab League and the Chicago Convention on International Civil Aviation, and being desirous of unifying their efforts in the field of commercial civil aviation, of advancing aviation industry in the Arab countries and the world, and of increasing economic cooperation among them and between them and other countries, have agreed to establish an international Arab airline in accordance with the provisions of the present Convention.

Chapter One

Establishment, Designation, Purpose, Membership, Location

Article 1: There shall be founded an Arab establishment for air transportation given the name of "The World Arab Airline".

Article 2: The Airline shall exploit commercial aviation in the Arab and foreign countries, and create an industry of civil aviation in order to link the Arab world with the out world by an air network of regular services for the purpose of raising the aviation level.

To materialize those purposes, the Airline shall:

- 1- Operate international long-range regular services, medium-range services along the former services, and any other services the Airline can obtain with due regard to Article 3 of the Convention.

*) This translation is My Translation.
The present Convention has been approved by the Arab League

- 2- Buy, sell, lease and hire aircraft, spare parts, and other equipment, manufacture them, and carry out maintenance work.
- 3- Act as agent for ground, commercial and technical services to Arab and foreign airlines in the Arab and foreign countries.
- 4- Prepare and train technicians requisite for the work of this Airline and other airlines.
- 5- Exercise all operations connected directly or indirectly with the exploitation of international air transport.

Article 3: Airline shall cooperate with the Arab air carriers operating in commercial civil aviation, reconcile its interests with those of the other carriers, and coordinate efforts in order to advance the industry of the Arab commercial civil aviation. The Airline may conclude special agreements to this end.

Article 4: An Arab State or country has the right to be a member in the Airline in accordance with the provisions of this Convention.

Article 5: The Board of Directors shall locate the headquarters of the Airline and the centre of each of the branches, maintenance workshops and offices of the Airline, and shall appoint its agents abroad.

Chapter Two

Capital, Shares, Increase and Decrease of Shares, Contributions and Apportionment

Article 6: The capital of the Airline equals seventeen million Sterling Pounds. The Sterling Pound is evaluated at the gold rate specified by the International Monetary Fund when the Convention comes into force.

Article 7: The capital shall be divided into one hundred and seventy thousand shares the value of each is one hundred Sterling Pounds according to the evaluation mentioned in Article 6.

Article 8: The Board of Directors, on the approval of two thirds of the total votes, has the right to increase the capital of the Airline. The increase of capital for the purpose of issuing shares to meet preliminary contribution in consideration of an Arab country's share when joining the Airline after the capital has been fully covered shall be effected on the approval of the majority of the total votes.

Article 9

- (1) The share of the member in the Airline's capital shall not exceed twenty percent. The shares of the members are fixed in the table annexed to the Convention.
- (2) If the capital is not fully paid during three years from the date on which this Convention comes into force, the top limit of the share may be raised to twenty-five per cent on condition that priority is given to the members whose shares are less than twenty per cent.
- (3) Members who adhere to the Convention after it has come into force shall contribute in the share fixed by the Board of Directors.

Article 10: The member shall pay one quarter of the value of his share at the time when the Convention comes into force; whereas the remainder shall be paid in the method fixed by the Board of Directors. In case of member's failure to pay this remainder within one year from the date of claim, the Board of Directors shall have the right, by majority of two-thirds of total votes, to reduce the share of the member to what may be equivalent to the amount paid, and to offer the shares resulting from this arrangement to the other members for subscription, with due regard being paid to paragraph 2 of Article 9 of the Convention.

Article 11: Should a member adhere to the Convention after it has come into force, he shall pay a percentage of the share fixed for him equivalent to what the other members have paid.

Article 12: The value of the shares subscribed shall be paid in cash in Sterling Pounds as set forth in Article 6 of the Convention. However, this value may, in exceptional cases, be paid in kind on the approval of the Board of Directors.

Article 13: Each member State has the right to sell to its nationals a part of its share on condition that precautions be taken to prevent the introduction of foreign capital into that share.

Article 14: With no prejudice to Articles 9 and 13 of the Convention, the following shall be applied:

- (1) All shares are nominal and may be circulated among the nationals of the member States each within the limits of its share. This circulation shall be effected by a deed of assignment signed by the assignee and the assignor, and certified by the Airline. This shall be documented in a special file to be kept at the Airline.
- (2) Ownership of shares shall not be transferred to persons of other nationalities. In case of inheritance, the inheritor shall have the right to claim the actual value of the shares.
- (3) The share is not divisible. The Airline will recognize it being owned by one owner only.

Chapter Three

Legal Status

Article 15: The Airline has a legal personality. Within the scope of its purposes, it possesses the right to conclude contracts, own movable and immovable property and dispense of them, and the right of litigation and carrying out all legal procedures.

Article 16: The responsibility of the members of the airline is limited in proportion to the share of each of them in the capital.

Article 17: The Airline is liable to third party for all undertakings and obligations resulting from performing its activities.

Chapter Four

Management

Article 18: The Airline shall be managed by a Board of Directors composed of one representative for one member country appointed by the Government of that country. The Government shall appoint an alternative representative to attend the meetings of the Board of Directors in case the original representative is unable to attend such meetings. The alternative representative shall enjoy the same powers enjoyed by the original representative.

Article 19: The Board of Directors shall be invested with such powers as necessary for the airline management, and shall be responsible for all its functions.

Article 20: The Board of Directors shall appoint a General Manager for the Airline and empower him with financial and administrative authority that is necessary for the management of the Airline with the exception of:

- 1- Approval of the annual budget.
- 2- Appointment of audits.
- 3- Approval of establishment, cancellation and modification of air services.
- 4- Approval of purchase and sale of aircraft.
- 5- Acceptance and purchase of spare parts other than those falling under the financial prerogative of the General Manager.
- 6- Making of regulations for the management of the Airline, and of by-law for the Board of Directors.

- 7- Appointment of high level staff and experts and determination of their salaries and emoluments.
- 8- Approval of general programmes made for equipment, purchases, insurance, estimate of depreciation, and percentage of general reserve after reaching the rate specified in Article 37 of the Convention.
- 9- Financial investment and taking loans.
- 10- Endorsement of final accounts.
- 11- Conclusion of agreements with organizations and other companies who practice work similar to that of the Airline, and participation in international organizations.
- 12- Deciding upon the basis of cooperation and coordination provided for in Article 3 of the Convention.
- 13- Dissolution of the Airline and distribution of its assets.
- 14- All other powers intrusted to the Board of Directors.

Article 21: The Board of Directors shall have one Chairman and one vice-Chairman. The term of office is one year for each. The two posts shall be held by member States in Alphabetical order.

Article 22: The Board of Directors shall meet in four regular sessions in one year, and in such special sessions as occasion may require at the invitation of the Chairman or at a request submitted to the Chairman by the Director General and two members of the Board wherein they state the reason that justifies such a session. The Board shall hold at least one meeting every three months.

Article 23: The session of the Board of Directors shall be legal if attended by an absolute majority of the number of members provided this majority represents at least two thirds of the total votes. It is stipulated that an invitation for meetings be addressed within the legal period fixed by the Board's regulations. In case of no quorum, the Board may meet fifteen days after the date of the invitation, and the meeting shall be considered legal no matter what the number of attendants or the percentage of their votes was.

Article 24: In voting in the Board of Directors each member shall be given five thousand votes regardless of the number of shares he owns, then one vote is added for every share owned by the member. Decisions shall be taken by the absolute majority of the votes of attendants unless otherwise expressed.

Article 25: Decisions on the following matters shall be taken by the majority of two-thirds of total votes:

- 1- Establishment, cancellation or modification of air services.
- 2- Purchase and sale of aircraft.
- 3- Appointment of the Director General and determination of his powers and emolument.
- 4- Location of the principal place of the airline and the workshops of maintenance.
- 5- Approval of the general programmes relating to equipment, procurement, and insurance.
- 6- Financial investment and taking of loans.
- 7- Determination of the percentage of dividend.
- 8- Approval of final accounts.
- 9- Increase of the shares of the members as set forth in paragraph 2 of Article 9.
- 10- Dissolution and liquidation of the Airline.

Chapter Five

Facilities and Exemptions

Article 26: Members shall secure freedoms of the air that are necessary for the operations of the Airline.

Article 27: Members undertake to provide all facilities that are necessary for the proper functioning of the Airline, and shall in this respect accord it treatment not less than that they accord their own air carriers.

Article 28: The following shall be exempt from all taxes and charges:

- 1- The Airline's shares when issued and circulated.
- 2- The Airline's real and movable property and profits.

Article 29:

- 1- The Airline's aircraft, spare parts, and equipment necessary for its operation shall be exempt from taxes and customs duties.
- 2- The following shall be exempt from customs charges and all other governmental and municipal charges:

- (a) The fuel, oils and stores of the airline's aircraft when it lands in the territory of one of the members as long as the fuel, oils and stores stay within the limits of the customs.
- (b) The fuel, oils, and stores of the Airline's aircraft supplied by one of the members. However, if the laws of such a member do not permit exemption, he shall support the airline by means of subsidy equal to the charges paid.

Article 30: The funds, profits and financial operations of the Airline shall not be subject to restrictions imposed on transfer and similar operations.

Article 31: Employment in the Airline shall not be subject to nationality conditions imposed by the labor laws and professional restrictions.

Chapter Six

Aircraft Registration

Article 32: By two-thirds of the total votes the Board of Directors shall decide the method of registration of the Airline's aircraft in the light of the Chicago Convention on International Civil Aviation signed on 7 December, 1944.

Chapter Seven

Certificates of Airworthiness and Licenses

Article 33: The member States shall recognize certificates of airworthiness and licenses of crew issued by the competent aeronautical authorities of the member States provided that the standards and conditions of issuance are not less than those imposed by the International Civil Aviation Organisation.

Chapter Eight

Fiscal Year, Annual Budget, Annual Report, Final and Reserve Account, Dividend

Article 34: The fiscal year of the airline begins on 1st April and ends on 31 March.

Article 35: The Director General shall submit to the Board of Directors for approval the following:

- 1- A budget estimating the Airline's work for the next fiscal year. This budget shall be submitted at the end of January of each year.
- 2- The final balance sheet account, the profit & loss account and a list of assets and liabilities approved by legal audits. Submission of these documents shall take place within three months from the end of the fiscal year to which the said accounts belong.

Article 36: The Board of Directors shall, within four months from the end of each fiscal year, submit a report on the activities and the financial status of the Airline, the balance sheet of the profit and loss account, the list of assets and liabilities, and the

report of the audits.

The Board of Directors shall publish the balance sheet and the profit and loss account in one of the daily newspapers published in the capital of each member within 15 days from its approving the accounts.

Article 37: The Board of Directors shall by two-thirds of the total votes decide the percentage of the yearly profit that is to be distributed among shares after deducting all operation and depreciation and other expenses, and after allotting 10% of the net profit to the General Reserve Account. This percentage shall no longer be allotted when the total of the General Reserve becomes equal to half of the Airline's capital.

Chapter Nine

Withdrawal, Suspension
Dissolution, Liquidation

Article 38: No member shall ask for withdrawal from the Airline before he has been a member for five years. Request of withdrawal shall be made by a note in writing to the Director General who shall submit it to the Board of Directors. Withdrawal becomes operative one year from the date at which the Director General has received the note unless it is withdrawn before this period.

Article 39: Should any member fall short in any of his obligations towards the Airline, the Board of Directors may terminate the membership of that member by a decision it takes by a majority of two-thirds of the votes. Membership will cease to exist after three months from the date of the decision unless another decision is issued by a majority of two-thirds of the total votes providing for rehabilitation.

Article 40: When a member loses his membership, the Board of Directors shall determine how to deal with the share of such a member according to Article 9 of the Convention. Should a dispute arise between the Airline and the Government of the member concerning the value of that share and the way by which it will be settled, the dispute shall be referred to arbitration in accordance with Article 46 of the Convention.

Article 41: When the member loses his membership he shall remain responsible for his obligations towards the Airline up to the date on which membership ceases to exist, and shall have the right to receive his dues from his share in the capital and profits up to that date.

Article 42: If the cease of membership causes damage to the airline, the member concerned shall be responsible for the payment of compensation in consideration of the damage.

Article 43: The Airline may by a decision taken by majority of two-thirds of total votes suspend its operations for a certain period save work and procedures necessary for the maintenance of its equipment.

Article 44:

- 1- The Board of Directors by a majority of two-thirds of votes may decide to dissolve the Airline which shall remain active until all its rights and obligations are settled. Neither member shall withdraw nor membership shall be terminated during the period between the date of dissolution decision and completion of liquidation. No stock shall be distributed among members before settlement of debts due on the Airline.
- 2- No stock shall be distributed among members in proportion to shares they own.

Chapter Ten

Interpretation and Arbitration

Article 45: The Board of Directors shall decide by a majority of two-thirds of total votes upon all disputes that may arise between the airline and one of its members or among them concerning the interpretation and execution of the present Convention.

Article 46: In case a dispute arises between the Airline and a member who lost his membership, or between the Airline and a member during liquidation, the dispute shall be submitted to an arbitration tribunal composed of three arbitrators one to be nominated by the Airline, one by the member party to the dispute, and the third to be chosen by the two arbitrators. The award of the tribunal shall be taken by majority vote, final, and binding.

If the two arbitrators cannot reach agreement on the selection of the third arbitrator, the President of the International Court of Justice may act as the third arbitrator, or may choose the third arbitrator with no objection from both parties.

Should the formation of the tribunal be difficult the dispute shall be submitted to the International Court of Justice to decide on. Its award thereon shall be binding.

Chapter Eleven

Final Provisions

Article 47: The Convention shall be ratified by the participant Arab States Governments according to their respective laws. Instruments of ratification shall be deposited with the Secretariat General of the Arab League which shall notify the other contracting parties to this effect.

Article 48: Each State or country shall become a member in the Airline from the date of deposit of instruments of ratification with the Secretariat General of the Arab League.

Article 49: The duration of the present Convention is fifty years commencing from the date on which the Convention comes into force, and may be renewed automatically for the same duration unless the members who represent two-thirds of the total votes agree otherwise.

Article 50: The Convention shall come into force one month from the date of deposit of instruments of ratification by members whose total contribution is not less than sixty per cent of the total capital of the Airline.

In support whereof the undermentioned Plenipotentiaries signed the Present Convention for their Governments.

Done at the city of Baghdad on 17th April, 1961.

For the Governments of.....(signatures)

A N N E X
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Shares of the founding members are as follows:

	<u>Share at Establishment</u>
The Hashemite Kingdom of Jordan	1 %
The Republic of Iraq	20 %
The Kingdom of Saudi Arabia	15 %
The United Arab Republic	20 %
The State of Kuwait	15 %

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