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**GUIDELINES FOR DRAFTING BILATERAL AIR TRANSPORT AGREEMENTS:  
THE CASE OF MACAU**

by

Aurora C. R. Santos

A Thesis submitted to the  
Faculty of Graduate Studies and Research  
in partial fulfilment of the requirements  
for the degree of MASTER OF LAWS

Institute of Air and Space Law  
McGill University  
Montreal, Canada

November 1993

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**DRAFTING BILATERAL AIR TRANSPORT AGREEMENTS: THE CASE OF MACAU**

## ABSTRACT

The primary intention of this research is to elaborate guidelines for bilateral air transport agreements which can be entered into by Macau, a Chinese territory under Portuguese administration.

In order to achieve this, a comprehensive comparative study of other countries' bilateral air transport agreements is undertaken. This involves carrying out a detailed examination of, *inter alia*, the theoretical, doctrinal and institutional features of the said agreements in general, and a practical study of various concrete agreements.

Macau's current and future political and legal status is outlined with special consideration being paid to the unique status of the Territory *vis-à-vis* Portugal and the People's Republic of China. Macau's recently created civil aviation structure is presented along with the Territory's trading policy in general and more specifically, the international air policy to be adopted.

Finally, based on the above research, a proposal is presented, in the conclusion, for a standard bilateral air transport agreement which Macau can use in its expanding civil aviation links with other countries.

## RÉSUMÉ

Le but fondamental de cette recherche est de rédiger des instructions concernant les accords bilatéraux du transport aérien, qui pourraient être conclus par Macau, un territoire chinois sous administration portugaise.

Pour l'achever, une étude comparative globale des accords bilatéraux du transport aérien d'autres pays sera entreprise. Ceci implique de faire un examen détaillé d'entre autres, la théorie, la doctrine et les caractéristiques institutionnelles des accords bilatéraux en général, aussi bien qu'une étude pratique de différents cas concrets.

Le statut politique et légal, présent et futur de Macau est dessiné en considérant plus particulièrement le statut unique du Territoire vis-à-vis du Portugal et de la République Populaire de Chine. La structure de l'aviation civile de Macau récemment créée est présentée ensemble avec la politique commerciale en général et plus spécifiquement la politique aérienne internationale qui doit être adoptée.

Enfin, basé sur la recherche ci-dessus, une proposition est faite pour un modèle d'un accord bilatéral du transport aérien que Macau pourrait utiliser dans le développement de ses rapports de l'aviation civile avec d'autres pays.

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The responsibility for the contents of this thesis is entirely mine and the opinions expressed therein do not necessarily represent or reflect the official views, opinions or policies of the Government of Macau or any of its departments.

## LIST OF ABBREVIATIONS

AACM	Macau Civil Aviation Authority
AASL	Annals of Air and Space Law
AIT	American Institute in Taiwan
BATA	Bilateral Air Transport Agreement
CAB	Civil Aeronautics Board (United States)
CATC	Commonwealth Air Transport Council
CCNAA	Coordination Council for North American Affairs
DGAC	Directorate-General of Civil Aviation (Portugal)
FRG	Federal Republic of Germany
GDR	Germany Democratic Republic
IASL	Institute of Air and Space Law
IATA	International Air Transport Association
ICAO	International Civil Aviation Organization
JALC	Journal of Air Law and Commerce
PICAO	Provisional International Civil Aviation Organization
PRC	People's Republic of China
TIAS	Treaties and Other International Acts Series
UK	United Kingdom
USA	United States of America
USSR	Union of Soviet Socialist Republics

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*According to legend, the name Macau originated many centuries ago at sea when a junk was caught in a sudden, violent storm. Just when all on board were about to give up, a young woman, who had boarded the boat at the last moment, stood up and ordered the elements to calm down. Miraculously the gale ceased and the sea became calm. The junk arrived safely on the nearby coast, but the woman disappeared.*

*The sailors then realised that she must have been A-Ma, the Chinese goddess who favours seafarers and fishers. They then built a temple to her, which remains to this day.*

*Centuries later when Portuguese sailors landed and asked the name of the place, the locals replied "A-Ma-Gao" (Bay of A-Ma). In modern usage, Amagao has been shortened to Macau.*

- In "Macau: Building Bridges for a Brighter Future" (1992) May Supplement Asia Money & Finance at 42.

## INTRODUCTION

Macau is a small territory located on the southeastern coast of China, about 40 miles (60kms) southwest of Hong Kong, and 85 miles (140 kms) southeast of Guangzhou (Canton).

With a total area of approximately only seven square miles (16 sq.kms), the territory of Macau consists of an urban peninsula adjoining China and two islands, Taipa and Coloane, which are linked to the city by the Macau-Taipa Bridge and the Taipa-Coloane Causeway respectively.

Called by the Portuguese "City of the Name of God" and by the Chinese "The Water-Lily Peninsula", Macau is accepted by both as the Bay of the Goddess (Ama or Ma = Goddess; Kau or Gao = Bay).

The Territory's unique historical and political situation has always prevented any clear agreement as to its precise status in international law. Initially a settlement, then a colony and later an overseas province, Macau was declared in 1976 a "special territory" of Portugal as enshrined in the Constitution of the Portuguese Republic and in the Macau Organic Statutes. During the eighties both the Chinese and the Portuguese Governments recognised Macau as Chinese territory under Portuguese administration. On April 13, 1987, a Joint Declaration on the Question of Macau was signed in Beijing, by Portugal and China. According to the Sino-Portuguese Joint Declaration, Macau will revert to Chinese sovereignty on December 20, 1999, becoming a "Special

Administrative Region" (SAR) with the present political, economic and social system remaining unchanged for a further fifty years.

With its liberal government policies, moderate taxation and *laissez-faire* economy, Macau has been experiencing an unprecedented expansion over the last two decades.

Despite the fact that the Territory is undergoing a transition period, the signing of the Joint Declaration has provided a guarantee that there will be no major changes to the political future or the economic prospects of Macau. Existing uncertainties and fears have not overshadowed the rapid growth of the economy. Private investors are putting their faith in the future, recognizing that the People's Republic of China is moving irreversibly towards a more open attitude, trying hard to achieve a balance between the need to import Western developments (life-style) and at the same time the desire to keep its ancient culture untarnished.

A series of major infrastructural projects are currently underway in Macau and, of these, the construction of the Territory's first airport is of particular significance.

Work is also progressing on other infrastructural projects, some of which have been planned to coordinate with the airport operation: a deep water harbour, the new Macau-Taipa bridge, an industrial park, a container terminal and a fuel terminal in the deep water harbour. In neighbouring China there are plans to build a railway linking Guangzhou and Zhuhai, a Chinese Special Economic Zone bordering Macau.

The Macau International Airport is scheduled to come into operation by mid-1995, thereby guaranteeing international access to the Territory. It will be a tremendous

boost for Macau, both in developing its economy and strengthening its autonomy now, and particularly after 1999, as a Special Administrative Region.

As far as the People's Republic of China is concerned, the Macau International Airport will function as a point of direct entry and an exit to and from the hinterland without any encroachment on its territorial borders. This will, therefore, facilitate commercial exchange with other international markets.

From the point of view of third countries, the Macau International Airport is a major attraction due both Macau's privileged relationship with mainland China and to its potential as a future hub in the region. It offers an alternative to Hong Kong where airport capacity is limited. Furthermore, Macau intends to adopt a liberal air policy which would include trying to attract traffic whereas Hong Kong has an air policy which is basically geared towards protecting its own airlines and has, therefore, resulted in restrictive practices in the exchange of air traffic rights.

Since the project started, several foreign airlines have indicated interest in establishing commercial air services between their countries and Macau. As we will see later, each country has sovereignty over the airspace above its territory and to establish international air services prior authorization from the relevant State being flown over is necessary. Due to differing State positions on regulating the economic aspects of commercial air transport, it has not been possible to reach a worldwide consensus which would allow these authorizations to be granted on a multilateral basis. The granting of traffic rights as well as the legal framework under which those rights may or can be exercised, are usually agreed on a bilateral basis between the countries concerned.

In the light of this, the civil aviation authorities in Macau have been approached by several countries (i.e., the U.S.A., Luxembourg, the Federal Republic of Germany, Austria, The Netherlands and Belgium) and the possibility of concluding the Territory's first bilateral air transport agreements is currently under examination.

The primary intention of this study has been to draw up a draft proposal for a bilateral air transport agreement which could be used as the basis for the discussions in which Macau will be involved and also to provide guidelines which will allow alterations to be made to any proposal in specific situations.

On the one hand, there has been an attempt to collate, examine and put in order existing material dealing with bilateral air transport agreements in order to permit familiarization with this new subject within Macau. On the other, an attempt has been made to provide other countries with an accurate reflection of Macau's situation in the lead up to and following 1999.

A comparative analysis of the bilateral air transport agreements of several countries was undertaken in detail. This involved, *inter alia*, an examination of the theoretical, institutional and doctrinal aspects related to bilateral agreements in general as well as a practical study of such agreements.

The present and future legal and political status of Macau as well as its civil aviation structure was studied, taking into consideration the special status of this territory, *vis-à-vis* Portugal and the People's Republic of China.

In conclusion, a proposal for a bilateral air transport agreement that could be entered into by Macau has been produced, based on an examination of the various types

of bilateral air transport agreements and the economic features/implications of each one, and on an examination of Macau's economy in general and the specific air policy which is to be adopted and the influence this will have on future negotiations.

The appendices contain entire copies or sections of bilateral air transport agreements which are specifically mentioned in the text, or which provide an example of some of the agreements whose main features are described, as well as the relevant Macau legislation.

## **PART I**

### **INTRODUCTION**

#### **CHAPTER 1 - THE REGULATION OF INTERNATIONAL AIR TRANSPORT**

##### **1.1 - INTRODUCTION**

One can say that the regulation of international air transport began in the 20th century with the development of civil aviation.<sup>1</sup> As air traffic cannot be confined within the borders of a single country, the need for a definition of the legal regime of the territorial airspace was a particular concern.<sup>2</sup> Ownership of the air has been a constant focus of disputes ranging from whether it should be regarded as free to all nations, as a State *imperium*, absolute or restricted, to something connected to the ground and included in the property rights of the owner of the ground soil, as under Roman Law.<sup>3</sup> During the First World War, for security reasons, the principle of airspace sovereignty over national territory was introduced into different national legislations.<sup>4</sup>

In recognition of the practices already adopted by States, and widely accepted as a rule of customary law,<sup>5</sup> the sovereignty principle was formally established in 1919.<sup>6</sup>

##### **1.2 - THE PARIS CONVENTION, 1919**

The Paris Convention of 1919<sup>7</sup> was the first multilateral document regulating international air navigation.<sup>8</sup> The sovereignty of air space above States' territory was, once and for all, recognized in Article 1 of the Convention, which reads 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."

As a consequence of the sovereignty principle, every State can close its airspace, and establish, multilaterally or bilaterally, the conditions that shall regulate the air commerce, into, through or out of its territory.<sup>9</sup> This situation was presented in the last paragraph of Article 15 with the statement that "[t]he establishment of international airways shall be subject to the consent of the States flown over". Different interpretations were given to this provision - "[d]id 'international airways' only refer to the itinerary of aircraft or to commercial air operations as such?"<sup>10</sup> - and, in 1929, the text of Article 15 was amplified "... as to leave no doubt of the right of each contracting state to bar any regular international air line from its air space, with or without good reasons...."<sup>11</sup> Article 15 was rewritten 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."

Only one privilege<sup>12</sup> was multilaterally exchanged between the Contracting Parties in the Paris Convention: the right of innocent passage above each State's territory. According to Article 2, paragraph 1 "[e]ach contracting State undertakes in time of peace to accord freedom of innocent passage above its territory to the aircraft of the other contracting States...."

The Paris Convention of 1919 is no longer in force but its importance remains considerable since "... [the Convention] codified what is now the most basic rule of international aviation law, that of the sovereignty of a State over the airspace above its territory",<sup>13</sup> and "... it represents the first successful attempt directed towards gathering together different States interested in international air navigation within a permanent organization."<sup>14</sup>

Some other multilateral agreements followed the Paris Convention, 1919,<sup>15</sup> and, 25 years later, as a result of the Chicago Conference,<sup>16</sup> the most important legal framework regulating international air transport was established.<sup>17</sup>

### **1.3 - THE CHICAGO CONFERENCE, 1944**

The Conference on International Civil Aviation met for five weeks from November 1 to December 7, 1944.<sup>18</sup>

The main objective of the Conference was to reach an agreement on how to regulate the technical and economic aspects of international air transport.<sup>19</sup> The Conference, however, split into two separate camps. Some States adopted stances led on the one hand by the United States and, on the other, by the United Kingdom.<sup>20</sup> The former was in favour of a liberal policy based on free competition for rates and services, with routes to be agreed upon bilaterally by States.<sup>21</sup> The latter advocated a system of "order in the air", with strict government control through the creation of an International Air Authority with the power to allocate air routes across the world and determine the

frequency of air services therein as well as fixing rates, "in order to give every nation a 'fair share' of the international air transport market".<sup>22</sup>

It was essentially over the issue of regulating capacity with particular regard to the "fifth freedom",<sup>23</sup> that the States were divided at Chicago.<sup>24</sup>

It was impossible to reach an agreement and the Conference was only partially successful in regulating the economic aspects of operating scheduled and non-scheduled air transport.<sup>25</sup> The States did, however, reach an agreement on the principles and regulations that would govern the technical side of international civil aviation,<sup>26</sup> and establish "a multilateral legal basis on which international air transport, whether scheduled or non-scheduled, may be developed further by additional agreements between States",<sup>27</sup> namely the Chicago Convention, 1944, which among other things, led to the creation of ICAO (the International Civil Aviation Organization) "an institutional framework for post-war international civil aviation."<sup>28</sup>

### 1.3.1 - The Chicago Conference and Agreements

The main documents produced by the Chicago Conference, and contained in its Final Act are the following:<sup>29</sup>

- **The Interim Agreement on International Civil Aviation**, which created PICAO, the Provisional ICAO. (This functioned from June 6, 1945 until April 4, 1947);
- **The Convention on International Civil Aviation**;<sup>30</sup>
- **The International Air Services Transit Agreement**, [hereinafter, Transit Agreement]. (Widely ratified, the Transit Agreement exchanges, on a multilateral basis, the first two freedoms of the air for scheduled services);

- **The International Air Transport Agreement**, [hereinafter, Transport Agreement]. (The Transport Agreement exchanges, on a multilateral basis, the first five freedoms of the air for scheduled services. Due to a lack of ratification, the Transport Agreement is a dead letter).
- **Draft of Technical Annexes to the Convention**. ("The general scope of these international standards and recommended practices [the Annexes] is indicated by Article 37 of the Convention as any matter 'concerned with safety, regularity, and efficiency of air navigation'");<sup>31</sup>
- **Standard Form of Agreement for Provisional Air Routes**. (Sometimes referred to as the Standard "Chicago" Agreement, it was drafted by the Chicago Conference as a non-binding model for bilateral air transport agreements between sovereign States).<sup>32</sup>

#### 1.4 - THE CHICAGO CONVENTION

The Convention on International Civil Aviation was signed in Chicago on December 7, 1944, and implemented on April 4, 1947.<sup>33</sup>

As had been established in the Paris Convention, 1919, "[t]he Contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory" (Article 1 of the Convention). As already mentioned above, as a consequence of the sovereignty principle, States can close their airspace, and establish, multilaterally or bilaterally, the conditions that shall regulate air commerce into, through or out of its territory.<sup>34</sup>

As far as scheduled flights are concerned, Article 6 states that "[n]o 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." Given that during the Chicago Conference, it was not possible to reach an agreement to regulate air commerce

multilaterally,<sup>35</sup> this regulation has continued to be made on a bilateral basis,<sup>36</sup> and the conditions set down still depend on the bargaining power of the States involved.

As far as non-scheduled flights are concerned,<sup>37</sup> the first paragraph of Article 5 grants the aircraft of a Contracting State the first two freedoms of the air,<sup>38</sup> namely the "technical rights", the right to overfly and the right to land for non-traffic purposes. The second paragraph of the same Article exchanges, between the Contracting States, the remaining three freedoms, the "commercial rights".<sup>39</sup> The unilateral imposition of "regulations, conditions or limitations" referred to in the same paragraph of Article 5<sup>40</sup> tends, however, to negate this privilege or to make it almost inoperative.<sup>41</sup> As a consequence, most international non-scheduled flights are subject to prior governmental approval,<sup>42</sup> through the unilateral application of national laws and regulations,<sup>43</sup> or through bilateral agreements, a practice which has become common in recent years.<sup>44</sup>

#### **1.4.1 - Distinction between Scheduled and Non-Scheduled International Air Transport**

The Convention does not contain any criterion for distinguishing scheduled and non-scheduled international air transport. Neither Article 5 nor Article 6 (the former dealing with non-scheduled and the latter with scheduled flights) gives a precise definition of the terms.<sup>45</sup>

Article 96 defines the expressions "air service", "international air service" and "airline", but does not say anything about the distinction between scheduled and non-scheduled international air services. Nevertheless, the distinction between the two kinds

of international air transport is very important since they must be dealt with in completely different ways according to the law.<sup>46</sup> The issue was studied by the International Civil Aviation Organization, and on March 25, 1952, the ICAO Council adopted a "Definition of a Scheduled International Air Service" "for the guidance of Contracting States in the application of Articles 5 and 6 of the Convention":<sup>47</sup>

"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 recognizable systematic series."

With the emergence of new types of "charters"<sup>48</sup> which were programmed like scheduled flights, application of this definition became impractical,<sup>49</sup> and some research was undertaken to modify it.

Although it did not alter the definition, the ICAO Second Air Transport Conference, held in Montreal from February 12 to 18, 1980, introduced several changes and additions in accompanying Notes, which gave more freedom to States "to classify as scheduled what would previously have been considered non-scheduled...."<sup>50</sup> "The changes in the Council's definition provide that the parties to a bilateral agreement have full discretion to reclassify flight operations as they wish: the necessary changes becoming part of the Bilateral Agreement."<sup>51</sup>

## **CHAPTER 2 - BILATERAL AIR TRANSPORT AGREEMENTS**

### **2.1 - DEFINITION AND RELEVANCE**

According to Professor Haanappel "[b]ilateral air transport agreements may be defined as international trade in services agreements, whereby two sovereign nations regulate the performance of commercial air services between their respective territories, and beyond in many cases."<sup>52</sup> Traffic rights are exchanged through bilateral air transport agreements and the legal and technical framework under which those rights will be exercised is established as well. The granting of commercial rights involves mainly the authorization for operation by the designated carrier of the other State, the designation of routes and service points, and the exchange of the "freedoms of the air", in the sense of commercial freedom<sup>53</sup> of air transport.<sup>54</sup>

#### **2.1.1 - Freedoms of the Air**

The concept of commercial "freedoms of the air",<sup>55</sup> is usually divided into five separate categories which are referred to as the "Five Freedoms of the Air".<sup>56</sup> However, there are an additional three freedoms which, although not officially recognized, can still be considered. For the aircraft of any specific State, let us say State A, the eight "freedoms of the air" can be described as follows:<sup>57</sup>

- **Freedom 1** (the first freedom): the privilege of flying over the territory of State B without landing;

- **Freedom 2** (the second freedom): the privilege of landing in State B for technical reasons only, i.e. for refuelling but not to pick up or set down passengers, cargo or mail;
- **Freedom 3** (the third freedom): the privilege of setting down in State B traffic (i.e. passengers, cargo or mail) picked up in State A (outbound traffic);
- **Freedom 4** (the fourth freedom): the privilege of picking up in State B traffic destined for State A (inbound traffic);<sup>58</sup>
- **Freedom 5** (the fifth freedom): the privilege of picking up or setting down in State B traffic which is destined for or has come from a third country, State C (extra-national traffic).<sup>59</sup>

In fact a distinction can be made between three types of fifth freedom: (i) the right to carry traffic between the grantor-State (B) and a third State or States located on a given route at a point anterior to the territory of the flag-State (A) (Anterior-point fifth freedom); (ii) the right to carry traffic between the grantor-State (B) and intermediate-point third States en route (Intermediate-point fifth freedom); (iii) the right to carry traffic between the grantor-State (B) and third States situated on a given route beyond the grantor-State (Beyond-point fifth freedom);<sup>60</sup>

- **Freedom 6** (sixth freedom traffic): traffic carried by the aircraft of State A between State B and C, but via a point in the territory of State A;<sup>61</sup>
- **Freedom 7** (seventh freedom traffic): traffic carried by the aircraft of State A between States B and C on an air service which does not originate in State A, is not destined for State A nor passes through State A;<sup>62</sup>
- **Freedom 8** (eighth freedom traffic): traffic carried by the aircraft of State A between points within State B (cabotage);<sup>63</sup>

## 2.2 - NEGOTIATION AND ENACTMENT OF BILATERAL AIR TRANSPORT AGREEMENTS

Almost without exception, it is the civil aviation departments of any country which are responsible for negotiating bilateral air transport agreements. Negotiations are conducted by teams of representatives from the governments of the relevant countries.



These teams may include delegates from the ministry of foreign affairs and the ministry of transport. The ground work for negotiations is frequently carried out by the carriers which may attend the meetings in the capacity of fully-fledged members or sitting in at the meetings as observers.<sup>64</sup>

Once the negotiation procedure has been concluded, the bilateral air transport agreement must be enacted. There are various ways in which a bilateral air transport agreement may come into force. It may be enforced as from the day on which it is officially signed, upon the conclusion of the negotiations or at a later date; there may be a signature *ad referendum* or it may come into force upon a specified date subsequent to signing. Similarly, it may come into force after official signing and once constitutional requirements for its approval have been met or it may come into force provisionally upon signing pending the required constitutional approval.<sup>65</sup>

"Constitutional ratification practices differ, and may occasionally delay the implementation of the agreement."<sup>66</sup> Although generalizations are by nature imprecise, in countries with Anglo-Saxon legal systems, the treaty-making power most often lies in the hands of the executive branch of government, "whereas in countries which base their legal systems upon continental European law, the treaty-making power is shared between the executive and the legislative branches."<sup>67</sup> In the latter situation, treaty-making will necessarily be a two-step process: the negotiation and signing of the agreement will be carried out by the executive branch while the subsequent approval will come from the legislature.<sup>68</sup>

### **2.3 - LEGAL STATUS AND IMPLEMENTATION OF BILATERAL AIR TRANSPORT AGREEMENTS IN DOMESTIC LAW**

The implementation of bilateral air transport agreements in domestic law depends on the legal nature of these agreements and can vary from country to country. In countries where bilateral air transport agreements have the status of a treaty and ratification from the Parliament is thus necessary, implementation in domestic law occurs either automatically in the civil law tradition or through legislation in the British tradition.<sup>69</sup>

However, in most countries bilateral air transport agreements are intergovernmental agreements.<sup>70</sup> In this case, the domestic aviation legislation of the countries concerned must be consistent with the bilateral agreements and *vice versa*. Likewise, the relevant legislation must be strong enough to give the aeronautical authorities the power to implement the provisions of bilateral agreements.<sup>71</sup>

### **2.4 - FACTORS INFLUENCING BILATERAL AIR TRANSPORT AGREEMENT NEGOTIATIONS**

Whenever any specific State intends to establish international scheduled air services which involve the aircraft of its national airline(s) using the territory or air space of another State, then the consent of that State must be obtained beforehand.

Negotiations revolve around each side attempting to reach an acceptable balance between the rights to be exchanged and the need to protect their own interests and those of their national airline(s). In most cases, the complex task of negotiation in order to establish a bilateral air transport agreement is based on reciprocity.<sup>72</sup> This does not

automatically imply that the rights to be exchanged have to be identical. Rather, reciprocity simply means that there is in fact an equitable exchange of rights by both sides.<sup>73</sup> This is particularly true of the exchange of transit and traffic rights, whereas in the case of ancillary rights parties tend to agree to exchange such privileges reciprocally to the same extent as specified in the agreement.<sup>74</sup>

The results achieved by applying reciprocity differ from one agreement to another, and from one case to another, depending on the specific circumstances of each case.<sup>75</sup> In principle, bilateral air transport negotiations are conducted for the purpose of serving civil aviation interests. In practice, however, several other circumstances can influence negotiations or the negotiating procedure, namely the political, military, economic and cultural status of each party involved.<sup>76</sup>

Those circumstances exert a major influence over the way rights are exchanged and determine the philosophy behind the agreement itself, in other words whether it is liberal, protectionist or somewhere in between.<sup>77</sup>

## **CHAPTER 3 - HISTORICAL-ECONOMIC TRENDS IN BILATERAL AIR TRANSPORT AGREEMENTS**

### **3.1 - EARLY BILATERAL AIR TRANSPORT AGREEMENTS**

The implementation of international air transportation has not always been dependent on the conclusion of a formal bilateral air transport agreement. In its earliest stages, international air transportation was carried out mainly on the basis of informal intergovernmental agreements or even on the basis of concessions granted directly to foreign airlines.<sup>78</sup> (Even now, pending the conclusion of a formal agreement, temporary operating permissions may be granted by governments to foreign airlines, either through informal intergovernmental agreements or simply as the result of a direct application by the foreign airline to the territorial State).<sup>79</sup>

The first formal bilateral air transport agreement was concluded in 1913 between France and Germany,<sup>80</sup> but it was really in the light of the Paris Convention, 1919, that air transport began to operate primarily on the basis of bilateral air transport agreements.<sup>81</sup> This development appears to have been due to the fact that the Paris Convention, 1919, as noted above (Chapter 1, Section 2) enshrined the principle of sovereignty of air space over the territory of a State, declaring that "[t]he establishment of international airways and the creation and operation of regular international air navigation lines, with or without landing, on its territory" should be dependent on the prior consent of the State flown over.

Pre-World War II bilateral air transport agreements reflect a deeper concern with developing and encouraging this flourishing means of transportation, than in protecting the economy and the airlines of the States involved.<sup>82</sup> Bilateral air transport agreements dating from this period were very wide in scope without following any conventional model.<sup>83</sup> Essentially, they were characterized by the absence of a precise route schedule.<sup>84</sup> In the late 30s, the initial open policy approach they followed became more restrictive and traffic rights came to be exchanged on a reciprocal basis.<sup>85</sup>

In 1944, the Conference on International Civil Aviation was convened at Chicago with the purpose of reaching a multilateral agreement on the technical and economic aspects of air transportation, which had not been possible because of the opposite positions defended by the different groups of States.<sup>86</sup> Notwithstanding, the Conference adopted and included in its Final Act a Standard Form of Agreement for Provisional Air Routes, a model of a bilateral air transport agreement not intended to be binding on States.<sup>87</sup>

### **3.2 - STANDARD FORM OF AGREEMENT FOR PROVISIONAL AIR ROUTES (CHICAGO STANDARD FORM)**

The main objective of the so called "Chicago" Standard Agreement, which includes 10 provisions, was to serve as a model for future bilateral air transport agreements, in order to achieve a certain amount of uniformity, mainly on technical and operational matters.<sup>88</sup> The commercial and economic aspects, both more controversial areas, were left open for negotiation between the airlines designated by the two

governments concerned.<sup>89</sup> In effect, the "Chicago" Standard Agreement contains no provision on the determination of tariffs, capacity and frequencies, leaving the description of the routes to be operated as well as the rights bilaterally granted to be laid down in an Annex to the agreement.

The ancillary provisions contained in the "Chicago" Standard Agreement are mainly based on the Chicago Convention provisions, and even today some of them are still relevant, namely provisions "on designation of air carriers; charges for the use of airport and other facilities; importation of fuel, lubricating oils and spare parts; recognition of certificates of airworthiness, competency and licensing; application of laws and regulations of one contracting party to the aircraft of the other; registration of the agreement with the [Provisional] International Civil Aviation Organization; termination of the agreement upon one year's notice; and the requirement of substantial ownership and effective control of an airline by the nationals of its state of registration."<sup>90</sup>

This liberal Standard Agreement is basically a reflection of the open skies policy defended by the United States during the Conference. It comes as no surprise that this was the country which signed the most bilateral air transport agreements following the "Chicago" model.<sup>91</sup> On other hand, the United Kingdom was unhappy that so much freedom should be left to airlines as it had always defended strict governmental control.<sup>92</sup> A compromise between these two radical stances was reached in Bermuda, on February 11, 1946, by the two major civil aviation powers. They concluded an air transport agreement that was to serve as a model for a large number of the air transport agreements drawn up in the post-World War era and even now.<sup>93</sup>

### 3.3 - BERMUDA AGREEMENT

The Bermuda Agreement, usually called Bermuda I, represents a compromise between the two conflicting economic policies left unresolved at Chicago.<sup>94</sup> The United States, defending that there should be no regulation of capacity and tariffs, accepted governmental tariff control. The United Kingdom, defending that capacity should be predetermined on the basis of a 50-50 division between the carriers of the two States involved and that tariffs should be regulated by an international agency, accepted that the airlines themselves would determine capacity and frequency according to the principles set out and only subject to an *ex post facto* review by governments.<sup>95</sup>

The Bermuda Agreement is divided into three main bodies: the Final Act, the Agreement itself, and the Annexes. The exchange of traffic rights are set out in the Agreement as well as general regulatory measures. The important economic details concerning the exercise of those rights can only be found in the Final Act and Annexes. The so-called "Bermuda principles" relating to capacity are contained in the Final Act and can be described as follows:<sup>96</sup>

" (...)

3. the air transport facilities available to the travelling public should bear a close relationship to the requirements of the public for such transport;
4. there shall be a fair and equal opportunity for the carriers of the two nations to operate on any route between their respective territories (as defined in the Agreement) covered by the Agreement and its Annex;
5. in the operation by the carriers of either government of the trunk services described in the Annex to the Agreement, the interest of the

air carriers of the other government 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;

6. it is the understanding of both governments that services provided by a designated air carrier under the Agreement and its Annex shall retain, as their primary objective, the provision of capacity adequate to the traffic demands between the country of which the carrier is a national and the country of ultimate destination of the traffic. The right to embark or to disembark on such services international traffic destined for and coming from third countries at a point or points on the routes specified in the Annex to the Agreement, 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 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;
7. it is the intention of both governments that there should be regular and frequent consultation between their respective aeronautical authorities ... and that there should thereby be close collaboration in the observation of the principles and the implementation of the provisions outlined therein and in the Agreement and its Annex."

Those consultations represent the commonly called *ex post facto* review principle which are the basic feature of the Bermuda I.<sup>97</sup> Capacity is not exempt from governmental control, but such control may only be exercised in the case of governmental dissatisfaction with capacity actually offered by air carriers.<sup>98</sup>

Provisions on pricing and change of gauge,<sup>99</sup> as well as routes to be served are laid down in the Annexes.



The essential features of Bermuda I, as far as tariffs are concerned, may be summarised as follows: fares and rates shall be "reasonable", taking into account all relevant factors, such as cost of operation, reasonable profit and the rates charged by other air carriers. These fares and rates must be discussed and determined by the designated carriers, preferably through the Traffic Conference machinery of the International Air Transport Association (IATA)<sup>100</sup> and subject to approval of the aeronautical authorities of both countries.<sup>101</sup>

Concluding, as summarized by Professor Wassenbergh, the main principles of Bermuda I can be listed as follows:<sup>102</sup>

- a) capacity adjusted to traffic demand, to be controlled *ex post facto*;
- b) a right to carry fifth freedom traffic as long as the provision of capacity for third and fourth freedom traffic carriage remains the primary objective; and
- c) tariffs to be set by IATA, subject to government approval of both Parties.

In the years immediately after 1946 and also at present, a large number of bilateral air transport agreements have been concluded by States following the Bermuda model. Some of those agreements have not been completely faithful to the model and some deviations or differences can be found which characterize post-Bermuda I agreements.<sup>103</sup>

### **3.3.1 - Post-Bermuda I Agreements**

The new agreements usually consist of a main body with the inclusion of all substantive provisions and a route scheduled in an Annex.<sup>104</sup>

Some States felt it was necessary to clarify the *ex post facto* review procedure adding that "contracting parties may not unilaterally impose any restrictions on capacity, frequency, scheduling or type of aircraft to be used on the agreed air routes. It is also often provided that consultation may be requested to review operations in order to establish whether they are in conformity with the Bermuda I principles and for that purpose, statistics will be maintained by the aeronautical authorities of the contracting parties."<sup>105</sup>

However, most of the points in which these differ from Bermuda I relate to the capacity provision. A large number of bilateral agreements indicate a preference for the more restrictive predetermination of capacity<sup>106</sup> instead of following the Bermuda I liberal capacity provision.<sup>107</sup>

Route-schedules have become more precise and consequently less flexible, with a gradual disappearance of intermediate and beyond points to be served.<sup>108</sup> All-cargo routes are sometimes presented in separate schedules.<sup>109</sup>

The multiple designation system that we find in Bermuda I is often replaced by a single designation.<sup>110</sup>

The procedures for setting tariffs in the post-Bermuda I agreements follow the model more closely: tariffs should be determined by the carriers which in doing so may follow the ratemaking machinery of IATA where or whenever possible. This process is seldom mandatory. In either of the cases tariffs will always be subject to a previous approval by both governments (double approval).<sup>111</sup>

In the event of disputes, the arbitration through [P]ICAO established in Bermuda I is, in many cases replaced by arbitration through an *ad hoc* tribunal, composed of three members: one appointed by each contracting party; the third by mutual agreement of the two arbitrators or, in the case of no agreement, the President of the International Court of Justice or the President of the ICAO Council.<sup>112</sup>

On June 22, 1976, the United Kingdom denounced the Bermuda I arguing the imbalance of benefits in favour of the United States carriers. After one year of negotiations, on July 23, 1977 a new U.K. - U.S.A. bilateral air transport agreement was concluded to replace the old model.<sup>113</sup>

### 3.4 - BERMUDA II

The text of the Bermuda I Agreement, which is fairly vague and allows a wide margin of interpretation, was retained in Bermuda II. The provisions were kept basically unchanged apart from being more elaborate and restrictive particularly with regard to capacity, frequencies and routes.<sup>114</sup>

As far as tariffs are concerned, Bermuda II keeps the reference to the IATA machinery ratemaking process, and reiterates the system of double approval by governments. For this purpose tariffs should be submitted to the aeronautical authorities of both contracting parties at least one hundred and five days before the proposed date of introduction (instead of thirty days as was the case in Bermuda I - Annex II (c)).

Multiple designation of carriers was to some extent and in respect of some routes (i.e. the North Atlantic route) replaced by a single designation.

Innovative provisions on charters were included in the Agreement, for example the recognition that the "country of origin rule"<sup>115</sup> should be applied between the parties.

The regulation of non-scheduled and scheduled air services in the same bilateral air transport agreement is one of the main features attributed to Bermuda II<sup>116</sup> although this concept had already been applied in the bilateral agreement between France and the Federal Republic of Germany, of October 1955.<sup>117</sup>

Some other important provisions contained in the Bermuda II Agreement that should be pointed out are those related to aviation security (Art. 7), user charges (Art. 10), commissions to be paid to travel agencies (Art. 13) and settlement of disputes (Art. 17).<sup>118</sup>

The significance of Bermuda II as a valuable bilateral air transport agreement model pales when compared to its predecessor. One reason lies in the agreement itself which was drafted to serve one specific situation between two countries, with excessively detailed and precise provisions which were not intended to be used by the world aviation community. Another reason beyond the realm of the agreement itself is related to the "deregulation" policy which appeared on the American political stage in the mid-70s.<sup>119</sup> America's desire to adopt a more competitive aviation policy led it towards positively engendering new competitively-oriented bilateral air transport agreements commonly called "liberal".<sup>120</sup>

### 3.5 - "LIBERAL" AGREEMENTS (POST-BERMUDA II AGREEMENTS)

The basic principle in "deregulation" policy "is the elimination of government control over the economic regulation of air transport, leaving the economic decisions and policies to the determination of individual airlines and to the free forces of the marketplace",<sup>121</sup> subject only to the strict enforcement of antitrust and consumer protection laws.<sup>122</sup>

The defenders of this policy believed that "the function of economic policy is to serve consumers rather than protect producers, and that the best way to do that is by promoting competition at home and abroad (...)"<sup>123</sup>

Deregulation in the United States was formalised in the Air Cargo Reform Act of 1977<sup>124</sup> which liberalizes air carrier (route) entry for all-cargo air services and relaxes regulatory controls over air cargo rates;<sup>125</sup> and the Airline Deregulation Act of 1978<sup>126</sup> leading to a gradual abolition of entry and exit control on routes, of tariff control and of the existence of the Civil Aeronautics Board itself by January 1985.<sup>127</sup> Technically both statutes are amendments to the Federal Aviation Act of 1958.<sup>128</sup> The belief that "... such policy would give everybody an equal opportunity to compete and would thus be for the benefit and in the interest of all countries..."<sup>129</sup> led the United States to extend its domestic (de)regulation into the international field.<sup>130</sup>

On March 31, 1978, the first liberal bilateral air transport agreement was concluded between the United States and The Netherlands, a protocol to amend the existing bilateral air transport agreement.<sup>131</sup>

On August 21, 1978, a Policy Statement containing the objectives to be followed in the negotiation of future United States "liberal" bilateral air transport agreements was issued by the White House (Carter Statement):<sup>132</sup>

"Routes, prices, capacity, scheduled and charter rules and competition in the marketplace are interrelated, not isolated problems to be resolved independently. Thus, the following objectives will be present in negotiations as an integrated U.S. position:

- 1) creation of new and greater opportunities for innovative and competitive pricing that will encourage and permit the use of new price and service options to meet the needs of different travellers;
- 2) liberalization of charter rules and elimination of restrictions on charter operations;
- 3) expansion of scheduled service through elimination of restrictions on capacity, frequency, and route operating rights;
- 4) elimination of discrimination and unfair competitive practices faced by U.S. airlines in international transportation;
- 5) flexibility to designate multiple U.S. airlines in international air markets;
- 6) encouragement of maximum traveller and shipper access to international markets by authorizing more cities for non-stop or direct service, and by improving the integration of domestic and international airline service, and
- 7) flexibility to permit the development and facilitation of competitive air cargo services."

Following the Policy Statement, the United States concluded or renegotiated several "liberal" bilateral air transport agreements, in the belief that by doing so the results of deregulation could be spread.<sup>133</sup> The Policy Statement was reiterated in the International Air Transport Competition Act of 1979.<sup>134</sup>

The United States adopted a fairly uniform approach to its policy of increasing deregulation. A "model" liberal bilateral agreement was drafted, containing the key points of the new policy, whose main features are outlined by Professor Haanappel as follows:<sup>135</sup>

1. unlimited multiple designation of airlines;
2. a liberal route structure (airline of country A may serve foreign countries from any point in its country, via any intermediate point and to any beyond point);
3. free determination of capacity, frequency and types of aircraft by the designated airlines;
4. no limitation on the carriage of sixth freedom traffic;<sup>136</sup>
5. encouragement of low tariffs, set by individual airlines on the basis of the forces of the market-place without reference to the ratemaking machinery of IATA;
6. minimal governmental interference in tariff matters, double disapproval rule<sup>137</sup> applies, generally, but sometimes, on the early version of the "liberal" bilateral air transport agreement, the country of origin rule<sup>138</sup> is applied to tariffs of both scheduled and non-scheduled;<sup>139</sup>
7. inclusion of provisions on charter flights, i.e., the availability of inexpensive charter air services is encouraged and charterworthiness is generally governed by the country of origin rule.
8. provisions on fair commercial opportunities, e.g. as to ground handling at foreign airports,<sup>140</sup> and to the removal of discriminatory and unfair competitive practices.

Despite the fact that the United States has signed several "liberal" bilateral air transport agreements, "the development of an international doctrine lacked the consistency and the strong political formulation which domestic deregulation had received."<sup>141</sup> Although domestic antitrust laws have some international weight, the

United States is prevented from acting unilaterally in the international arena due to the variety of differing interests abroad.<sup>142</sup> The United States' desire to make air transport more accessible to as wide a market as possible by opening new gateways to foreign carriers seems to have appealed to foreign governments interested in promoting their flag carriers. Nevertheless, a series of important countries such as Italy, Canada, France and Japan have retained Bermuda I type agreements with the United States.<sup>143</sup>

Despite the initial appeal of the post-Bermuda II "liberal" agreements the United States has, since early 1983, been taking a more cautious approach in international aviation relations. Since late 1983, the United States has not entered into any new full-scale "liberal" bilateral agreements, possibly because of the difficulties involved in finding willing partners, and also due to a move back to more restricted agreements. Much more attention now appears to be paid to the financial interests of United States' air carriers than in the late 70s, and increased access to United States' gateways is no longer automatically handed over to foreign carriers in exchange for their country's acceptance of competitive provisions.<sup>144</sup>



### **ENDNOTES - PART I**

1. I. VLASIC, Public International Air Law I, Documents & Materials 2d ed. (Montreal: IASL, McGill University, 1989) at 1 [hereinafter, VLASIC]:

"Air Law is largely a development of the twentieth century. Its subject matter has not been clarified by the long series of decisions of courts and arbitral tribunals, by negotiations between governments, treaties and other international agreements, or by the customary practices of war and peace available as recognized sources of Maritime Law."

See also VLASIC, *ibid.* at 8 and N.M. MATTE, Treatise on Air-Aeronautical Law (Toronto: Carswell, 1981) at 71ff. [hereinafter, MATTE].

2. MATTE, *ibid.* at 53.
3. For a clear understanding, see MATTE, *supra*, note 1 at 53ff. and 71ff. See also H.A. WASSENBERGH, "Parallels and Differences in the Development of Air, Sea, and Space Law in the Light of Grotius' Heritage" (1984) 9 Annals of Air and Space L. at 169ff. [hereinafter, WASSENBERGH] and J. NAVEAU, International Air Transport in a Changing World (Brussels: Bruylant, 1989) at 25 [hereinafter, NAVEAU].
4. MATTE, *supra*, note 1 at 39.
5. *Ibid.*
6. See below, Chapter 1, Section 2.
7. Convention Relating to the Regulation of Aerial Navigation opened for signature at Paris, October 13, 1919 (Cmd.670, London: HMSO, 1920) [hereinafter, PARIS CONVENTION, 1919].
8. V.D. BORDUNOV, "Object of Legal Regulation in the Sphere of International Flights" (1989) 14 Air Law at 118 [hereinafter, BORDUNOV].
9. P.P.C. HAANAPPEL, Pricing and Capacity Determination in International Air Transport: A Legal Analysis (Deventer, The Netherlands: Kluwer Law & Taxation, 1984) at 11 [hereinafter, HAANAPPEL].
10. *Ibid.* at 25.

11. P.P.C. HAANAPPEL, Government Regulation of Air Transport: Cases & Materials (IASL, McGill University, Winter 1989) at 54 [hereinafter, HAANAPPEL II]; see also MATTE, *supra*, note 1 at 109-110.
12. HAANAPPEL, *supra*, note 9 at 11.
13. J.S. THAKER, The Regulation of Non-Scheduled Air Services under Bilateral Air Transport Agreements (LL.M. Thesis, IASL, McGill University, 1990) at 9 [hereinafter, THAKER].
14. MATTE, *supra*, note 1 at 104-105. The Convention set up the International Commission for Air Navigation (ICAN), a permanent body placed under the authority of the League of Nations, later replaced by the International Civil Aviation Organization (ICAO). For details see MATTE, *ibid.* at 114ff.
15. The Madrid Convention, 1926 (The Ibero-American Convention Relating to Air Navigation); The Habana Convention, 1928 (Pan-American Convention on Commercial Aviation); The Buenos Aires Convention, 1935 (Convention on Aircraft Carriage); The Bucharest Convention, 1936 (Convention on Air Navigation between the countries which are members of the Balkan Agreement); The Zemun Agreement, 1937 (Protocol on the Establishment and Operation of Scheduled Air Routes). For details see MATTE, *supra*, note 1 at 119ff.
16. See below, Chapter 1, Section 3.
17. See below, Chapter 1, Section 4.
18. International Civil Aviation Conference held in Chicago from November 1 to December 7, 1944 [hereinafter, CHICAGO CONFERENCE].
19. See HAANAPPEL, *supra*, note 9 at 9; see also VLASIC, *supra*, note 1 at 7 and R. AZZIE, Lectures Given to the Institute of Air and Space Law (Montreal: IASL, McGill University, 1966) at 3-4 [hereinafter, AZZIE].
20. See P.P.C. HAANAPPEL, "Bilateral Air Transport Agreements - 1913-1980" (1979) 5 Int'l Trade L. J. at 243 [hereinafter, HAANAPPEL III]; see also HAANAPPEL II, *supra*, note 11 at 105ff., THAKER, *supra*, note 13 at 17-18 and K. EL-HUSSAINY, "Bilateral Air Transport Agreements and their Economic Content with Special Reference to Africa" (1983) 8 Annals of Air and Space L. at 118-119 [hereinafter, EL-HUSSAINY].
21. *Ibid.*
22. *Ibid.*

23. See below, Freedoms of the Air, Chapter 2, Section 1.1.
24. B. CHENG, The Law of International Air Transport (London: Stevens & Sons, 1962) at 19 [hereinafter, CHENG].
25. See below, the Chicago Conference and Agreements, Chapter 1, Section 3.1.
26. The technical matters governing international civil aviation are contained in the provisions of Part I of the Chicago Convention, in Annexes to the Chicago Convention, and in other air navigation regulations not included in the Annexes - the Procedures for Air Navigation Services (PANS) and the Regional Supplementary Procedures (SUPPS).
27. CHENG, *supra*, note 24 at 25.
28. *Ibid.* See also M. MILDE, "The Chicago Convention - After Forty Years" (1984) 9 Annals of Air and Space L. 119-131, at 3 [hereinafter, MILDE]:

"The Chicago Convention has a dual personality (...): it is, in the first place, a charter of public international air law as it relates to international civil aviation; in that sense it is a multilateral law-making convention stipulating rights, duties and functions of sovereign States in a specialized field of activities. At the same time the Chicago Convention is a constitutional instrument creating an international body of States - the International Civil Aviation Organization - and defining the structure, aims, purposes and functions of this international organization which became, in 1947, a Specialized Agency in the United Nations...."

For a thorough analysis of ICAO see T. BUERGENTHAL, Law-Making in the International Civil Aviation Organization (Syracuse, N.Y.: Syracuse University Press, 1969) [hereinafter, BUERGENTHAL].

29. ICAO Doc. 2187, in CHENG, *supra*, note 24 at 499ff. (Appendix A).
30. See below, Chapter 1, Section 4.
31. CHENG, *supra*, note 24 at 67.
32. HAANAPPEL III, *supra*, note 20 at 245; see also HAANAPPEL, *supra*, note 9 at 17 and THAKER, *supra*, note 13 at 34-35. For a better understanding of the "Chicago" Standard Form, see below, Chapter 3, Section 2.

33. Convention on International Civil Aviation, 7/12/1944, ICAO Doc. 7300/6 [hereinafter, CHICAGO CONVENTION].
34. HAANAPPEL, *supra*, note 9 at 11.
35. NAVEAU, *supra*, note 3 at 35. See, however, above, Transit Agreement and Transport Agreement, Chapter 1, Section 3.1. See also H.A. WASSENBERGH, "Regulatory Reform - A Challenge to Intergovernmental Civil Aviation Conferences" (1986) 11 Air Law at 32 [hereinafter, WASSENBERGH I]:

"The Chicago Convention does not deal with economic matters, although since the 80's, Special ICAO Air Transport Conferences have been held to address the economic problems involved in the regulation of international air services."

36. See WASSENBERGH, *supra*, note 3 at 171 n. 16:

"Article 6 of the Chicago Convention has become the starting point for the present restrictive bilateralism in the exchange of operational and traffic rights for international scheduled air services";

see also NAVEAU, *supra*, note 3 at 30:

"Article 6 did not imply the formal exchange of traffic rights through bilateral agreements, but the practice developed and article 6 was ultimately considered as a 'charter of bilateralism'".

On the same subject see MATTE, *supra*, note 1 at 141, CHENG, *supra*, note 24 at 229 and D. GOEDHUIS, "Questions of Public International Air Law" (1952) 81 Recueil des Cours 203 at 230 [hereinafter, GOEDHUIS].

37. For a distinction between scheduled and non-scheduled international air transport see below, Chapter 1, Section 4.1.
38. See below, freedoms of the air, Chapter 2, Section 1.1.
39. *Ibid.*
40. CHICAGO CONVENTION: Article 5:

"Each contracting State agrees that all aircraft of the other contracting States, being aircraft not engaged in scheduled international air services shall have the right, subject to the observance of the terms of this Convention, to make flights into or in transit non-stop across its territory and to make stops for non-traffic purposes without the necessity of obtaining prior permission, and subject to the right of the State flown over to require landing. Each contracting State nevertheless reserves the right, for reasons of safety of flight, to require aircraft desiring to proceed over regions which are inaccessible or without adequate air navigation facilities to follow prescribed routes, or to obtain special permission for such flights.

Such aircraft, if engaged in the carriage of passengers, cargo, or mail for remuneration or hire on other than scheduled international air services, shall also, subject to the provisions of article 7 [cabotage], have the privilege of taking on or discharging passengers, cargo, or mail, subject to the right of any State where such embarkation or discharge takes place to impose such regulations, conditions or limitations as it may consider desirable." [emphasis provided]

41. THAKER, *supra*, note 13 at 47-48; see also P.P.C. HAANAPPEL, "The International Air Transport Association (IATA) and the International Charter Air Lines" (1978) 3 Annals of Air and Space L. 143-153 at 146 [hereinafter, HAANAPPEL IV] and the ICAO Circular 137-AT/43 1977 - Regulation of Capacity in International Air Transport Services at 2 [hereinafter, ICAO Circular 137].
42. THAKER, *supra*, note 13 at 48ff.; see also A.L. MERCKX, "New Trends in the International Bilateral Regulation of Air Transport" (1982) 17 European Transport Law at 141-142 [hereinafter, MERCKX]. An exception to this requirement of prior governmental approval can be found in two regional multilateral agreements which exchange traffic rights for non-scheduled air services: the 1956 Multilateral Agreement on Commercial Rights of Non-Scheduled Air Services in Europe, (Paris Agreement) reached within the framework of ECAC, and the 1971 Multilateral Agreement on Commercial Rights of Non-Scheduled Air Services among the Association of South-East Asian Nations (Manila Agreement).
43. See THAKER, *supra*, note 13 at 48-49:

"In general, international charters are subject to the national laws of either the country of origin of the traffic or the country of destination of the traffic, or both. In most cases, the rules of the country with the more restrictive regime apply".

44. See below, Part II, Chapter 2, Sections 4 and 22. For a thorough analysis of the regulation of non-scheduled air services under bilateral air transport agreements, see THAKER, *supra*, note 13.
45. EL-HUSSAINY, *supra*, note 20 at 120.
46. See above, Chapter 1, Section 4.
47. ICAO Doc. 7278 - C/841, 10/5/52. On the Council definition see also W. GULDIMANN, "The Distinction Between Scheduled and Non-Scheduled Air Services. Another Exercise in International Frustration" (1979) 4 Annals of Air and Space L. 135-149 at 137 [hereinafter, GULDIMANN].
48. THAKER, *supra*, note 13 at 43:

"‘Non-scheduled’ is a public law term. ‘Charter’ is a private law term. However, in every day language these two terms have come to be used interchangeably, at least in the field of public air law. This trend has also been established in State practice, notably in bilateral air agreements."
49. NAVEAU, note 3 at 31.
50. HAANAPPEL II, *supra*, note 11 at 111.
51. EL-HUSSAINY, *supra*, note 20 at 123.
52. HAANAPPEL II, *supra*, note 11 at 297.
53. HAANAPPEL, *supra*, note 9 at 10.
54. ICAO Circular 137, *supra*, note 41 at 2.
55. The freedoms of the air are defined by EL-HUSSAINY, *supra*, note 20 at 125 as "[t]he privileges of transporting passengers cargo and mail through or into or beyond the territory of a given state...."
56. HAANAPPEL, *supra*, note 9 at 11-12.

57. *Ibid.* Another "freedom of the air", the ninth freedom traffic, is already being considered in bilateral negotiations: traffic carried by the aircraft of State A between points within State B (cabotage) not connected or linked with the third and the fourth freedom.
58. Third and fourth freedom traffic are closely linked and together form inter-partes traffic, which is the traffic between the territories of the two Contracting States to a bilateral agreement: HAANAPPEL II, *supra*, note 11 at 102.
59. Extra-national traffic is the traffic which neither originates in nor is destined for the State of nationality of the aircraft or the State of which the airline carrying the traffic is a national: HAANAPPEL II, *ibid.*
60. CHENG, *supra*, note 3 at 11-12.
61. HAANAPPEL II, *supra*, note 11 at 102. Sixth freedom traffic is defined as follows by B. GIDWITZ, The Politics of International Air Transport (Toronto: Lexington, 1980) at 136 [hereinafter, GIDWITZ]:

"An airline has the right to carry traffic that has neither its origin or its ultimate destination as its own country of registry, but passes through, connects at, or stops for a limited period of time (stopover) at a point in the country of registry."
62. HAANAPPEL II, *ibid.* at 102-103.
63. *Ibid.* at 103.
64. HAANAPPEL III, *supra*, note 20 at 263.
65. HAANAPPEL II, *supra*, note 11 at 299-300. See also below, Part II, Chapter 2, Section 31 - Entry into force.
66. NAVEAU, *supra*, note 3 at 92.
67. HAANAPPEL II, *supra*, note 11 at 300.
68. *Ibid.*
69. HAANAPPEL III, *supra*, note 20 at 263-264; see also HAANAPPEL II, *supra*, note 11 at 301-304.
70. HAANAPPEL III, *ibid.* at 264.

71. *Ibid.* See also HAANAPPEL II, *supra*, note 11 at 301-304 and MERCKX, *supra*, note 42 at 120: "In the USA, bilateral air transport agreements, have the status of executive agreements, signed under the executive power of the President without the advice and consent required for the conclusion of a treaty under the Constitution."
  72. CHENG, *supra*, note 24 at 289-290; see also EL-HUSSAINY, *supra*, note 20 at 127.
  73. CHENG, *ibid.* at 290.
  74. *Ibid.*
  75. EL-HUSSAINY, *supra*, note 20 at 127.
  76. HAANAPPEL II, *supra*, note 11 at 304ff.
  77. "There are two main (and opposite) approaches to scheduled international air transport regulation, viz. based either on the concept of the scheduled airline industry being a *private economic activity* or on the concept of scheduled aviation being a '*public utility service*'.... The role of governments, and thereby the type of regulation under regionalism in international air transport, will depend on one's choice of approach. In general it can be said that as a rule the 'private' approach is a liberal one which will diminish the role of governments (de-control) and promote *competition*, while the 'public' approach is a restrictionist one which will enhance the government-influence and lead to *protectionism*."
- H.A. WASSENBERGH, "The Future of Multilateral Air Transport Regulation in the Regional and Global Context" (1983) 8 Annals of Air and Space L. 263-281 at 272 [hereinafter, WASSENBERGH II].
78. HAANAPPEL III, *supra*, note 20 at 241.
  79. CHENG, *supra*, note 24 at 231.
  80. HAANAPPEL II, *supra*, note 11 at 312-313.
  81. HAANAPPEL III, *supra*, note 20 at 241.
  82. See *ibid.* at 242.
  83. HAANAPPEL II, *supra*, note 11 at 313.



84. *Ibid.* at 313-314. For an example of a pre-World War II bilateral air transport agreement see Appendix 1: "Provisional Convention between The Netherlands and Germany Relating to Air Navigation", signed at Hague, on July 24, 1922.
85. HAANAPPEL II, *supra*, note 11 at 314.
86. See above, Chapter 1, Section 3.
87. See above, Chapter 1, Section 3.1.
88. See J.Z. GERTLER, "ICAO and Bilateralism: the Case of Standard Bilateral Clauses" (1991) 16 Annals of Air and Space L. 57-77 at 60-61 [hereinafter, GERTLER].
89. HAANAPPEL III, *supra*, note 20 at 245.
90. HAANAPPEL, *supra*, note 9 at 17-18.
91. HAANAPPEL II, *supra*, note 11 at 315.
92. *Ibid.*
93. Air Services Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, February 11, 1946 in Annexes and Final Act of the Civil Aviation Conference held at Bermuda, January 15 - February 11, 1946, TIAS 1507, 3 UNTS 253 [hereinafter, Bermuda I].
94. HAANAPPEL II, *supra*, note 11 at 317.
95. ICAO Circular 137, *supra*, note 41 at 5.
96. MATTE, *supra*, note 1 at 231-232.
97. HAANAPPEL II, *supra*, note 11 at 319.
98. *Ibid.*
99. "Change of gauge" means the "change to aircraft of different capacity". For further details see CHENG, *supra*, note 24 at 434ff. See also, below, Part II, Chapter 2, Section 19 - Change of Aircraft.
100. "Soon after the Chicago Conference, the airlines themselves took the initiative and created IATA [International Air Transport Association] for the international regulation of rates and fares. IATA (...) was founded as

an association of scheduled international airlines in April 1945, equipped with the machinery for the determination of scheduled international air fares and rates (the IATA Traffic Conferences) by IATA's first Annual General Meeting of September 1945, and incorporated as a Canadian corporation in December 1945."

HAANAPPEL III, *supra*, note 20 at 245.

101. HAANAPPEL II, *supra*, note 11 at 318. See below, Part II, Chapter 2, Section 16 - Tariffs.
102. H.A. WASSENBERGH, "Liberal Bilateral Air Transport Agreements between the U.S. and Europe and their Impact on Latin America" (1979) 4 Annals of Air and Space L. 367-383 at 369 n. 3 [hereinafter, WASSENBERGH III].
103. HAANAPPEL III, *supra*, note 20 at 251ff.
104. See HAANAPPEL III, *ibid.* at 251.
105. *Ibid.* at 250.
106. See below, Part II, Chapter 2, Section 17 - Capacity.
107. HAANAPPEL III, *supra*, note 20 at 253-254.
108. *Ibid.* at 252-253. See also below, Part II, Chapter 2, Section 33 - Annex(es).
109. *Ibid.* at 253. See also below Part II, Chapter 2, Section 4 - Grant of rights.
110. *Ibid.* at 252. For a distinction between single and multiple designation see below, Part II, Chapter 2, Section 5 - Designation and Authorization.
111. *Ibid.* at 255-257. See also, below, Part II, Chapter 2, Section 16 - Tariffs.
112. *Ibid.* at 253.
113. Air Services Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, July 23, 1977, TIAS 8641, 28 UST 5367 [hereinafter, Bermuda II].
114. See HAANAPPEL III, *supra*, note 20 at 260. For text see Appendix 4. On Bermuda II see also P.P.C. HAANAPPEL, "Bermuda 2: A First Impression" (1977) 2 Annals of Air and Space L. 139-149 at 139ff. [hereinafter, HAANAPPEL V], MATTE, *supra*, note 1 at 236ff. and P.E. COOPER, "Aviation Law, Air Services Agreement Between the United States and the United

Kingdom" (1978) 8 Georgia Journal of Int'l & Comparative Law 211-221 at 211ff. [hereinafter, COOPER].

115. "Under [the 'country of origin' rule] eligibility for charter air transportation is determined exclusively by the regulations of the country where the charter traffic originates."
- HAANAPPEL, III, *supra*, note 20 at 259.
116. MATTE, *supra*, note 1 at 246.
117. *Ibid.* at 246 n. 83.
118. HAANAPPEL V, *supra*, note 114 at 147-148; see also MATTE, *ibid.* at 248.
119. HAANAPPEL, III, *supra*, note 20 at 261; see also HAANAPPEL, *supra*, note 9 at 50.
120. P.P.C. HAANAPPEL, An Analysis of U.S. Deregulation of Air Transport and its Inferences for a More Liberal Air Transport Policy on Europe (Strasbourg: Council of Europe, 1984) at 38 [hereinafter, HAANAPPEL VI].
121. HAANAPPEL III, *supra*, note 20 at 261.
122. See NAVEAU, *supra*, note 3 at 144.
123. Quoted in M. LEBLANC, A Guide for Drafting Bilateral Air Transport Agreements in Canada (LL.M. Thesis, IASL, McGill University, 1987) at 17 [hereinafter, LEBLANC].
124. P.L. 95 - 163, Nov. 9, 1977, 91 Stat. 1284.
125. HAANAPPEL VI, *supra*, note 120 at 13.
126. P.L. 95 - 504, Oct. 24, 1978, 92 Stat. 1705.
127. See HAANAPPEL VI, *supra*, note 120 at 13ff.
128. *Ibid.* at 13.
129. H.A. WASSENBERGH, "Aviation Policy and a New International Legal Order" (1981) 6 Air Law 169-176 at 170 [hereinafter, WASSENBERGH IV].
130. *Ibid.*

131. HAANAPPEL VI, *supra*, note 120 at 38.
132. Presidential Statement, United States Policy for the Conduct of International Air Transportation Negotiations, August 21, 1978, 14 Weekly Comp. of Pre. Doc. - 1412-1463.
133. NAVEAU, *supra*, note 3 at 146.
134. P.L. 96-192, Feb. 15, 1980, 94 Stat. 35.
135. HAANAPPEL, *supra*, note 9 at 42. For more on liberal bilateral air transport agreements see also HAANAPPEL, *ibid.* at 139ff., HAANAPPEL III, *supra*, note 20 at 262, HAANAPPEL VI, *supra*, note 120 at 43ff. and R.W. BOGOSIAN, "Aviation Negotiations and the U.S. Model Agreement" (1981) 46 JALC 1007-1037 [hereinafter, BOGOSIAN]. Appendix 5 contains a U.S. Standard "liberal" bilateral agreement. For all the provisions, in detail, see below, Part II, Chapter 2.
136. See above, Chapter 2, Section 1.1 - Freedoms of the air. For an example, see Part II, Chapter 2, Section 33, U.S.A. - Macau, 1991.
137. See below, Part II, Chapter 2, Section 16 - Tariffs.
138. *Ibid.*
139. HAANAPPEL, *supra*, note 9 at 42 n. 153.
140. See below, Part II, Chapter 2, Section 13 - Commercial Operations, U.S.A.- Macau, 1991.
141. NAVEAU, *supra*, note 3 at 144.
142. P.C. HAANAPPEL, "Deregulation of Air Transport in North America and Western Europe" in Air Worthy (Antwerp: Kluwer Law and Taxation, 1985) 91-115 at 98 [hereinafter, HAANAPPEL VII].
143. HAANAPPEL, *supra*, note 9 at 43.
144. HAANAPPEL VII, *supra*, note 142 at 104.

## **PART II**

### **BILATERAL AIR TRANSPORT AGREEMENTS**

Following the earlier explanation of the background and evolution of bilateral air transport agreements, a general analysis of their structure and contents as well as a specific examination of concrete examples has been deemed necessary in order to facilitate a full understanding of the nature of this kind of agreement.

The bilateral air transport agreements examined have been chosen from those countries (or territories) which are in some way connected to Macau due to a variety of factors, namely: special status (i.e. Hong Kong); historical and political reasons (i.e. the People's Republic of China and Portugal); geographical proximity or because Macau is about to enter into negotiations concerning future bilateral air transport agreements (a miscellaneous selection); finally, a country whose air policy is similar to that which Macau intends to pursue and whose bilateral air transport agreements may be used as models (i.e. the United States of America).

Due to limited space, only some of the bilateral air transport agreements established by those countries or territories mentioned above have been chosen. Given that it is impossible to present full examples of each, a further selection has been made under each heading to include those provisions which best serve the purposes of this study: to provide guidelines for drafting bilateral air transport agreements in Macau. The criteria adopted in the selection of the provisions are presented below in no order of preference:

- clarity of presentation;
- simplicity of text;
- the best suited to Macau's situation;
- the most recent;
- variation from the norm in some feature which could eventually be of interest in the drafting of future bilateral air transport agreements.

There has also been an attempt to provide a variety of different ways of presenting the information through different countries' agreements and some of the different aspects regarded as significant have been singled out for examination. In the same vein, if a certain provision is lacking in the relevant legislation, this absence has been noted when it is regarded to be of importance. Clauses whose contents were considered to be obsolete or which reflect a highly specific situation relevant only to the countries concerned have been omitted. Similarly, those special situations which are not a general feature of either country concerned have also been omitted except when that special situation applies to Macau.

Given that the aim of this research has not been to indicate specific forms of negotiation for different countries, an analysis of the general features of the air traffic policies adopted by each country or group of countries with regard to the agreements they have already concluded was deemed to be outside the scope of the study. Rather, the aim has been to provide a model agreement by selecting a set of clauses which could, with a degree of flexibility and whenever circumstances demand, be used as alternatives to the model agreement in future negotiations. Prior to entering into an examination of the text of each of the provisions, there follows a brief description of the general structure and contents of bilateral air transport agreements.

**CHAPTER 1 - THE STRUCTURE AND CONTENTS OF BILATERAL AIR  
TRANSPORT AGREEMENTS**

**1.1 - THE STRUCTURE OF BILATERAL AIR TRANSPORT AGREEMENTS**

The structure of a bilateral air transport agreement may vary according to the wishes of the contracting parties. Normally, however, bilateral air transport agreements can be divided into three parts: preamble, body, and annex(es).

The preamble can vary in its complexity but it always contains the names of the parties involved and their general objectives in concluding the agreement. The scope of the agreement can also be defined in the preamble, namely, which type of air transport is to be regulated by the agreement: scheduled, non-scheduled or both.

The body of the agreement usually contains the economic, technical and administrative provisions agreed upon by the two governments in order to regulate air transport between their countries.

The annex(es) contain, fundamentally, the route scheduled under which the traffic rights granted are to be exercised as well as any conditions or restrictions to be applied therein. Sometimes technical matters related to questions of air navigation safety are also present in the annex(es).

## **1.2 - GENERAL CONTENTS OF BILATERAL AIR TRANSPORT AGREEMENTS**

So long as they do not conflict with a peremptory norm of international law,<sup>1</sup> contracting parties have, at least in theory, almost total freedom to do as they wish with their air space and to negotiate it as they see fit, including provisions deemed desirable in their bilateral air transport agreements. Nevertheless, although there is no internationally accepted format for bilateral air transport agreements, their structure, contents and even presentation tend to be fairly consistent, particularly amongst those countries whose air policies are similar. The main differences between agreements are those rooted in the economic differences which have always been the obstacle to any multilateral exchange of traffic rights.

Apparent in the various provisions contained in any bilateral air transport agreement there will be a variety of degrees of demands ranging from a need to secure rights which are fundamental to the running of the service to those which would be beneficial to the general operation of the air service. The order of the clauses and annexes differs from agreement to agreement as governments may prefer to combine, add or delete certain provisions or include items in different sections.<sup>2</sup> The various agreements entered into by any specific country may also vary depending on circumstances.

The list which follows is not intended to be exhaustive but rather the examples offer the greatest number of provisions to be found in a bilateral air transport agreement.



Nevertheless, it is obvious that no single bilateral air transport agreement need contain all the provisions listed below:<sup>3</sup>

1. Preamble;
2. Definitions;
3. Titles;
4. Grant of rights;
5. Designation and authorization;
6. Revocation of authorization;
7. Application of laws;
8. Recognition of certificates and licenses (Safety);
9. Documents to be kept on board aircraft;
10. Aircraft in distress and investigation procedures;
11. Security procedures;
12. Environmental protection and noise abatement procedures;
13. Commercial operations, i.e.:
  - Establishment of offices and airline representation,
  - Local or convertible currency sales by airlines,
  - Ground handling arrangements,
  - Computer reservation systems,
  - Currency conversion and remittance by airlines;
14. Taxation;
15. Immigration and control of travel documents;
16. Tariffs;
17. Capacity;
18. Provision of statistics and other information;
19. Change of aircraft;
20. User charges;
21. Customs duties and other charges;
22. Non-scheduled operations;
23. Exchange of views;
24. Consultations;
25. Settlement of disputes;
26. Amendments;
27. Multilateral agreements;
28. Termination;
29. Registration;
30. Previous agreement;
31. Entry into force;
32. Choice of languages;
33. Annex(es).

## **CHAPTER 2 - TEXTUAL ANALYSIS OF SELECTED BILATERAL AIR TRANSPORT AGREEMENTS**

The purpose of this chapter is to present the usual format of provisions in bilateral air transport agreements which have already been drafted followed by any significant variations. In selecting the provisions shown below, the following agreements were examined:

- A. **Agreements of Hong Kong**. Bilateral Air Services Agreements concluded by the Government of Hong Kong under the entrustment of authority granted by the Government of the United Kingdom.<sup>4</sup>

Hong Kong - The Netherlands, 1986;  
Hong Kong - Canada, 1988;  
Hong Kong - Malaysia, 1991;

- B. **Agreements of the People's Republic of China**<sup>5</sup>

Canada - People's Republic of China, 1973;  
Spain - People's Republic of China, 1978;  
The Netherlands - People's Republic of China, 1979;  
U.S.A. - People's Republic of China, 1980;  
Oman - People's Republic of China, 1983;

- C. **Agreements of Portugal**<sup>6</sup>

Portugal - Morocco, 1958;  
Portugal - Finland, 1971;  
Portugal - U.S.S.R., 1974;  
Portugal - German Democratic Republic, 1975;  
Portugal - Hellenic Republic, 1986;

- D. **Agreements of the United States of America**<sup>7</sup>

U.S.A. - Canada, 1966;  
Singapore - U.S.A., 1978;

American Institute in Taiwan (AIT) - Coordination Council for  
North American Affairs (CCNAA), 1980;  
U.S.A. - Macau, 1991 (unpublished);

E. Miscellaneous<sup>8</sup>

United Kingdom - U.S.S.R., 1957;  
Finland - Thailand, 1986;  
Republic of Korea - Republic of China, 1986;  
Singapore - Kenya, 1987;  
Brunei - Philippines, 1987;  
New Zealand - Federal Republic of Germany, 1987;

Canada - Australia, 1988;  
Japan - Austria, 1989;  
Austria - Qatar, 1991;  
Luxembourg - Macau, 1992 (unpublished);  
Federal Republic of Germany - Macau, 1992 (unpublished);  
New Zealand - Macau, 1993 (unpublished);  
The Netherlands - Macau, 1993 (unpublished);  
Austria - Macau, 1993 (unpublished);  
Belgium - Macau, 1993 (unpublished);

Specific examples of the provisions described in the preceding chapter will now be provided, introduced, whenever required, by a summary containing brief technical and theoretical information which is intended to elucidate the subject dealt with in the subsequent sections.

## 2.1 - Preamble

As seen above, the preamble, regardless of its complexity, generally contains the name of the parties, their objectives and the scope of the agreement. The title refers to either air services or air transport. The term "air services" is defined in Article 96 of the Chicago Convention as "... any scheduled air service performed by

aircraft for the public transport of passengers, mail or cargo" [emphasis added]. "Air transport" is intended to have a wider interpretation which may include scheduled and non-scheduled air services."<sup>9</sup>

#### **Hong Kong - The Netherlands, 1986**

Agreement Between the Government of Hong Kong and the Government of the Kingdom of The Netherlands Concerning Air Services.

The Government of Hong Kong and the Government of the Kingdom of The Netherlands.

Desiring to promote the development of air services between their respective areas;<sup>10</sup>

Desiring to conclude an Agreement for the purpose of providing the framework for such air services;

Have agreed as follows:

#### **Portugal - G.D.R., 1975**

Agreement Between the Government of Portugal and the Government of the German Democratic Republic Relating to Air Transport.

The Government of Portugal and the Government of the German Democratic Republic, hereinafter called "the Contracting Parties",

Desiring to develop and to strengthen the mutual relations between the two States in the field of civil aviation,

Have agreed as follows:

#### **U.S.A. - Macau, 1991**

Air Transport Agreement Between The Government of The United States of America and The Government of Macau.

The Government of the United States of America and the Government of Macau;

Desiring to promote an international air transport system based on competition among airlines in the marketplace with minimum governmental interference and regulation;

Desiring to facilitate the expansion of international air transport opportunities;

Desiring to make it possible for airlines to offer the travelling and shipping public a variety of service options at the lowest prices that are not predatory or discriminatory and do not represent abuse of a dominant position and wishing to encourage individual airlines to develop and implement innovative and competitive prices;

Desiring to ensure the highest degree of safety and security in international air transport and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardize the safety of persons or property, adversely affect the operation of air transportation, and undermine public confidence in the safety of civil aviation; and

Desiring to conclude an agreement covering all commercial air transportation;

Have agreed as follows:

#### **Austria - Qatar, 1991**

##### Air Services Agreement Between the Austrian Federal Government and the Government of the State of Qatar.

The Austrian Federal Government and the Government of the State of Qatar, hereinafter referred to as the Contracting Parties:

Being parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944;

Desiring to conclude an Agreement, supplementary to the said Convention, for the purpose of establishing air services between and beyond their respective territories;

Have agreed as follows:

## 2.2 - Definitions

The Contracting Parties usually agree that certain terms used in the Agreement should be clarified. Those terms are usually defined as in the Chicago Convention. In most agreements the definitions appear in the first Article but sometimes they are incorporated into the clause where specific reference is made to them.<sup>11</sup>

The intention here has been to provide the greatest possible number of terms which are usually defined although not all agreements may contain all the examples given.

For the purpose of this Agreement, unless the context otherwise requires, the term:

[or]

For the purpose of this Agreement, unless indicated otherwise:

- (a) the term **"aeronautical authorities"** means in the case of Hong Kong, the Director of Civil Aviation, and in the case of Malaysia, the Minister of Transport, or, in both cases, any person or body authorised to perform any functions at present exercisable by the above-mentioned authorities or similar functions; (Hong Kong - Malaysia, 1991);

[or]

**"Aeronautical authorities"** means, in the case of the United States of America, the Department of Transportation, or its successor, and in the case of Macau, [ ], or its successor; (U.S.A. - Macau, 1991);

[or]

the **"aeronautical authorities"** means: in the case of [ ], the Minister responsible for the subject of Civil Aviation and in the case of [ ], or, in both cases, any other authority or person empowered

to perform the functions now exercised by the said authorities;  
(Luxembourg - Macau, 1992);<sup>12</sup>

[and]

- (b) the term "**user charge**" means a charge made to airlines by the authorities or permitted by them to be made for the provision for aircraft, their crews and passengers and cargo, of airport property or facilities, or air navigation facilities, including related services and facilities; (Hong Kong - The Netherlands, 1986);

[or]

"**User charge**" means a charge applied to airlines for the provision of airport, air navigation, or aviation security facilities and services; (U.S.A. - Macau, 1991);

[and]

- (c) the term "**designated airline**" means an airline which has been designated and authorised in accordance with Article 4 of this Agreement; (Hong Kong - Malaysia, 1991);

[or]

"**Designated airline**" means the airline which either Contracting Party has designated to operate the agreed services on the specified routes; (Portugal - G.D.R., 1975);

[and]

- (d) the terms "**air service**", "**international air service**", "**airline**" and "**stop for non-traffic purposes**" have the meaning respectively assigned to them in article 96 of the said Convention;<sup>13</sup> (Hong Kong - Malaysia, 1991);

[or]

"**Air service**" means scheduled air service performed by aircraft for the public transport of passengers, baggage, cargo or mail, separately or in combination, for remuneration or hire;

"**Airline**" means any air transport enterprise offering or operating international air services;

**"International air service"** means an air service which passes through the air space over the territory of more than one State; (U.S.A. - P.R.C., 1980);

[or]

**"Stop for non-traffic purposes"** means a landing for any purpose other than taking on or discharging passengers, baggage, cargo and/or mail in air transportation;

**"Air transportation"**<sup>14</sup> means any operation performed by aircraft for the public carriage of traffic in passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire;

**"International air transportation"**<sup>15</sup> means air transportation which passes through the airspace over the territory of more than one State; (U.S.A. - Macau, 1991);

[and]

- (e) the terms **"territory"**,<sup>16</sup> **"air service"**, **"international air service"** and **"stop for non-traffic purposes"** have, for the purposes of this Agreement, the meaning laid down in Articles 2 and 96 of the Convention on International Civil Aviation as amended at present or in future; (F.R.G. - Macau, 1992);

[or]

the term **"area"** in relation to Hong Kong includes Hong Kong Island, Kowloon and the New Territories and in relation to Malaysia has the meaning assigned to **"territory"** in Article 2 of the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944; (Hong Kong - Malaysia, 1991);

[or]

**"Territory"**, with respect to the United States of America, means the land areas under the sovereignty, jurisdiction, protection, or trusteeship of the United States, and the territorial waters adjacent thereto, and, with respect to Macau, means [ ]; (U.S.A. - Macau, 1991);

[or]



The term "**territory**" in relation to a State has the meaning assigned to it in Article 2 of the Convention; (Austria - Qatar, 1991);

[or]

The term "**territory**" in relation to a state means the land areas and the territorial waters adjacent thereto under the sovereignty of that state; (Austria - Macau, 1993);

[and]

- (f) "**Agreement**" means this Agreement, its Annexes and any amendments thereto; (U.S.A. - Macau, 1991);

[or]

"**Agreement**" means this Agreement, the Annex attached thereto, and any amendments to the Agreement or to the Annex; (Canada - Australia, 1988);

[and]

- (g) "**Agreed services**" means scheduled air services for the transport of passengers, baggage, cargo or mail on the routes specified in the Annex to this Agreement; (The Netherlands - P.R.C., 1979);

[or]

"**agreed services on the specified routes**" means the agreed services on the routes specified in the Annex to this Agreement; (Portugal - G.D.R., 1975);

[or]

the term "**agreed service**" means any air service operated on the specified routes;

the term "**specified route**" means any of the routes specified in the Schedule; (Japan - Austria, 1989);

[and]

- (h) The term "**tariff**" means the prices to be paid for the carriage of passengers, baggage and cargo 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; (The Netherlands - P.R.C., 1979);

[or]

"Price"<sup>17</sup> means

- (i) any fare, rate or price to be charged by airlines, or their agents and the conditions governing the availability of such fare, rate or price;
- (ii) the charges and conditions for services ancillary to carriage of traffic which are offered by airlines; and
- (iii) amounts charged by airlines to air transportation intermediaries;  
for the carriage of passengers (and their baggage) and/or cargo (excluding mail) in air transportation;  
(A.I.T. - C.C.N.A.A., 1980);

[or]

"tariffs" means the prices which the designated airlines charge for the transport of passengers and cargo and the conditions under which those prices apply; (Canada - Australia, 1988);

[or]

"Price" means any fare, rate or charge for the carriage of passengers (and their baggage) and/or cargo (excluding mail) in air transportation charged by airlines, including their agents, and the conditions governing the availability of such fare, rate or charge; (U.S.A. - Macau, 1991);

[and]

- (i) "Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on December 7, 1944; (A.I.T. - C.C.N.A.A., 1980);

[or]

the term "**the Convention**" means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day

of December, 1944, and includes any Annex adopted under Article 90 of that Convention and any amendment of the Annexes or Convention under Articles 90 and 94 thereof; (Singapore - Kenya, 1987)

[and]

- (j) the term "~~schedule~~" means the Route Schedule annexed to this Agreement or as amended in accordance with the provisions of Article (16) of the present Agreement. The Schedule forms an integral part of this Agreement and all references to the Agreement shall include references to the schedule except where otherwise provided; (Oman - P.R.C., 1983);<sup>18</sup>

[or]

The Annexes to the present Agreement shall be deemed to be an integral part thereof; (Portugal - U.S.S.R., 1974);

[or]

The term "**annex**" shall mean the route schedules attached to the present Agreement and any clauses or notes appearing in such annex.

The annex to this Agreement is considered an inseparable part thereof; (Portugal - Hellenic Republic, 1986);

[and]

- (k) "**Full economic costs**"<sup>19</sup> means the direct cost of providing service plus a reasonable charge for administrative overhead; (U.S.A. - Macau, 1991);

[and]

- (l) The term "**capacity**" in relation to 'agreed service' means the capacity of the aircraft used on such service, multiplied by the frequency operated by such aircraft over a given period on a route or section of a route.

The term "**capacity**" in relation to an aircraft means the payload of that aircraft available on a route or section of a route; (Austria - Qatar, 1991);

[and]

- (m) the term "**Ground handling**"<sup>20</sup> means the processing, loading and unloading of passengers, baggage, cargo, mail and aircraft stores, aircraft cleaning and fueling, and other rampside and airport terminal activities; (U.S.A. - Macau, 1991);

[and]

- (n) the term "**prohibited area**" <sup>21</sup> means the area and the air space above that area over or through which any prohibition to the flying of an aircraft of any description is or may be imposed by the Contracting Party concerned; (Republic of Korea - Republic of China, 1986);

[and]

- (o) the term "**stores**" means articles of a readily consumable nature for use or sale on board an aircraft during flight, including commissary supplies; (The Netherlands - Macau, 1993);

[or]

the terms "**aircraft equipment**", "**ground equipment**", "**aircraft stores**", "**spare parts**" have the meanings respectively assigned to them in Annex 9 of the Convention; (Belgium - Macau, 1993);

[and]

- (p) the term "**change of aircraft**" means the operation of one of the agreed services by a designated airline in such a way that one or more sectors of the route are flown by aircraft different in capacity from those used on another sector; (The Netherlands - Macau, 1993);<sup>22</sup>

[and]

- (q) the term "**Computer Reservation System**" (CRS) means a computerized system containing information about airline schedules, seat availability, fares and related services and through which reservations can be made and/or tickets can be issued and which makes some or all of these facilities available to travel agents; (The Netherlands - Macau, 1993);<sup>23</sup>

[and]

- (r) the term "**Contracting Party**" means the Austrian Federal Government on the one hand and the Government of [ ] on the other; (Austria - Macau, 1993).

### 2.3 - Titles

Out of all the agreements examined, only the following examples were found:

**Hong Kong - Canada, 1988**

Article 22 - Titles

Titles used in this Agreement are for reference purposes only.

**Oman - P.R.C., 1983<sup>24</sup>**

Article 19 - Titles

Titles are inserted in this Agreement at the head of each article for the purpose of reference and convenience and in no way to define, limit or describe the scope or intent of the present Agreement.

### 2.4 - Grant of Rights

This section usually defines the scope of the agreement containing a description of the "agreed services" exchanged between the contracting parties, to be exercised according to the "specified routes" normally listed in the Route Schedule or Annex. It may also contain the route scheduled as well as the conditions/restrictions that should be observed in exercising the rights granted. This section may also regulate the designation of airlines and the inauguration of services.

The rights exchanged between (or forbidden by) the contracting parties under this section can be described as follows:

- **Overflight and technical stop for non-traffic purposes.<sup>25</sup>**

- **Traffic rights granted for scheduled services between territories of contracting parties.**
- **Traffic rights granted for scheduled services on routes to and from third countries.**

"Third country traffic rights are considered to have not been granted where a route granted to one party names one or more intermediate and/or beyond points in third countries but denies local traffic rights between such point or points and the other party's territory, or where the general grant of such rights is made subject to subsequent agreement. However, if their use is only made subject to future specification, such as selection of a point or points, such rights are considered to have been granted..."<sup>26</sup>

- **Cabotage.** In the article dealing with the granting of rights cabotage is, as a rule, specifically prohibited although the absence of this express exclusion does not mean that cabotage privileges are allowed.<sup>27</sup> Cabotage rights are only granted on rare occasions and, in accordance with Article 7 of the Chicago Convention, they may only be granted on a non-exclusive basis.<sup>28</sup>
- **Non-scheduled traffic rights.** "Most bilateral air transport agreements deal only with scheduled international air services, although in more recent years non-scheduled or charter air services, have increasingly been included in bilateral agreements (...) in separate charter bilaterals, or together with scheduled air services in the same agreement."<sup>29</sup>
- **All-cargo traffic rights.** Sometimes the parties establish certain routes for all-cargo flights only. Special separate provisions for all-cargo operations may also be contained in the agreement. The absence of any specific reference does not necessarily mean that all-cargo flights are not covered by the agreement but rather that they are not dealt with as a separate specific issue.<sup>30</sup>

### **Hong Kong - Malaysia, 1991**

#### **Article 3 - Grant of rights**

- (1) Each Contracting Party grants to the other Contracting Party the following rights in respect of its international air services:

- (a) the right to fly across its area without landing;
  - (b) the right to make stops in its area for non-traffic purposes.
- (2) Each Contracting Party grants to the other Contracting Party the rights hereinafter specified in this Agreement for the purpose of operating international air services on the routes specified in the appropriate Section of the Annex to this Agreement. Such services and routes are hereinafter called "the agreed services" and "the specified routes" respectively. While operating an agreed service on a specified route the designated airlines of each Contracting Party shall enjoy in addition to the rights specified in paragraph (1) of this Article the right to make stops in the area of the other Contracting Party at points determined for that route in accordance with the Annex to this Agreement for the purpose of taking on board and discharging passengers and cargo, including mail, separately or in combination.
- (3) Nothing in paragraph (2) of this Article shall be deemed to confer on the designated airlines of one Contracting Party the right to take on board, at one point in the area of the other Contracting Party, passengers and cargo, including mail, carried for hire or reward and destined for another point in the area of the other Contracting Party.
- (4) If because of armed conflict, political disturbances or developments, or special and unusual circumstances, a designated airline of one Contracting Party is unable to operate a service on its normal routing, the other Contracting Party shall use its best efforts to facilitate the continued operation of such service through appropriate temporary rearrangements of routes.

**U.S.A. - P.R.C., 1980**  
**Article 2 - Grant of rights**

(...)

- (3) Nothing in paragraph (2)(a) of this Article shall be deemed to confer on the designated airline(s) of one Party the right of taking on at one point in the territory of the other Party traffic in passengers, baggage, cargo or mail destined for

another point in the territory of the other Party (stopover<sup>31</sup> and cabotage traffic), except the non-revenue traffic in personnel of such airline(s), their families, baggage and household effects, articles used by the representative offices of such airline(s) and aircraft stores and spare parts of such airline(s) for use in the operation of the agreed services. Any exchange of rights between the Parties to allow the designated airline(s) of either Party to carry on-line stopover traffic between the points on the specified route(s) in the territory of the other Party shall be subject to consultations at an appropriate time in the future.

(...)

**Oman - P.R.C., 1983**

**Article 2 - Granting of Rights and Privileges**

(...)

- (4) In case the designated airline of one Contracting Party desires to operate an additional flight or a charter flight on the specified route, the aeronautical authorities of such Contracting Party shall submit an application to the aeronautical authorities of the other Contracting Party, and the flight can be operated only after approval has been obtained. The said application shall be submitted not later than seventy-two hours before the take-off of such flight.

**Portugal - Hellenic Republic, 1986**

**Article 2 - Operating rights**

(...)

2. The airline designated by each Contracting Party shall enjoy the following rights:
  - (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;
  - (c) To make stops in the said territory for the purpose of putting down and taking on passengers, mail and cargo coming from



or destined for points on the specified routes, subject to the provisions of this Agreement and its annex.

3. [Cabotage expressly forbidden].

**U.S.A. - Canada, 1966**

Article II

(...)

Article IV

An airline designated by one Contracting Party may not take on at one point in the territory of the other Contracting Party traffic destined for another point in the territory of such other Contracting Party. However, an airline designated by one Contracting Party to provide service over a route containing more than one point in the territory of the other Contracting Party may provide a stopover at any of such points to traffic moving on a ticket or waybill providing for transportation on the same airline on a through journey to or from a point outside the territory of such other Contracting Party.

**A.I.T. - C.C.N.A.A., 1980**

[This Agreement does not contain any provision on grant of rights, which are exchanged in the Annex to the Agreement. Cabotage is expressly prohibited in the body of the Agreement in Article 3].

**U.S.A. - Macau, 1991**

Article 2 - Grants of rights

1. Each Party grants to the other Party the following rights for the conduct of international air transportation by the airlines of the other Party:
  - a. the right to fly across its territory without landing;
  - b. the right to make stops in its territory for non-traffic purposes; and
  - c. the rights otherwise specified in this Agreement.

2. Nothing in paragraph 1 of this Article shall be deemed to grant the right for one Party's airlines to participate in air transportation between points in the territory of the other Party.
3. Nothing in paragraph 1 of this Article shall be deemed to grant the right for airlines designated by the United States to provide air transportation between Macau and points in the territory of the People's Republic of China.<sup>32</sup>

**Singapore - Kenya, 1987**  
**Article 2 - Grant of Rights**

(...)

- (4) All the rights granted in this Article by one Contracting Party shall not be assigned to any other third party.

**Luxembourg - Macau, 1992**  
**Article 2 - Grant of rights**

1. Each Contracting Party grants to the other Contracting Party the following rights for the conduct of international air services by the airline designated by the other Contracting Party:

(...)

- (c) to make stops in the said territory for the purpose of taking up and discharging, while operating the routes specified in the Annex, international traffic in passengers, cargo and mail, separately or in combination.

(...)

**F.R.G. - Macau, 1992**  
**Article 2 - Grant of Rights**

(...)

- (2) The routes over which the designated airlines of the Contracting Parties will be authorized to operate international air services shall be specified in a Route Scheduled by an exchange of notes.
- (3) [Cabotage expressly forbidden].

## 2.5 - Designation and Authorization

This section grants the contracting parties the right to designate the airline(s) to operate the agreed services under the conditions laid down. "An agreement may specify single designation where each party may designate one airline; multiple designation where each party may designate one or more airlines;<sup>33</sup> or multiple designation, but with route limitations. In this last case each party may designate more than one airline but with restrictions on specific routes. For example, the agreement may provide that on a specified route or routes only one airline may be designated."<sup>34</sup>

In most bilateral air transport agreements, authorization to start operations given by the other contracting party depends on prior examination of the conditions laid down in this section. At other times, the States merely reserve the right to revoke, suspend or limit the authorization or permission to operate if certain requirements are not met but these requirements do not constitute an *a priori* condition for the granting of authorization.

An important and customary demand that can condition or prevent the granting of permission for a designated airline of the other party to operate the agreed services is that substantial ownership and effective control of the designated airlines be vested in the

designating party or its nationals. Some other conditions may also be specified, such as compliance with the laws and regulations of the grantor State.<sup>35</sup>

The substantial ownership and effective control provision is intended to guarantee the authentic nationality of the designated airlines,<sup>36</sup> preventing nationals of State A from starting an air traffic company in State B to operate airlines to State C.<sup>37</sup>

According to Professor Wassenbergh<sup>38</sup> "[s]ubstantial ownership and effective control' is normally acquired with a minimum of 51% of the shares in the airline, although even, say, 30% could be called a 'substantial' participation, depending partly on what powers are accorded under the airline's by-laws. In this latter case, substantial ownership could be vested in more than one State. A noteworthy consequence of this possibility would be that in such a case the airline concerned could exercise the rights granted to several States .... The intention of the 'substantial ownership' clause, therefore, is evidently that substantial ownership can only be vested in one nationality, thereby giving States a weapon with which to protect the exchange of commercial rights according to nationality and on a purely bilateral basis."

"To protect investors and also to protect themselves against exploitation, [some small countries] have passed laws which clearly regulate the incorporation of companies with foreign capital, within their territories. Such laws determine the structure that these corporations must have in order for them to be considered as legally constituted national companies. [In their view], therefore (...) the determination of the nationality of a company must be accepted as being the exclusive right of each sovereign country and that

this national status may not be questioned as long as the company be organized in accordance with the laws of the country under whose flag it operates."<sup>39</sup>

**Hong Kong - Malaysia, 1991**

**Article 4 - Designation of and Authorization of Airlines**

(...)

- (3) (a) The Government<sup>40</sup> of Hong Kong shall have the right to refuse to grant the operating authorizations referred to in paragraph (2) of this Article, or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 3(2) of this agreement, in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Government of Malaysia or its nationals.
- (b) The Government of Malaysia shall have the right to refuse to grant the operating authorizations referred to in paragraph (2) of this Article, or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 3(2) of this Agreement, in any case where it is not satisfied that that airline is incorporated and has its principal place of business in Hong Kong.

(...)

- (5) When an airline has been so designated and authorized it may begin to operate the agreed services, provided that the airline complies with the applicable provisions of this Agreement.<sup>41</sup>

**U.S.A. - P.R.C., 1980**

**Article 3 - Designation and Authorization**

(...)

- (5) When an airline has been so designated and authorized it may commence operations on or after the date(s) specified in the appropriate authorizations.

**Portugal - Hellenic Republic, 1986**

**Article 3 - Designation of airlines**

(...)

- 5- When an airline has been so designated and authorized, it may begin at any time to operate the agreed services, provided that time-tables have been approved and tariffs are in force in respect of those services, as required respectively under article 12 and article 14 of this Agreement.

**U.S.A. - Macau, 1991**

**Article 3 - Designation and Authorization**

1. Each Party shall have the right to designate as many airlines as it wishes to conduct international air transportation in accordance with this Agreement and to withdraw or alter such designations. Such designations shall be transmitted to the other Party in writing through appropriate channels, and shall identify whether the airline is authorized to conduct the type of air transportation specified in Annex I or in Annex II or both [scheduled or non-scheduled international air transport].
2. On receipt of such a designation, and of applications from the designated airline, in the form and manner prescribed for operation authorizations and technical permissions, the other Party shall grant appropriate authorizations and permissions with minimum procedural delay, provided:
  - a. substantial ownership and effective control of that airline are vested in the Party designating the airline, nationals of that Party, or both;
  - b. the designated airline is qualified to meet the conditions prescribed under the laws and regulations normally applied to the operation of international air transportation by the Party considering the application or applications; and

- c. the party designating the airline is maintaining and administering the standards set forth in Article 6 (Safety) and Article 7 (Security).

**Republic of Korea - Republic of China, 1986**

**Article 3 - Designation and Authorization**<sup>42</sup>

1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party one airline for the purpose of operating the agreed services on the specified routes. On receipt of such designation, the other Contracting Party shall, subject to the provisions of paragraph 2 of this Article and without undue delay, grant to the designated airline the appropriate operating authorization.
2. Before being authorized to inaugurate the agreed air services referred to in paragraph 1 of this Article, the designated airline may, however, be required to satisfy the aeronautical authorities of the other Contracting Party that it is qualified to fulfil the terms and conditions prescribed under the relevant laws and regulations normally applied by those authorities to the operation of international scheduled air services.
3. At any time when the provisions of paragraph 1 of this Article shall have been complied with, the airline so designated and authorized may begin to operate the agreed services.
4. Each Contracting Party reserves the right to withhold or revoke the grant to the designated airline of the other Contracting Party of the privileges specified in Article 2, paragraph 2 of this Agreement or to impose such conditions as it may deem necessary on the exercise by such airline of those privileges, 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 its nationals.

**F.R.G. - Macau, 1992** [The only example found with no reference to either "substantial ownership and effective control" or "incorporation and place of business" of the airline].

Article 3 - Designation and Operating Authorization

- (1) The international air services on the routes specified in accordance with Article 2 (2) of this Agreement may be started at any time, provided that
  - (a) the Contracting Party to whom the rights specified in Article 2 (1) of this Agreement are granted has designated one or several airlines in writing, and
  - (b) the Contracting Party granting these rights has authorized the designated airline or airlines to initiate the air services.
- (2) The Contracting Party granting these rights shall, subject to the provisions of paragraph 3 below as well as Article 9 of this Agreement, give without delay the said authorization to operate the international air service.
- (3) Either Contracting Party may require any airline designated by the other Contracting Party to furnish proof that it is qualified to meet the requirements prescribed under the laws and regulations of the first Contracting Party governing the operation of international air traffic.
- (4) Either Contracting Party shall have the right to replace, by written communication to the other Contracting Party and subject to the provisions of paragraphs 1 to 3 above, an airline it has designated by another airline. The newly designated airline shall have the same rights and be subject to the same obligations as the airline which it replaces.

**New Zealand - Macau, 1993**

Article 3 - Designation and Authorisation

1. 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 and to withdraw or alter such designations.



2. On receipt of such designation the other Contracting Party shall, subject to the provisions of paragraphs (3) and (4) of this Article, without delay grant to the airline or airlines designated the appropriate authorisations.
3. The aeronautical authorities of one Contracting Party may require an airline designated by the other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by such authorities.
4. Each Contracting Party shall have the right to refuse to grant the operating authorisations referred to in paragraph (2) of this Article, or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 2 (1) of this Agreement, in any case where such Contracting Party is not satisfied that the airline is incorporated and has its principal place of business in the territory of the other Contracting Party.
5. When an airline have been so designated and authorised it may begin to operate the agreed services, provided that the airline complies with the applicable provisions of this Agreement.

## **2.6 - Revocation of Authorization**

This section is concerned with the right to revoke, withdraw or suspend permits already granted, or to impose other limitations on an airline, should the relevant authorities not be satisfied that substantial ownership and effective control of that airline are vested in the other party or in its nationals; or that that airline is incorporated and has its principal place of business in the territory of the other party; or in cases where an airline does not comply with national laws and regulations, or fulfil the conditions laid down in the agreement.

**Hong Kong - Malaysia, 1991**

**Article 5 - Revocation or Suspension of Operating Authorization**

- (1) Each Contracting Party shall have the right to revoke or suspend an operating authorization for the exercise of the rights specified in Article 3(2) of this Agreement by an airline designated by the other Contracting party, or to impose such conditions as it may deem necessary on the exercise of those rights:
  - (a) (i) in the case of the Government of Hong Kong, in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Government of Malaysia or its nationals;
  - (ii) in the case of the Government of Malaysia, in any case where it is not satisfied that that airline is incorporated and has its principal place of business in Hong Kong; or
- (...)

**U.S.A.- Macau, 1991**

**Article 4 - Revocation of Authorization**

1. Each Party may revoke, suspend or limit the operating authorizations or technical permissions of an airline designated by the other Party where:
  - a. substantial ownership and effective control of that airline are not vested in the other Party, the other Party's nationals, or both;
  - b. that airline has failed to comply with the laws and regulations referred to in Article 5 (Application of Laws) of this Agreement; or
  - c. the other Party is not maintaining and administering the standards as set forth in Article 6 (Safety).

2. Unless immediate action is essential to prevent further non-compliance with subparagraphs 1b or 1c of this article, the rights established by this Article shall be exercised only after consultation with the other Party.
3. This Article does not limit the rights of either Party to suspend, limit, or condition air services in accordance with the provisions of Article 7 (Aviation Security).

**Republic of Korea - Republic of China, 1986**

**Article 4 - Revocation and Suspension**

Notwithstanding the provisions of Articles 2 and 3, each Contracting Party shall have the right to revoke, suspend, or limit by the imposition of conditions, the operating authorization granted to a designated airline of the other Contracting Party, if such designated airline, in operating its air services in terms of this Agreement, fails to comply with any applicable law or regulation of the first-mentioned Contracting Party or fails to comply with any term or condition prescribed in this Agreement and its Annex, provided that unless immediate action is essential to prevent further infringement of the law or regulation or term or condition above-mentioned, this right shall be exercised only after consultation with the other Contracting Party.

**F.R.G. - Macau, 1992**

**Article 4 - Revocation or Limitation of Operating Authorization**

Either Contracting Party may revoke, or limit by the imposition of conditions, the authorization granted in accordance with article 3 (2) of this Agreement in the event of failure by a designated airline to comply with the laws and regulations of the Contracting Party granting the rights or to comply with the provisions of this Agreement or to fulfil the obligations arising therefrom. Such revocation or limitation shall be preceded by consultation as provided for in Article 15 of this Agreement, unless an immediate suspension of operations or imposition of conditions is necessary to avoid further infringements of laws or regulations.

**New Zealand - Macau, 1993**

**Article 4 - Revocation and Limitation of Authorisation**

1. Each Contracting Party shall have the right to revoke or suspend an operating authorisation for the exercise of rights specified in Article 2 (1) of this Agreement by an 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 the airline is incorporated and has its principal place of business in the territory of the Contracting Party;
  - (b) in the case of failure by that airline to comply with the laws or regulations of that Contracting Party granting these rights; or
  - (c) if that airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.
2. Unless immediate revocation or suspension of the operating authorisation mentioned in paragraph (1) of this Article or imposition of the conditions therein is essential to prevent further infringement of the laws and regulations, such right shall be exercised only after consultations with the other Contracting Party.

**2.7 - Application of Laws**

This section of a bilateral air transport agreement is related to Articles 11 and 13 of the Chicago Convention,<sup>43</sup> and "[it] deals with a requirement of compliance by the airline(s) of one party with the laws and regulations of the other concerning aircraft operation and navigation and/or the admission and departure of aircraft, passengers, crew and cargo."<sup>44</sup>

In some agreements there is a paragraph under this section (or a separate provision) which refers to simplified transit control procedures for transit passengers, baggage and/or cargo, which reflects the purposes of Annex 9 of the Chicago Convention (Facilitation).

**Hong Kong - Canada, 1988<sup>45</sup>**

**Article 6 - Application of Laws and Regulations**

- (1) The laws and regulations of one Contracting Party relating to the admission to or departure from its area of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its area, shall be applied to the aircraft of the airline or airlines designated by the other Contracting Party and shall be complied with by such aircraft upon entry into, departure from, or while within, the area of the first Contracting Party.
- (2) The laws and regulations of one Contracting Party relating to the admission to or departure from its area of passengers, crew and cargo (including mail), such as regulations relating to entry, clearance, immigration, passports, customs and quarantine, shall be complied with by or on behalf of such passengers, crew and cargo (including mail) of the airline or airlines designated by the other Contracting Party upon entry into, departure from, or while within, the area of the first Contracting Party.
- (3) In the application to the designated airline or airlines of the other Contracting Party of the laws and regulations referred to in this Article a Contracting Party shall not grant more favourable treatment to its own airline or airlines.

**U.S.A. - Macau, 1991**

**Article 5 - Application of Laws**

1. While entering, within or leaving the territory of one Party, its laws and regulations relating to the operation and navigation of aircraft shall be complied with by the other Party's airlines.

2. While entering, within, or leaving the territory of one Party, its laws and regulations relating to the admission to or departure from its territory of passengers, crew, or cargo on aircraft (including regulations relating to entry, clearance, aviation security, immigration, passports, customs, and quarantine or, in the case of mail, postal regulations) shall be complied with by, on behalf of such passengers, crew, or cargo of the other Party's airlines.

**Republic of Korea - Republic of China, 1986**

**Article 7 - Applicability of Laws and Regulations**

(...)

3. Neither Contracting Party shall grant any preference to its own designated airline over the designated airline of the other Contracting Party with regard to the application of laws and regulations provided for by this Article.

**Singapore - Kenya, 1987**

**Article 7 - Application of Laws and Regulations**

(...)

- (3) Each Contracting Party shall apply the laws and regulations referred to under paragraphs (1) and (2) of this Article on a non-discriminatory basis.
- (4) The charges for use of airports and other air navigation facilities levied by either Contracting Party shall be applied uniformly to the designated airlines of both Contracting Parties.

**Brunei - Philippines, 1987**

**Article 8 - Immigration and Custom Requirements**

(...)

- (3) Passengers in direct transit across the territory of either Contracting Party shall be subject to no more than a very simplified control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes. For purposes

of this paragraph, the term "direct transit" shall apply only to passengers, baggage and/or cargo who/which are never out of the control of the customs authorities of the Contracting Parties.

## **2.8 - Recognition of Certificates and Licenses (Safety)**

This section is related to Articles 32 and 33 of the Chicago Convention,<sup>46</sup> and deals with the mutual recognition of each country's documentation, such as certificates of airworthiness, certificates of competency and crew licenses.<sup>47</sup>

**Agreements of Hong Kong - [No provisions].**

**Portugal - G.D.R., 1975**

### Article 5

1. The aircraft of the designated airline of one Contracting Party, when flying within the territory of the other Contracting Party, shall bear their nationality and registration marks.
2. Certificates of airworthiness, licenses, certificates of competency and other documents which have been issued or rendered valid by a Contracting Party and are still valid, shall be recognized by the other Contracting Party for the operation of the agreed services on the specified routes.

Contracting Party reserves the right, however, not to recognize, for flights within its territory, licenses and certificates of competency issued to its own nationals, or rendered valid by another State.

**U.S.A. - Macau, 1991**

### Article 6 - Safety

1. Each Party shall recognize as valid, for the purpose of operating the air transportation provided for in this Agreement, certificates of airworthiness, certificates of competency, and licenses issued or validated by the other Party and still in force, provided that the requirements for such certificates or licenses at least equal the

minimum standards which may be established pursuant to the Convention. Each Party may, however, refuse to recognize as valid for the purpose of flight above its own territory, certificates of competency and licenses granted to or validated for its own nationals by the other Party.

2. Each Party may request consultations concerning the safety standards maintained by the other Party relating to aeronautical facilities, aircrew, aircraft, and operation of the designated airlines. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards and requirements in these areas that at least equal the minimum standards which may be established pursuant to the Convention, the other Party shall be notified of such findings and the steps considered necessary to conform with these minimum standards; and the other Party shall take appropriate corrective action. Each Party reserves the right to withhold, revoke, or limit the operating authorization or technical permission of an airline or airlines designated by the other Party in the event the other Party does not take such appropriate corrective action within a reasonable time.

**Austria - Qatar, 1991**

**Article 8 - Airworthiness Certificates and Licenses**

(...)

2. If the privileges or conditions of the licenses or certificates referred to in paragraph 1 above, issued or rendered valid by the aeronautical authorities of one Contracting Party to any person or aircraft, should permit a difference from the standards established under the Convention, and which difference has been filed with the International Civil Aviation Organization, the aeronautical authorities of the other Contracting Party may request consultations with the aeronautical authorities of that Contracting Party with a view to satisfying themselves that the practice in question is acceptable to them. Failure to reach a satisfactory agreement in these matters regarding flight safety will constitute grounds for the application of Article 4 [revocation or suspension of operating authorisation] of this Agreement.



## **2.9 - Documents to Be Kept on Board Aircraft**

This provision is based on Article 29 of the Chicago Convention,<sup>48</sup> and does not often appear.

**Agreements of Hong Kong - [No provisions].**

**Oman - P.R.C., 1983**

### **Article 14 - Documents**

The aircraft of the designated airline of either Contracting Party operating on the specified route shall bear its nationality and registration marks and carry on board the following certificates and documents:

- a) certificate of registration;
- b) certificate of airworthiness;
- c) journey log sheet;
- d) aircraft radio station license;
- e) licenses or certificates for each member of the crew;
- f) list of crew members;
- g) list of passengers giving the places of departure and destination;
- h) manifest of cargo and mail;
- i) general declaration;

Each Contracting Party shall recognize as valid the certificates and licenses mentioned above issued or rendered valid by the other Contracting Party.

**Portugal - U.S.S.R., 1974**

### **Article 12**

1. Aircraft of the airline designated by one Contracting Party must, during flights over the territory of the other Contracting Party, bear the identification and registration marks of their State, and carry certificates of registration, certificates of airworthiness and any other aircraft documents which the aeronautical authorities of the Contracting Parties may require, and also radio licenses.
2. Pilots and other members of the crew must be in possession of valid personal certificates.

3. All the above-mentioned documents issued or recognized as valid by one Contracting Party shall be recognized as valid within the territory of the other Contracting Party.

**Agreements of the U.S.A. - [No provisions].**

**Miscellaneous - [No provisions].**

## **2.10 - Aircraft in Distress and Investigation Procedures**

This section contains the procedures to be followed in emergency landings, accidents, or disasters on or over the territory of the contracting parties. It may also contain investigation procedures, and is connected to Articles 25 and 26 of the Chicago Convention.<sup>49</sup>

**Agreements of Hong Kong - [No provisions].**

**Canada - P.R.C., 1973**

### **Article 15**

1. In the event that an aircraft of the designated airline of one Contracting Party is in distress or meets with an accident in the territory of the other Contracting Party, the other Contracting Party shall, consistent with internationally accepted standards and practices, instruct the authorities concerned to take necessary action on the following:
  - (a) render assistance to the passengers and crew;
  - (b) inform without delay the first Contracting Party of the accident;
  - (c) provide all security measures for the aircraft and its contents and protect all relevant evidence;
  - (d) conduct an investigation into all the relevant circumstances;
  - (e) provide the accredited representatives or accredited representative and his advisers of the first Contracting Party with access to the aircraft and provide them with all facilities;

- (f) give clearance to the aircraft and its contents as soon as they are no longer necessary for the investigation;
  - (g) analyse the evidence and submit to the first Contracting Party six copies of a detailed report on the investigation containing the probable cause and findings together with substantiating information upon which the conclusions were based.
2. Upon receipt of the accident notification, the aeronautical authorities of one Contracting Party shall facilitate the investigation by providing relevant information regarding the flight crew and aircraft involved in the accident.
  3. An accident is also deemed to have occurred when an aircraft of the designated airline of one Contracting Party operating within the territory of the other Contracting Party is unreported and its known fuel reserves have been exhausted.

**Portugal - U.S.S.R., 1974**  
**Article 14**

1. In case of a forced landing or accident to an aircraft of one Contracting Party within the territory of the other Contracting Party, the latter Contracting Party shall take all the steps necessary to render assistance to the aircraft, its crew and passengers and shall take measures to safeguard the aircraft, as well as the baggage, cargo and mail on board the aircraft.
2. The Contracting Party in whose territory the accident has occurred shall immediately inform the other Contracting Party thereof, shall take all the steps necessary to investigate the circumstances and causes of the accident and shall, on request, grant the necessary permission for representatives of the other Contracting Party to be present at the investigation as observers.
3. The Contracting Party carrying out the investigation of the accident shall furnish the other Contracting Party with information on the results thereof and with the final accident investigation report.

**Agreements of the U.S.A. - [No provisions].**

**Miscellaneous - [No provisions].**

## **2.11 - Security Procedures**

This section refers to co-operation between the contracting parties in situations involving aviation security, including any bilateral communications or actions taken to prevent, suppress or terminate threats or acts of unlawful interference.

As a rule "[it] contains an undertaking to act in conformity with the provisions of the Tokyo (1963),<sup>50</sup> Hague (1970)<sup>51</sup> and Montreal (1971)<sup>52</sup> Conventions, and/or the ICAO Standards and Recommended Practices set out in Annex 17 - Security - Safeguarding International Civil Aviation against Acts of Unlawful Interference.<sup>53</sup> Even when the contracting parties are signatories, some of the principles enshrined in these documents are repeated under this heading.

**Hong Kong - Malaysia, 1991 - [Similar to the U.S.A. - Macau, 1991].**

**U.S.A. - P.R.C, 1980 - [Nearly identical to the U.S.A. - Macau, 1991].**

**Portugal - Hellenic Republic, 1986**

### **Article 8 - Security**

The Contracting Parties agree to provide all practicable aid to each other with a view to suppressing the unlawful seizure of aircraft and other unlawful acts against aircraft, airports and air navigation facilities, and threats to aviation security.

The Contracting Parties shall have regard to the provisions of the Convention on Offences and Certain Other Acts Committed on Board the Aircraft, signed at Tokyo on September 14th, 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on December 16th, 1970, and the Convention for the Suppression of

Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23rd, 1971. When incidents or threats of unlawful seizure of aircraft or other unlawful acts against aircraft, airports or air navigation facilities occur, the Contracting Parties shall expedite and facilitate communications to the extent practicable under the circumstances so as to terminate such incidents rapidly and safely.

**U.S.A. - Macau, 1991**

**Article 7 - Aviation Security**

1. In accordance with their rights and obligations under international law, the Parties reaffirm that their obligation to protect, in their mutual relationship, the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement.
2. The Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of aircraft and other unlawful acts against the safety of passengers, crew, aircraft, airports, and air navigation facilities and any other threat to aviation security.
3. The Parties shall act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970, and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.
4. The Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention; they shall require that operators of airports in their territory, operators of aircraft of their registry, and operators of aircraft who have their principal place of business or permanent residence in their territory act in conformity with such aviation security provisions.
5. Each Party agrees to observe the security provisions required by the other Party for entry into the territory of that other Party, as well as to take adequate measures to protect aircraft and to inspect passengers, crew, their carry-on items, cargo, and aircraft stores,

prior to and during boarding or loading. Each Party shall also give positive consideration to any request from the other Party for special security measures to meet a particular threat.

6. When an incident or threat of an incident of unlawful seizure of aircraft or other unlawful acts against the safety of passengers, crew, aircraft, airports, and air navigation facilities occurs, the Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.
7. When a Party has reasonable grounds to believe that the other Party has departed from the aviation security provisions of this Article, the aeronautical authorities of that Party may request immediate consultations with aeronautical authorities of the other Party. Failure to reach a satisfactory agreement within 30 days from the date of such request will constitute grounds for a decision to withhold, revoke, limit, or impose permission of an airline or airlines of the other Party. When required by an emergency, a Party may take interim action prior to the expiry of 30 days.

**Miscellaneous** - [All similar to one or another of the previous examples].

## **2.12 - Environmental Protection and Noise Abatement Procedures**

Provisions dealing with environmental issues do not often appear as these matters are dealt with in a separate context.

**U.K. - U.S.S.R., 1957** [Only this example was found].

### Annex

(...)

### 18 - Aircraft Noise

The airline designated by either Contracting Party shall, if as a result of noise measurements carried out by the aeronautical authorities of the other Contracting Party these measures are required in order to reduce aircraft noise to an acceptable level:

- (a) carry out any modification that may be necessary for this purpose to the aircraft to be used on the agreed services;
- (b) provide any mufflers or other devices required for this purpose for use during ground running at airports in the territory of the other Contracting Party to which the aircraft are to operate regularly.
- (c) employ such operating techniques or procedures as may be reasonably required by the other Contracting Party.

### **2.13 - Commercial Operations**

The commercial operations can be described in one or more provisions and cover among others, some or all of the following subjects:<sup>54</sup>

- Establishment of offices and airline representation;
- Local or convertible currency sales by airlines;
- Ground handling arrangements;
- Computer reservation systems;
- Currency conversion and remittance by airlines;
- Other commercial guidelines for airlines.

### **Hong Kong - The Netherlands, 1986**

#### **Article 10 - Sale of Air Transport Services**

The airlines of the Contracting Parties shall be free to sell air transport services in the area of both the Contracting Parties either directly or through an agent.

#### **Article 11 - Transfer of Earnings**

A designated airline of Hong Kong shall have the right to convert and remit to Hong Kong on demand local revenues in excess of sums locally disbursed. A designated airline of the Netherlands shall have the right to convert and remit to the Kingdom of the Netherlands on demand local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted without restrictions at the rate of exchange applicable to current transactions which is in effect at the time such revenues are presented for conversion and remittance.

**Hong Kong - Malaysia, 1991**

**Article 12 - Airline Representation and Sales**

(...)

- (2) The designated airline of each Contracting Party shall have the right to engage in the sale of air transportation in the area of the other Contracting Party, either directly or through agents. The designated airlines of each Contracting Party shall have the right to sell, and any person shall be free to purchase, such transportation in local currency or in any freely convertible other currency.

**U.S.A. - P.R.C., 1980**

**Article 9 - Representative Offices**

(...)

- (2) Each Party shall to the maximum extent practicable ensure the safety of the representative offices and their staff members of the designated airline(s) of the other Party, as well as safeguard their aircraft, stores, and other properties in its territory for use in the operation of the agreed services.
- (3) Each party shall extend assistance and facilities to the representative offices and their staff members of the designated airline(s) of the other Party as necessary for the efficient operation of the agreed services.

(...)

**Article 10 - Personnel**

- (1) The crew members of the designated airline(s) of either Party on flights into and out of the territory of the other Party shall be nationals of the Party designating such airline(s). If a designated airline of either Party desires to employ crew members of any other nationality on flights into and out of the territory of the other Party, prior approval shall be obtained from that other Party.
- (2) The staff of the representative offices of the designated airline(s) of each party in the territory of the other Party shall be nationals of either Party, unless otherwise agreed. The number



of such staff shall be subject to the approval of the competent authorities of both Parties. Each designated airline shall be permitted such number of staff as is adequate to perform the functions described in this Agreement associated with the provision of the agreed services, and in no event shall be less than that permitted to any foreign airline performing comparable services. Each Party shall by diplomatic note notify the other Party of the authorities which shall be considered the competent authorities for purposes of this paragraph.

#### Article 11 - Market Access

- (1) Matters relating to ground handling pertaining to the operation of the agreed services may be agreed upon between the airlines of both Parties, subject to the approval of the aeronautical authorities of both Parties.

(...)

- (5) The Parties agree to approve cooperative service arrangements negotiated on reasonable commercial terms between their airlines. The types of arrangements that will be approved include wet leases, blocked space arrangements and code-sharing. However, approvals will not be granted for arrangements involving the carriage of cabotage traffic, pooling or revenue-sharing arrangements.<sup>55</sup>

#### **U.S.A. - Macau, 1991**

##### Article 8 - Commercial Opportunities

1. The airlines of one Party may establish offices in the territory of the other Party for the promotion and sale of air transportation.
2. The designated airlines of one Party may, in accordance with the laws and regulations of the other Party relating to entry, residence, and employment, bring in and maintain in the territory of the other Party managerial, sales, technical, operational, and other specialist staff required for the provision of air transportation.

3. Each designated airline may perform its own ground handling in the territory of the other Party ("self-handling") or, at its option, select among competing agents for such services in whole or in part. These rights shall be subject only to physical constraints resulting from considerations of airport safety. Where such considerations preclude self-handling, ground services shall be available on an equal basis to all airlines; charges shall be based on the costs of services provided; and such services shall be comparable to the kind and quality of services as if self-handling were possible.
4. Each designated airline may engage in the sale of air transportation in the territory of the other Party directly and, at the airline's discretion, through its agents, except as may be specifically provided by the charter regulations of the country in which the charter originates that relate to national security or to the protection of passenger funds and passenger cancellation and refund rights. Each airline may sell such transportation, and any person shall be free to purchase such transportation, in the currency of that territory or in freely convertible currencies.
5. Each airline may convert and remit to its country, on demand, local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted promptly without restrictions or taxation in respect thereof at the rate of exchange applicable to current transactions and remittance on the date the carrier makes the initial application for remittance.
6. The airlines of one Party shall be permitted to pay for local expenses, including purchases of fuel, in the territory of the other Party in local currency. At their discretion, the airlines of one Party may pay for such expenses in the territory of the other Party in freely convertible currencies according to local currency regulation.

**F.R.G. - Macau, 1992**

**Article 11 - Commercial Activities**

- (1) Each Contracting Party shall, on a reciprocal basis, grant to any designated airline of the other Contracting Party the right to maintain in its territory such offices and administrative,

commercial and technical personnel as are needed by the designated airline.

- (2) The establishment of the offices and the employment of the personnel referred to in paragraph 1 above shall be subject to the laws and regulations of the Contracting Party concerned, such as the laws and regulations relating to the admission of foreigners and their stay in the territory of the Contracting Party concerned. The personnel employed in the offices according to paragraph 1 above shall not, however, require a work permit.
- (3) Each Contracting Party shall, on a reciprocal basis, grant to any designated airline of the other Contracting Party the right of self-handling of passengers, baggage, cargo and mail for the designated or other airlines of the other Contracting Party. This right does not include air-side ground handling services (aircraft ground handling), which remain the prerogative of the airport operators.
- (4) Each Contracting Party shall grant to any designated airline of the other Contracting Party the right to sell its transport services on its own transport documents directly in its own sales offices and through its agents in the territory of the other Contracting Party to any customer in any currency.

**The Netherlands - Macau, 1993**

**Article 12 - Transfer of Funds**

(...)

3. The airlines of the Contracting Parties shall receive approval for such transfer within at most 30 days of application, into a freely convertible currency, at the official rate of exchange for conversion of local currency, as at the date of sale.

The airlines of the Contracting Parties shall be free to effect the actual transfer on receipt of approval.

**Article 16 - Computer Reservation System**<sup>56</sup>

1. Contracting Parties agree that:

- a) the interest of consumers of air transport products shall be protected from any misuse of such information including misleading presentation thereof;
  - b) a designated airline of a Contracting Party and the airlines agents shall have unrestricted and non-discriminatory access to and use of CRS's in the territory of the other Contracting Party;
  - c) In this respect the CRS Code of Conduct adopted in the territory of the respective Contracting Parties shall be applicable.
2. Each Contracting Party guarantees to the CRS chosen as its primary system by the designated airline(s) of the other Contracting Party free and unimpaired access in its territory. Neither Contracting Party shall, in its territory, impose or permit to be imposed on the CRS chosen by the designated airline(s) of the other Contracting Party more stringent requirements than those imposed on the CRS of its own designated airline(s).

## **2.14 - Taxation**

Some bilateral air transport agreements contain provisions avoiding double taxation on a reciprocal basis, on income or profits derived by the operation of international air services of the designated airline of one Contracting Party in the territory of the other Contracting Party, as well as from any tax on turnover or capital. Those provisions are based in a model tax clause adopted in 1981 by IATA for bilateral air transport agreements.<sup>57</sup>

**Oman - P.R.C., 1983**

**Article 8 - Exemption from income and other taxes**

- (1) The designated airline of each Contracting Party shall be exempt from income tax or other similar taxes in the territory of the other Contracting Party in respect of the gains or profits accruing to it from the operation of the agreed services.
- (2) The employees of the designated airline who are nationals of either Contracting Party, shall be exempt from income tax or other similar taxes in the territory of the other Contracting Party, in respect of their emoluments, allowances or gains accruing to them from their employment in the said territory by the said designated airline for the purposes of the operation of the agreed services.

**Portugal - G.D.R., 1975**

**Article 11**

No taxes or other direct dues shall be imposed on any revenue achieved by the designated airline of one Contracting Party in the territory of the other Contracting Party by operating the agreed services on the specified routes.

**The Netherlands - Macau, 1993**

**Article 11 - Double Taxation**

1. Income and profits from the operation of aircraft in international traffic shall be taxable only in the State in which the place of effective management of the enterprise is situated.
2. Gains from the alienation of aircraft operated in international traffic shall be taxable only in the State in which the place of effective management of the enterprise is situated.
3. Capital represented by aircraft operated in international traffic and by movable property pertaining to the operation of such aircraft shall be taxable only in the State in which the place of effective management of the enterprise is situated.

4. The provisions of paragraph 1 of this Article shall also apply to income and profits from the participation in pool, a joint business or an international operating agency.

**Austria - Macau, 1993**

**Article 8 - Taxation**

(...)

- (3) Where a special Agreement for the avoidance of double taxation with respect to taxes on income and on capital exists between the Contracting Parties, the provision of the latter shall prevail.

**2.15 - Immigration and Control of Travel Documents**

Out of all the agreements examined, only the following example was found:

**F.R.G. - Macau, 1992**

**Article 13 - Immigration and Control of Travel Documents**

- (1) Upon the request of either Contracting Party the other Contracting party shall permit the airlines which exercise air traffic rights in both countries to take measures to ensure that only passengers with the travel documents required for entry into or transit through the requesting State are carried.
- (2) Either Contracting Party shall accept for examination a person being returned from his point of disembarkation after having been found inadmissible if this person previously stayed in its territory before embarkation, other than in direct transit. A Contracting Party shall not return such a person to the country where he was earlier found to be inadmissible.
- (3) This provision is not intended to prevent public authorities from further examining a returned inadmissible person to determine his eventual acceptability in the State or make arrangements for his transfer, removal or deportation to a State of which he is a national or where he is otherwise acceptable. Where a person who has been found to be inadmissible has lost or destroyed his travel documents, a Contracting Party shall accept instead a document attesting to the circumstances of embarkation and

arrival issued by the public authorities of the Contracting Party where the person was found to be inadmissible.

## **2.16 - Tariffs**

There is a wide variety in the presentation and precision of the tariff clauses included in bilateral air transport agreements. They can contain a definition of tariffs, relevant factors governing tariff establishment, different procedures for establishing tariffs, a secondary tariff establishment mechanism if the initial airline mechanism fails, procedures for the filing of tariffs and finally procedures to be followed in case of discord between the parties over tariffs and other than the settlement of disputes laid down in the agreement and related to any other matter.

As far as the establishment of tariffs is concerned, there are several procedures which can be adopted, enumerated below. The first method is to leave it to the industry's discretion to regulate prices for itself, either by the airline themselves or through a multilateral tariff mechanism for setting tariffs. "Most of the agreements refer expressly to the IATA rate-fixing machinery as the channel through which agreement between the airlines is to be made and consultation with other airlines conducted."<sup>58</sup>

Recourse to IATA's rate-fixing machinery is sometimes optional. Some bilateral air transport agreements stipulate that carriers, in determining the tariffs to be submitted to aeronautical authorities for approval, may use or shall use wherever possible the rate-fixing machinery of IATA. A few bilateral air transport agreements refer instead to "the international body which formulates proposals in this matter".<sup>59</sup>

The second method is by the direct intervention of governmental bodies. Usually this applies as a subsidiary method to be adopted if the airlines fail to reach an agreement.<sup>60</sup>

"The third is to leave the levels to be achieved through the free play of competitive forces in the market place."<sup>61</sup>

The tariffs agreed in accordance with the above methods must be subject to some governmental control by the contracting parties. The control procedures can be divided into the following main groups:

**"Double approval" or "Dual approval".** This method requires the approval of both parties involved in fixing the tariffs or an agreement on the tariffs submitted to them by the airlines before those tariffs can take effect.

**"Double disapproval", "Dual disapproval", or "Mutual disapproval".** Under this method unless both aeronautical authorities disapprove, tariffs become effective. "Prices are to be based upon commercial considerations in the marketplace. Intervention is limited to prevention of predatory or discriminatory prices or practices, protection of consumers from unduly high prices or prices that reflect the abuse of market position by a dominant carrier, and protection of airlines from prices that are artificially low because of direct or indirect governmental subsidy or support."<sup>62</sup>

**"Country of origin".** Whereby a party may disapprove tariffs only for flights originating in its own territory.<sup>63</sup>

"...[T]ariffs of foreign air carriers may be disapproved by the aeronautical authorities of the country where the air transportation commences, either on a one-way or roundtrip basis. Whereas under the mutual disapproval rule tariffs must be disapproved by the aeronautical authorities of both contracting Parties, the country of origin disapproval rule allows unilateral Governmental disapproval."<sup>64</sup>



**"Zone of reasonableness" or "fare band" system.**

"Found in a few bilateral agreement, it involves a reference point or points around which various types of tariff control are agreed. In its simplest form a zone may be established within which a tariff may not be disapproved by a party, though tariff filing may still be necessary. Outside of the zone, one or a combination of the above-mentioned tariff control processes may apply."<sup>65</sup>

A distinction between tariffs on third/fourth and fifth freedom sectors appears in some bilateral air transport agreements, as will be demonstrated below, and, in these cases, a combination of the different methods described can be found.

**Hong Kong - The Netherlands, 1986**

**Article 7 - Tariffs**

(...)

(10) (...)

- (b) The aeronautical authorities of each Contracting Party shall approve any tariff filed by the designated airline of the other Contracting Party for carriage between a point in the area of the first Contracting Party and a point other than in the Kingdom of the Netherlands or Hong Kong provided that:
  - (i) the airline in question is authorized by both aeronautical authorities to undertake such carriage; and
  - (ii) that tariff is identical with the duly approved tariff for that carriage charged by airlines of the first Contracting Party or the airlines of the country in which the other point is situated or, if there are no such airlines, by any other airline authorised to undertake such carriage by the aeronautical authorities of the first Contracting Party.

(...)

- (d) The Contracting Party which has approved a tariff established in accordance with subparagraphs (a), (b) and (c) of this paragraph may withdraw its approval with effect from the same day as that on which the tariff approved for its own or any other airline ceases to be effective.

**Hong Kong - Malaysia, 1991**

**Article 7 - Tariffs**

- (1) The term "tariff" means one or more of the following:
  - (a) the fare charged by an airline for the carriage of passengers and their baggage on scheduled air services and the charges and conditions for services ancillary to such carriage;
  - (b) the rate charged by an airline for the carriage of cargo (excluding mail) on scheduled air services;
  - (c) the conditions governing the availability or applicability of any such fare or rate including any benefits attaching to it; and
  - (d) the rate of commission paid by an airline to an agent in respect of tickets sold or air waybills completed by that agent for carriage on scheduled air services.
- (2) The tariffs to be charged by the designated airlines of the Contracting Parties for carriage between Hong Kong and Malaysia shall be those approved by the aeronautical authorities of both Contracting Parties and shall be established at reasonable levels, due regard being had to all relevant factors, including the cost of operating the agreed services, the interests of users, reasonable profit and the tariffs of other airlines operating over the whole or part of the same route.
- (3) The tariffs referred to in paragraph (2) of this Article may be agreed by the designated airlines of the Contracting Parties seeking approval of the tariffs, which may consult other airlines operating over the whole or part of the same route, before

proposing such tariffs. However, a designated airline shall not be precluded from proposing, nor the aeronautical authorities of the Contracting Parties from approving, any tariff, if that airline shall have failed to obtain the agreement of the other designated airlines to such tariff or because no other designated airline is operating on the same route. References in this and the preceding paragraph to "the same route" are to the route operated, not the specified route.

- (4) Any proposed tariff for carriage between Hong Kong and Malaysia shall be filed with the aeronautical authorities of the Contracting Parties by the designated airline or airlines seeking its approval in such form as the aeronautical authorities may separately require to disclose the particulars referred to in paragraph (1) of this Article. It shall be filed not less than 60 days (or such shorter period as the aeronautical authorities of the Contracting Parties may agree) before the proposed effective date. The proposed tariff shall be treated as having been filed with the aeronautical authorities of a Contracting Party on the date on which it is received by those aeronautical authorities.
- (5) Provided it has been filed in accordance with paragraph (4) of this Article, any proposed tariff may be approved by the aeronautical authorities of a Contracting Party at any time but shall be deemed to have been disapproved by the aeronautical authorities of that Contracting Party unless, within 30 days after the date of filing, the aeronautical authorities of one Contracting Party have served on the designated airline or airlines of the other Contracting Party written notice of approval of the proposed tariff.
- (6) If a tariff has not been approved in accordance with the provisions of paragraph (5) of this Article, the aeronautical authorities of the Contracting Parties may jointly determine the tariff. For this purpose, one Contracting Party may request consultations between the aeronautical authorities of the Contracting Parties in accordance with Article 14 of this Agreement.
- (7) If a tariff has not been approved by the aeronautical authorities of a Contracting Party in accordance with paragraph (5) of this Article, and if the aeronautical authorities of the Contracting Parties have been unable jointly to determine the tariff in

accordance with paragraph (6) of this Article, the dispute may be settled in accordance with the provisions of Article 15 of this Agreement.

- (8) Subject to paragraph (9) of this Article, a tariff established in accordance with the provisions of this Article shall remain valid until a replacement tariff has been established.
- (9) Except with the agreement of the aeronautical authorities of both Contracting Parties, and for such period as they may agree, the validity of a tariff shall not be prolonged by virtue of paragraph (8) of this Article:
  - (a) where a tariff has a terminal date, for more than 12 months after that date;
  - (b) where a tariff has no terminal date, for more than 12 months after the date on which a replacement tariff is filed with the aeronautical authorities of the Contracting Parties by a designated airline of a Contracting Party.
- (10)
  - (a) The tariffs to be charged by the designated airlines of Hong Kong for carriage between Malaysia and another State shall be subject to approval by the aeronautical authorities of Malaysia and, where appropriate, of the other State. The tariffs to be charged by the designated airlines of Malaysia for carriage between Hong Kong and a State other than Malaysia shall be subject to approval by the aeronautical authorities of Hong Kong and, where appropriate, of the other State.
  - (b) Any proposed tariff for such carriage shall be filed by the designated airline of one Contracting Party seeking approval of such tariff with the aeronautical authorities of the other Contracting Party. It shall be filed in such form as those aeronautical authorities may require to disclose the particulars referred to in paragraph (1) of this Article and not less than 90 days (or such shorter period as they may decide)

prior to the proposed effective date. The proposed tariff shall be treated as having been filed on the date on which it is received by those aeronautical authorities.

- (c) Such tariff may be approved at any time by the aeronautical authorities of the Contracting Party with whom it has been filed but shall be deemed to have been disapproved by them unless, within 30 days after the date of filing, they have served on the designated airline seeking approval of such tariff written notice of approval
  - (d) The aeronautical authorities of a Contracting Party may withdraw approval of any such tariff approved by them on giving 90 days notice to the designated airline charging such tariff. That airline shall cease to charge such tariff at the end of that period.
- (11) Notwithstanding the provisions of paragraphs (5) and (10)(c) of this Article, the aeronautical authorities of a Contracting Party shall approve any proposed tariff filed with them by a designated airline which corresponds (e.g. in price level, conditions and date of expiry but not necessarily the routing being used) to the tariff charged by an airline of that Contracting Party for comparable services between the same points or is more restrictive or higher than that tariff.

**U.S.A. - P.R.C., 1980**

**Annex IV - Conditions of Discount Fares**

Discount fares within the zone of pricing flexibility described in paragraph (3) of Article 13 of this Agreement shall be subject to the conditions of the type generally applicable to same or similar fares in other international air transportation markets. Such discount fares shall be subject to conditions in not less than four of the following categories:

- Round trip requirements;
- Advance-purchase requirements;
- Minimum-Maximum length of stay requirements;
- Stopover restrictions;
- Stopover charges;
- Transfer limitations;

- Cancellation refund penalties;
- Group size restrictions;
- Return travel conditions;
- Ground package requirements.

**Oman - P.R.C., 1983**

**Article 13 - Establishment of Tariffs**

- (1) The tariffs on any agreed services shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, reasonable profit, characteristics of service (such as standards of speed and accommodation) and the tariffs of other airlines for any part of the specified route. These tariffs shall be fixed in accordance with the following provisions of this Article.
- (2) The tariffs referred to in paragraph (1) of this Article shall be agreed upon between the designated airlines of both Contracting Parties. In consultation when necessary and possible, with other airlines operating over the whole or part of that route. The tariffs so agreed shall be subject to the approval of the aeronautical authorities of both Contracting Parties and shall be submitted to their respective aeronautical authorities at least 90 days prior to the proposed date of introduction of these tariffs. This period can be reduced in certain cases upon agreement between the said authorities.
- (3) If the designated airlines cannot agree on any of these tariffs, the aeronautical authorities of the Contracting Parties shall try to determine the tariffs by agreement between themselves.
- (4) If the aeronautical authorities cannot agree on the approval of any tariff submitted to them under paragraph (2) of this Article or on the determination of any tariff under paragraph (3), the matter shall be referred to the Contracting Parties for settlement in accordance with the provisions of Article (17) of the present Agreement.
- (5) Pending determination of a new tariff in accordance with the provisions of this Article, the tariffs already in force shall prevail. Nevertheless, a tariff shall not be prolonged by virtue

of this paragraph for more than 12 months after the date on which it otherwise would have expired.

**Portugal - Hellenic Republic, 1986**

**Article 14 - Tariffs**

(...)

2. The tariffs referred to in paragraph 1 of this article shall, if possible, be agreed by the designated airlines of both Contracting Parties, after consultation, if necessary, with other airlines operating over the whole or part of the route, and such agreement shall, wherever possible, be reached by the use of the procedures of the International Air Transport Association for the working out of tariffs.

(...)

**A.I.T. - C.C.N.A.A., 1980**

**Article 11 - Pricing**

(...)

- (4) Notwithstanding paragraph (3) of this Article, each party shall allow (a) any designated airline of either party or any airline of a third party to meet a lower or more competitive price proposed or charged by any other airline or charterer for air transportation between the territories of the parties, and (b) any designated airline of one party to meet a lower or more competitive price proposed or charged by any other airline or charterer for air transportation between the territory of the other party and an intermediate or beyond point. As used herein, the term "meet" means the right to establish on a timely basis, using such expedited procedures as may be necessary, an identical or similar price on a direct, interline or intra-line basis, notwithstanding differences in conditions relating to routing, roundtrip requirements, connections, type of service or aircraft type, or such price through a combination of prices.<sup>66</sup>

**U.S.A. - Macau, 1991**

**Article 12 - Pricing**

1. Each Party shall allow prices for air transportation to be established by each designated airline based upon commercial considerations in the marketplace. Intervention by the parties shall be limited to:
  - a. prevention of discriminatory prices or practices;
  - b. protection of consumers from prices that are unreasonably high or restrictive due to the abuse of a dominant position;
  - c. protection of airlines from prices that are artificially low because of direct or indirect governmental subsidy or support.
2. Each Party may require notification to or filing with its aeronautical authorities of prices proposed to be charged to or from its territory by airlines of the other Party. Notification or filing by the airlines of both Parties may be required no more than 30 days before the proposed date of effectiveness. In individual cases, notification or filing may be permitted on shorter notice than normally required. Neither Party shall require the notification or filing by airlines of the other Party of prices charged by charterers to the public, except as may be required on a non-discriminatory basis for information purposes.
3. Neither Party shall take unilateral action to prevent the inauguration or continuation of a price proposed to be charged or charged by (a) an airline of either Party for international air transportation between the territories of the Parties, or (b) an airline of one Party for international air transportation between the territory of the other Party and any other country, including in both cases transportation on an interline or intraline basis. If either Party believes that any such price is inconsistent with the considerations set forth in paragraph 1 of this Article, it shall request consultations and notify the other Party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than 30 days after receipt of the request, and the Parties shall cooperate in securing information necessary for reasoned resolution of the issue. If the Parties reach agreement with respect to a price for which a notice of dissatisfaction has been given, each Party shall use



its best efforts to put that agreement into effect. Without such mutual agreement, the price shall go into effect or continue in effect.

**F.R.G. - Macau, 1992**

**Article 10 - Tariffs**

- (1) The tariffs to be charged by a designated airline for passengers on the route specified in accordance with Article 2 (2) of this Agreement shall be subject to approval by the aeronautical authorities of the Contracting Party in whose territory the point of departure of the journey (according to the information in the transport documents) is situated.
- (2) In their tariffs, the designated airlines shall take into account the cost of operation, a reasonable profit, the prevailing conditions of competition and of the market as well as the interests of transport users. The competent aeronautical authorities may refuse to approve a tariff only, if it does not comply with this criterion.
- (3) The tariffs shall be submitted by the designated airlines to the aeronautical authorities for approval at least one month prior to the envisaged date of their introduction.
- (4) If the aeronautical authorities of either Contracting Party do not consent to a tariff submitted for their approval, they shall inform the airline concerned within 21 days after the date of submission of the tariff. In such case, this tariff shall not be applied. The tariff applied up to that time which was to be replaced by the new tariff shall continue to be applied.

**New Zealand - Macau, 1993<sup>67</sup>**

**Article 10 - Tariffs**

1. Each Contracting Party shall allow prices for air transportation to be established by each designated airline based upon commercial considerations in the marketplace.

Intervention by the Contracting Parties shall be limited to:

- (a) prevention of predatory or discriminatory prices or practices;

(...)

3. (...)

Without mutual agreement, that price shall not go into or continue in effect.[emphasis provided]

**Belgium - Macau, 1993**

**Article 13 - Tariffs**

(...)

- 10. Without prejudice to the application of the provisions of the preceding paragraphs of this article, the designated airlines shall be allowed to match, on sectors of the agreed services on which they exercise fifth freedom traffic rights, tariffs applied by the third and fourth freedom airlines on the same sectors.

The prices applied by the fifth freedom airlines shall not be lower and the tariff conditions shall not be less restrictive than those of the said third and fourth freedom airlines.<sup>68</sup>

**2.17 - Capacity**

In bilateral air transport agreements, capacity is generally defined in relation to "agreed services" and in relation to aircraft (i.e. Austria - Qatar, 1991). As far as concerns the former, "[it] means the capacity of the aircraft used on such services, multiplied by the frequency operated by such aircraft over a given period on a route or section of a route." As regards the latter, "[it] means the payload of that aircraft available on a route or section of a route."

In capacity provisions one can find some significant elements, which are exemplified as follows:<sup>69</sup>

- a statement of general principles governing capacity;
- a specific formula or division of capacity on routes between contracting parties;
- a statement of principles governing capacity on routes to or from third countries;
- a specific formula or division of capacity on routes to or from third countries;
- principles expressly excluding unilateral capacity controls;
- inter-airline arrangements affecting capacity;
- requirement for filing and approval by aeronautical authorities of capacity, frequencies, timetables and/or schedules;
- non-scheduled capacity arrangement(s);
- scheduled all-cargo capacity arrangement(s);
- change of gauge;<sup>70</sup>
- transferring scheduled capacity;

There are three basic methods of regulating capacity and a variety of other intermediate methods that cannot be classified as any one of the three main types. The three basic types are as follows:

- (i) Predetermination;
- (ii) Bermuda I;
- (iii) Free-determination;

It is quite common to find capacity clauses which include elements from more than one of the methods described, thus reflecting a greater or lesser degree of government intervention in deciding the capacity to be offered. The methods described above can be characterized as follows:

**(i) Predetermination:**

"Every predetermination system requires prior governmental determination or approval of capacity before air services may commence. Sometimes this determination or approval is limited to total capacity only.

More often it relates not only to total capacity, but also to frequency of flights, scheduling of flights and/or types of aircraft to be used. Predetermination clauses can take one of two forms: the bilateral air transport agreement repeats the *Bermuda I* capacity principles, but makes them subject to *a priori* rather than *ex post facto* governmental review; or, the bilateral agreement contains some other capacity principles, such as reciprocity or equal sharing of capacity between Contracting States, subject to prior governmental determination or approval. The system of governmental approval can also take one of two forms: individual airlines must seek prior governmental approval of capacity and frequencies; or the designated airlines must reach an inter-carrier agreement on capacity and related matters, subject to prior governmental approval.<sup>71</sup>

**(ii) Bermuda I:**

"Capacity instead of being predetermined, was to be regulated only by the airlines designated to operate on each route for which rights were granted on the basis of agreed general principles<sup>72</sup> and the possibility of *ex post facto* review by the aeronautical authorities concerned. The principles referred to included the understanding that the services provided should have as their primary objective the provision of capacity adequate to the demands of third and fourth freedom traffic, and that the right to fifth freedom traffic should be exercised subject to the general principle that capacity should be related to the requirements of a) "traffic between the country of origin and the countries of destination", b) "through airline operation" and c) "the area through which the airline passes after taking account of local and regional services".<sup>73</sup>

**(iii) Free - determination:**

These contain no conditions or limitations concerning the capacity to be offered by the designated airlines.<sup>74</sup>

"Under this arrangement, the parties agree that neither shall unilaterally limit the volume of traffic, frequency, or regularity of service, or the aircraft type or types operated by the designated airlines of the other party, except as may be required for customs, technical, operational, or environmental reasons under uniform conditions consistent with Article 15 of the Convention. The clause may also commit each party to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of the airlines of the other party."<sup>75</sup>

Given that within each group the text of these clauses varies very little from one agreement to the next, the following is intended to indicate the differences found in the agreements under examination.

**Hong Kong - Malaysia, 1991**

**Article 6 - Principles Governing Operation of Agreed Services**

- (1) There shall be fair and equal opportunity for the designated airlines of the Contracting Parties to operate the agreed services on the specified routes.
- (2) In operating the agreed services the designated airlines of each Contracting Party shall take into account the interests of the designated airlines of the other Contracting Party so as not to affect unduly the services which the latter provide on the whole or part of the same routes.
- (3) The agreed services provided by the designated airlines of the Contracting Parties shall bear a 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 meet the current and reasonably anticipated requirements for the carriage of passengers and cargo, including mail, originating in or destined for the area of the Contracting Party which has designated the airline. Provision for the carriage of passengers and cargo, including mail, both taken on board and discharged at points on the specified routes other than points in the area of the Contracting Party which designated the airline shall be made in accordance with the general principles that capacity shall be related to:
  - (a) traffic requirements to and from the area of the Contracting Party which has designated the airline;
  - (b) traffic requirements of the region through which the agreed service passes, taking account of other air services established by airlines of the States comprising that region; and

- (c) the requirements of through airline operation.
- (4) The capacity to be provided on the specified routes shall be such as is from time to time jointly determined by the Contracting Parties.

**Oman - P.R.C., 1983**

**Article 10 - Capacity Provisions**

(...)

- (2) Matters related to frequency, type of aircraft, schedule, ground handling and other matters pertaining to the operation of the agreed services shall be agreed upon through consultation between the designated airlines of both Contracting Parties. Frequency and type of aircraft so agreed shall be subject to the approval of the aeronautical authorities of both Contracting Parties.<sup>76</sup>

(...)

- (5) The capacity to be provided at the outset shall be agreed upon between both Contracting Parties before the agreed services are inaugurated. Thereafter, the capacity to be provided shall be discussed from time to time between the Aeronautical Authorities of the Contracting Parties and any change in capacity agreed upon shall be confirmed by an Exchange of Notes.

**Portugal - Hellenic Republic, 1986**

**Article 11 - Capacity**

(...)

- 2- The total capacity to be provided shall be maintained in equilibrium with the traffic requirements between the territories of the Contracting Parties and shall as far as possible be equally divided between the designated airlines.

(...)

**Singapore - U.S.A., 1978**

**Article 9**

(...)

- E. Without prejudice to the right of each Contracting Party to impose such uniform conditions on the use of airports and airport facilities as are consistent with Article 15 of the Convention on International Civil Aviation, neither Contracting Party shall unilaterally restrict the airline or airlines of the other Contracting Party with respect to capacity, frequency, scheduling or type of aircraft employed in connection with services over any of the routes specified in the Annex to this Agreement. In the event that one of the Contracting Parties believes that the operations conducted by an airline of the other Contracting Party have been inconsistent with the standards and principles set forth in this Article, it may request consultations pursuant to Article 12 of this Agreement for the purpose of reviewing the operations in question to determine whether they are in conformity with the said standards and principles.

**U.S.A. - Macau, 1991**

**Article 11 - Fair Competition**

1. Each Party shall allow a fair and equal opportunity for the designated airlines of both Parties to compete in the international air transportation covered by this Agreement.
2. Each Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of the airlines of the other Party.
3. Neither Party shall unilaterally limit the volume of traffic, frequency, regularity of service, or aircraft type or types operated by the designated airlines of the other Party, except as may be required for customs, technical, operational, or environmental reasons under uniform conditions consistent with Article 15 of the Convention.
4. Neither Party shall impose on the other Party's designated airlines a first refusal requirement, uplift ratio, no-objection fee,

or any other requirement with respect to the capacity, frequency, or traffic which would be inconsistent with the purposes of this Agreement.

5. Neither Party shall require the filing of schedules, programs for charter flights, or operational plans by airlines of the other Party for approval, except as may be required on a non-discriminatory basis to enforce uniform conditions as foreseen by paragraph 3 of this Article or as may be specifically authorized in an Annex to this agreement. If a Party requires filings for information purposes, it shall minimize the administrative burdens of filing requirements and procedures on air transportation intermediaries and on designated airlines of the other Party.

**Republic of Korea - Republic of China, 1986**

**Article 10 - Capacity Regulations**

1. The capacity offered by the designated airline shall be adapted to present and reasonably anticipate traffic requirements.
2. There shall be fair and equal opportunities for the designated airlines of both Contracting Parties to operate the agreed services.
3. In operating the agreed services, the designated airline of each Contracting Party shall take into consideration the interests of the designated airline of the other Contracting Party so as not to affect unduly the services which the latter provides on the whole or part of the same route.
4. The right to take up and set down at the points specified in the Annex and situated in the territory of the other Contracting Party traffic destined for or coming from a third country or territory shall be exercised in conformity with the general principles of orderly development to which both Contracting Parties subscribe.



**Luxembourg - Macau, 1992**

**Article 9 - Capacity**

1. The designated airline or airlines of the Contracting Parties shall have a fair and equal opportunity to operate the agreed services covered by this Agreement.
2. The capacity provided by each designated airline shall be such as will enable that airline at a reasonable load factor to provide the agreed services taking full account of the requirements of through-airline operations.
3. Neither Contracting Party may unilaterally impose any restrictions on the designated airline or airlines of the other Contracting Party with respect to capacity, frequency or type of aircraft employed in connection with services over any of the routes specified in the schedule annexed to this Agreement. In the event that one of the Contracting Parties believes that the operation proposed or conducted by the airline of the other Contracting Party unduly affects the agreed services provided by its designated airline, it may request consultation pursuant to Article 14 of this Agreement.

**New Zealand - Macau, 1993**

[The same as in Luxembourg - Macau, 1992].

**2.18 - Provision of Statistics and Other Information**

Some bilateral air transport agreements contain a provision which refers to the reciprocal duty of the contracting parties to provide statistics and other information deemed necessary.

**Hong Kong - Malaysia, 1991**

**Article 10 - Provision of Statistics**

The aeronautical authorities of each Contracting Party shall, on request, provide such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided

on the agreed services by the designated airlines of that Contracting Party to the aeronautical authorities of the other Contracting Party. Such statements shall include all information required to determine the amount of traffic carried by those airlines on the agreed services and the origins and destinations of such traffic.

**Canada - P.R.C., 1973**

Article 12

The aeronautical authorities of one Contracting Party shall provide to the aeronautical authorities of the other Contracting Party, at their request, information and statistics relating to the traffic carried by the designated airline of the first Contracting Party on the agreed services to and from the territory of the other Contracting Party.

**Belgium - Macau, 1993.**

[The same provision is contained in the Austria- Qatar, 1991, Article 12].

Article 16 - Exchange of information

1. The aeronautical authorities of both Contracting Parties shall exchange information, as promptly as possible, concerning the current authorizations extended to their respective designated airline to render service to, through, and from the territory of the other Contracting Party. This will include copies of current certificates and authorizations for services on specified routes, together with amendments, exemption orders and authorized service patterns.
2. Each Contracting Party shall cause its designated airline to provide to the aeronautical authorities of the other Contracting Party, as long in advance as practicable, copies of tariffs, schedules, including any modification thereon, and all other relevant information concerning the operation of the agreed services, including information about the capacity provided on each of the specified routes and any further information as may be required to satisfy the aeronautical authorities of the other Contracting Party that the requirements of this Agreement are being duly observed.

3. Each Contracting Party shall cause its designated airline to provide to the aeronautical authorities of the other Contracting Party statistics relating to the traffic carried on the agreed services showing the points of embarkation and disembarkation.

## **2.19 - Change of Aircraft**

"Change of aircraft" means the operation of one of the agreed services by a designated airline in such a way that one or more sectors of the route are flown over by aircraft different in capacity from those used on another sector.<sup>77</sup>

The terms "change of aircraft" and "change of gauge" are usually used to mean the same thing although the former has a broader meaning which can extend to a change of any aircraft while the latter implies a change to an aircraft of different capacity.<sup>78</sup>

When allowed, this practice is subject to some conditions specified in the agreement, such as (i) justification by economy of operation, (ii) consistency with the principles and standards set forth elsewhere in the agreements, (iii) place of change of aircraft (iv) and some other special conditions deemed desirable.<sup>79</sup> "Since economic factors, including 'economy of operation', form the main content of the legal principles which qualify, in international agreements, the permission to employ change of aircraft, the question whether, in a particular instance, change of aircraft is permissible under the agreements, can normally (...) be answered only after consideration of the concrete operating conditions of the given service."<sup>80</sup>

The draft of this section should be prepared very carefully paying attention to the unusual nature of particular routes which may eventually give rise to accepted variations in the practical construction of these and similar provisions.<sup>81</sup>

**U.S.A. - P.R.C., 1980**

**Annex I**

(...)

**Notes**

(...)

- (4) Subject to the provisions of Annex V [Capacity and carriage of traffic], the designated airline(s) of each Party may make a change of gauge in the territory of the other Party or at an intermediate point or points on the specified route(s) provided that:
- (a) operation beyond the point of change of gauge shall be performed by an aircraft having capacity less, for outbound services, or more, for inbound services, than that of the arriving aircraft.
  - (b) aircraft for such operations shall be scheduled in coincidence with the outbound or inbound aircraft, as the case may be, and may have the same flight number; and
  - (c) if a flight is delayed by operational or mechanical problems, the onward flight may operate without regard to the conditions in subparagraph (b) of this paragraph.

**U.S.A. - Macau, 1991**

[See below Section 33 - Annex(es)].

**The Netherlands - Macau, 1993**

**Article 3 - Change of Aircraft**

1. Each designated airline may on any or all flights on the agreed services and at its option, change aircraft in the territory of the other Contracting Party or at any point along the specified routes, provided that:
  - a. aircraft used beyond the point of change of aircraft shall be scheduled in coincidence with the inbound or outbound aircraft, as the case may be;
  - b. in the case of change of aircraft in the territory of the other Contracting Party and when more than one aircraft is operated beyond the point of change, not more than one such aircraft may be of equal size and none may be larger than the aircraft used on the third and fourth freedom sector.
2. For the purpose of change of aircraft operations, a designated airline may use its own equipment and, subject to national regulations, leased equipment, and may operate under commercial arrangements with another airline.
3. A designated airline may use different or identical flight numbers for the sectors of its change of aircraft operations.

**Belgium - Macau, 1993**

**Article 12 - Change of Gauge**

The designated airline of one Contracting Party may make a change of gauge in the territory of the other Contracting Party on the following conditions:

- a) that the substitution is justified by reasons of economy of operation;
- b) that the aircraft operating on the sector more distant from the territory of the Contracting Party designating the airline shall operate only in connection with the aircraft on the nearer sector 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 latter, and the capacity shall be determined with primary reference to this purpose;

- c) that the airline shall not hold itself out to the public by advertisement or otherwise as providing a service which originates at the point where the change of aircraft is made, unless otherwise permitted by the Annex to this Agreement;
- d) that in connection with any one aircraft flight into the territory of the other Contracting Party in which the change of aircraft is made, only one flight may be made out of that territory unless authorized by the aeronautical authorities of the other Contracting Party to operate more than one flight.

## **2.20 - User Charges**

This provision, related to Article 15 of the Chicago Convention,<sup>82</sup> deals with user charges for airports and air navigation facilities. It can at times indicate principles to be applied in the imposition of user charges, such as non-discrimination, no preferential treatment and "most favoured nation treatment".

### **Hong Kong - Malaysia, 1991**

#### **Article 13 - User Charges**

- (1) The term "user charge" means a charge made to airlines by the competent authorities or permitted by them to be made for the provision of airport property or facilities or of air navigation facilities, including related services and facilities, for aircraft, their crews, passengers and cargo.
- (2) A Contracting Party shall not impose or permit to be imposed on the designated airlines of the other Contracting Party user charges higher than those imposed on its own airlines operating similar international air services.
- (3) Each Contracting Party shall encourage consultation on user charges between its competent charging authorities and airlines using the services and facilities provided by those charging

authorities, where practicable through those airlines' representative organisations.

**U.S.A. - P.R.C., 1980**

**Article 6 - Technical Services and Charges**

- (1) Each Party shall designate in its territory regular airports and alternate airports to be used by the designated airline(s) of the other Party for the operation of the agreed services, and shall provide the latter with such communication, navigational, meteorological and other auxiliary services in its territory as are required for the operation of the agreed services, as set forth in Annex III to this Agreement
- (2) The designated airline(s) of each Party shall be charged for the use of airports, equipment and technical services of the other Party at fair and reasonable rates. Neither Party shall impose on the designated airline(s) of the other Party rates higher than those imposed on any other foreign airline operating international service.

(...)

**U.S.A.- Macau, 1991**

**Article 10 - User Charges**

1. User charges which may be imposed by the competent charging authorities or bodies of each Party on the airlines of the other Party shall be just, reasonable, non-discriminatory, and equitably apportioned among categories of users. In any event, user charges shall be assessed on all airlines of each Party on terms not less favourable than the most favourable terms available to any other airline.
2. User charges imposed on the airlines of the other Party may reflect, but shall not exceed, an equitable portion of the full economic cost to the competent charging authorities or bodies of providing the appropriate airport, air navigation, and aviation security facilities and services, and in the case of airport charges, may provide for a reasonable rate of return, after

depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis. Reasonable notice shall be given prior to changes in user charges.

(...)

**Canada - Australia, 1988**

**Article X - Airport and Facility Charges**

(...)

3. Neither of the Contracting Parties shall give preference to its own or any other airline over an airline engaged in similar international air services of the other Contracting Party in the application of its customs, immigration, quarantine and similar regulations or in the use of airports, airways, air traffic services and associated facilities under its control.

**Japan - Austria, 1989**

**Article 5**

The charges which either of the Contracting Parties may impose, or permit to be imposed, on the designated airlines of the other Contracting Party for the use of airports and other facilities under its control shall be just and reasonable and not higher than would be paid for the use of such airports and facilities by the airlines of the most favoured nation or by any national airline of the first Contracting Party engaged in international air services.

**2.21 - Customs Duties and Other Charges**

This section refers mainly to the exemption from customs duties and other charges on specified equipment and supplies on board aircraft. As a general rule, the contracting parties simply transcribe the contents of Article 24 of the Chicago Convention,<sup>83</sup> with their own variations.



**Hong Kong - Malaysia, 1991**

**Article 8 - Customs Duties**

(...)

- (6) Baggage and cargo in direct transit across the area of a Contracting Party shall be exempted from customs duties, excise taxes and similar fees and charges not based on the cost of services provided on arrival.

**U.S.A. - Macau, 1991**

**Article 9 - Customs Duties and Charges**

1. On arriving in the territory of one Party, aircraft operated in international air transportation by the designated airlines of the other Party, their regular equipment, ground equipment, fuel, lubricants, consumable technical supplies, spare parts (including engines), aircraft stores (including but not limited to such items of food, beverages and liquor, tobacco, and other products destined for sale to or use by passengers in limited quantities during flights) and other items intended for or used solely in connection with the operation or servicing of aircraft engaged in international air transportation shall be exempt, on the basis of reciprocity, from all import restrictions, property taxes, and similar fees and charges, imposed by the national authorities and not based on the cost of services provided, provided that such equipment and supplies remain on board the aircraft.
2. There shall also be exempt, on the basis of reciprocity, from the taxes, duties, fees, and charges referred to in paragraph 1 of this Article, with the exception of charges based on the cost of the service provided:
  - a. aircraft stores introduced into or supplied in the territory of one Party and taken on board, within reasonable limits, for use on outbound aircraft of an airline of the other Party engaged in international air transportation, even when these stores are to be used on a part of the journey performed over the territory of the Party in which they are taken on board;

- b. ground equipment and spare parts including engines introduced into the territory of a Party for the servicing, maintenance, or repair of aircraft of an airline of the other Party used in international air transportation; and
  - c. fuel, lubricants, and consumable technical supplies introduced into or supplied in the territory of a Party for use in an aircraft of an airline of the other Party engaged in international air transportation, even when these supplies are to be used on a part of the journey performed over the territory of the Party in which they are taken on board.
- 3. Equipment and supplies referred to in paragraphs 1 and 2 of this Article may be required to be kept under the supervision or control of the appropriate authorities.
  - 4. The exemptions provided by this Article shall also be available where the airlines of one Party have contracted with another airline, which similarly enjoys such exemptions from the other Party, for the loan or transfer in the territory of the other Party of the items specified in paragraphs 1 and 2 of this Article.

**Austria - Macau, 1993**

**Article 7 - Exemption from customs and other duties**

(...)

- 4) There shall be also exempt from all customs duties and/or taxes on a reciprocal basis items and goods imported into the territory of other Contracting Party for the exclusive use by the designated airline(s) of the other Contracting Party as follows:
  - (a) goods to be used for the establishment, equipment and operation of an office, e.g. all kinds of building material, furniture, typewriters, etc.;
  - (b) all types of telecommunications equipment as teletype-apparatus and walkie talkies or other wireless equipment for use within the airport;

- (c) airline computer systems for reservation and operational purposes, various official documents bearing the emblem of the airline such as luggage tags, air tickets, airway bills, timetables, boarding cards, etc.. As far as motor vehicles are concerned, the exemption covers only bus-type cars used for transfer of passengers and luggage between the city office and the airport.

**Belgium - Macau, 1993**

**Article 10 - Customs and Excise**

1. Each Contracting Party shall exempt the designated airline of the other Contracting Party from import restrictions, customs duties, excise taxes, inspection fees and other national, regional or local duties and charges on aircraft, fuel, lubricating oils, consumable technical supplies, spare parts including engines, regular aircraft equipment, ground equipment, aircraft stores and other items intended for use or used solely in connection with the operation or servicing of aircraft of the designated airline of such Contracting Party operating the agreed services, as well as printed ticket stock, airway bills, any printed material which bears the insignia of the company printed thereon and usual publicity material distributed without charge by that designated airline.

(...)

**2.22 - Non-Scheduled Operations**

As seen above, most bilateral air transport agreements cover essentially scheduled international air services.<sup>84</sup> Non-scheduled or charter air services are usually governed either by the administrative rules of the country of origin of the traffic or the country of destination or both.<sup>85</sup> However in most recent years, non-scheduled air services have increasingly been regulated under bilateral agreements, separate or together with scheduled air services.<sup>86</sup>

Some of the provisions governing non-scheduled operations shall be discussed below although it should not be forgotten that, when granted, the right to operate non-scheduled flights is usually contained in the Article dealing with the general granting of rights, or discussed in the annexes.<sup>87</sup>

**Agreements of Hong Kong - [No provisions].**

**Canada - P.R.C., 1973**

Article 20

The provisions set out in Article 5, 9, 10, 11, 14, and 15, as well as in Article 13, paragraph 3 of this Agreement shall be applicable to special flights and charter flights operated by an airline of one Contracting Party in the territory of the other Contracting Party in accordance with Article 2, paragraph 5 of this Agreement, and to the airline operating such flights.

**Portugal - Morocco, 1958**

Chapter III - Non-Scheduled Air Transport

Article 19

1. Each Contracting Party shall grant to the aircraft of the other Contracting Party the authorization to carry out non-scheduled commercial air transport flights from or to its territory, without the imposition of the "regulations, conditions or limitations" provided for in the second paragraph of Article 5 of the Convention, where the aircraft are used for one of the following activities:
  - (a) transport carried out for humanitarian purposes or in case of urgent necessity;
  - (b) passenger transport by aerial taxi, of an occasional nature and on a charter basis, provided that the aircraft does not have a seating capacity of more than six, that the destination is chosen by the hirer or hirers and that not part of the capacity of the aircraft is made available for the public;

- (c) transport carried out by aircraft of which the total capacity is hired by the single individual or corporate body for the carriage of his or its staff or merchandise, provided that no part of the said capacity is made available to a third party.
2. The same treatment shall be accorded to aircraft engaged in one of the following activities:
- (a) the transport of freight exclusively;
  - (b) the transport of passengers between regions which are not connected by scheduled air services;
  - (c) single transport flights, no carrier or group of carriers being entitled under this sub-paragraph to more than one flight per month between the same two traffic centres, for all the aircraft available to him or it.

Each Contracting Party may, however, require the abandonment of the activities specified in paragraph 2 of the present Article if it deems that these are harmful to the interests of its scheduled air services.

Furthermore, in respect of the activity referred to in sub-paragraph (b) of this paragraph, each Contracting Party may freely define the extent of the regions (in particular the aerodrome or aerodromes included) and modify this definition at any time.

#### Article 20

The Contracting States further agree that in cases not covered by Article 19 a prior authorization may be required for non-scheduled air transport; the period within which the application must be lodged shall not exceed two working days for a single transport flight or a series of four transport flights at most; a longer period may be specified in the case of a more extensive series of flights.

**Agreements of U.S.A. - [No provisions].**

**Miscellaneous - [No provisions].**

#### **2.23 - Exchange of Views**

Out of all the agreements examined, only the following example was found:

**F.R.G. - Macau, 1992**

**Article 14 - Exchange of Views**

Exchanges of views shall take place as needed between the aeronautical authorities of the Contracting Parties in order to achieve close cooperation and agreement in all matters pertaining to the application of this Agreement.

**2.24 - Consultations**

"An agreement may provide for consultation between the parties, aeronautical authorities or governments, for whatever purposes and following either detailed or unspecified procedures."<sup>88</sup> Held on a frequent, regular basis, these consultations can be used as a measure to prevent disputes arising.<sup>89</sup>

**Hong Kong - Malaysia, 1991**

**Article 14 - Consultation**

One Contracting Party may at any time request consultations on the implementation, interpretation, application or amendment of this Agreement. Such consultations, which may be between the aeronautical authorities of the Contracting Parties, shall begin within 60 days from the date the other Contracting Party receives such request in writing, unless otherwise agreed by the Contracting Parties.

**Oman - P.R.C., 1983**

**Article 16 - Consultations**

- (1) The aeronautical authorities of both Contracting Parties shall, when necessary, exchange views to the effect of ensuring close cooperation and approval of all matters relating to the implementation of this agreement.
- (2) Each Contracting Party may, at any time, request consultations with the other Contracting Party for the purpose of amending the present Agreement or Schedule. Such consultations shall begin within a period of 60 days from the date of receipt of

such request. Any amendments to the present Agreement agreed to, as a result of such consultations shall enter into force on the date of exchange of Diplomatic Notes stating that the legal procedures required have been fulfilled in accordance with their respective national laws.

- (3) If the amendment relates only to the Schedule, the consultations shall be between the aeronautical authorities of both Contracting Parties. When these authorities agree on a new or revised Schedule, the agreed amendments shall come into force as soon as they have been confirmed by an exchange of Diplomatic Notes.

**Japan - Austria, 1989**

Article 14

It is the intention of both Contracting Parties that there should be regular and frequent consultation between the aeronautical authorities of the Contracting Parties to ensure close collaboration in all matters affecting the fulfilment of the present Agreement.

**2.25 - Settlement of Disputes**

"Settlement of disputes in a bilateral air transport agreement is usually set out as a two-stage process, the first being consultation followed, if necessary, by arbitration."<sup>90</sup> This section usually contains procedures for consultation and/or negotiation between the airlines, the aeronautical authorities or the governments. In some agreements, direct negotiation between the parties constitutes the only means of settling disputes. It also indicates whether the agreement provides for the establishment of an *ad hoc* tribunal in the event that the consultation process does not resolve the dispute, or for the referral of a dispute to ICAO (International Civil Aviation Organisation), to its Council or to a tribunal established within ICAO, for advice or decision.

**Oman - P.R.C., 1983**

**Article 17 - Settlement of Disputes**

Both Contracting Parties shall ensure correct implementation of the present Agreement in a spirit of close cooperation and mutual support. If any difference of opinion arises in respect of the interpretation or implementation of this Agreement, the competent authorities of both Contracting Parties shall endeavour to settle it directly through consultations in a spirit of friendly cooperation and mutual understanding. On request, consultations shall begin within a period of 60 days from the date of receipt of such request. If agreement cannot be reached within 60 days, the Contracting Parties shall settle it through diplomatic channels.

**Portugal - Hellenic Republic, 1986**

**Article 18 - Settlement of Disputes**

- 1- If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place endeavour to settle it by direct negotiations.
- 2- If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body, or the dispute may, at the request of either Contracting Party, be submitted for decision to a tribunal of three arbitrators, one to be nominated by each Contracting Party and the third to be appointed by the two so nominated. Each of the Contracting Parties shall nominate an arbitrator within a period of 60 days from the date of receipt by either Contracting Party from the other of a notice through diplomatic channels requesting arbitration of the dispute and the third arbitrator shall be appointed within a further period of 60 days. If either of the Contracting Parties fails to nominate an arbitrator within the period specified or the third arbitrator is not appointed, the president of the Council of the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators, as the case requires. In such case, the third arbitrator shall be a national of a third State and shall act as president of the arbitral body.



- 3- The Contracting Parties undertake to comply with any decision given under paragraph 2 of this article.
- 4- If and so long as either Contracting Party or the designated airline of either Contracting Party fails to comply with the decision given under paragraph 2 of this article, the other Contracting Party may limit, suspend or revoke any rights or privileges which it has granted by virtue of this Agreement to the Contracting Party in default.
- 5- Each Contracting Party shall pay the expenses of the arbitrator it has nominated. The remaining expenses of the arbitral tribunal shall be shared equally by the Contracting Parties.

## **2.26 - Amendments**

There is usually a distinction drawn between amendments to the body of the agreement and amendments to the annex(es) or to the route schedule: "in the former case, a procedure identical to that for bringing the agreement itself into effect might be required for some countries, whereas in the latter case, modifications can be dealt with by means of an exchange of notes, or simply by direct agreement between the aeronautical authorities concerned."<sup>91</sup>

### **Hong Kong - The Netherlands, 1986**

#### **Article 15 - Amendment**

- (1) Any amendments to this Agreement other than the Annex agreed in writing by the Contracting Parties shall enter into force on the date when the Government of the Kingdom of the Netherlands notifies the Government of Hong Kong in writing that its constitutional procedures have been completed.
- (2) Any amendments to the Annex agreed by the Contracting Parties shall come into effect when confirmed in writing between the aeronautical authorities of both Contracting Parties.

**Hong Kong - Malaysia, 1991**

**Article 16 - Amendment**

Any amendments to this Agreement agreed by the Contracting Parties shall enter into force when confirmed in writing by the Contracting Parties.

**Portugal - Hellenic Republic, 1986**

**Article 16 - Modification of Agreement**

- 1- If either of the Contracting Parties considers it desirable to modify any provision of this Agreement, it may, at any time, request consultation to the other Contracting Party. Such consultation shall begin within a period of 60 days from the date of the request.
- 2- Any amendment or modification of this Agreement shall be settled between the Contracting Parties according to their own constitutional procedures and shall come into effect when it has been confirmed by an exchange of notes through diplomatic channels.
- 3- Modification to the annex may be effected by direct agreement between the aeronautical authorities of the Contracting Parties and shall come into force by an exchange of notes through diplomatic channels.

**Agreements of the U.S.A. - [No provisions].**

**2.27 - Multilateral Agreements**

This provision allows for the agreement to be modified to conform with any future applicable multilateral agreement that may be accepted by both parties. It may also be stated, in the same provision or in a different one that, in implementing a bilateral air

transport agreement the contracting parties shall act in conformity with the provisions of the Chicago Convention.

**Hong Kong - Canada, 1988<sup>92</sup>**

**Article 2 - Provisions of the Chicago Convention Applicable to International Air Services**

In implementing this Agreement, the Contracting Parties shall act in conformity with the provisions of the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, including the relevant Annexes, insofar as those provisions are applicable to international air services.

**Agreements of the P.R.C. - [No provisions].**

**Portugal - Finland, 1971**

**Article 13**

The present Agreement and its Annex shall be amended so as to conform with any multilateral convention which may become binding on both Contracting Parties.

**F.R.G. - Macau, 1992**

**Article 17 - Multilateral Conventions**

In the event of a general multilateral air transport convention accepted by the Contracting Parties entering into force, the provisions of such convention shall prevail. Any discussions with a view to determining the extent to which this Agreement is terminated, superseded, amended or supplemented by the provisions of the multilateral convention shall take place in accordance with Article 15 of this Agreement.

**The Netherlands - Macau, 1993**

**Article 21 - Applicability of Multilateral Agreements**

1. The provisions of the Convention [Convention on International Civil Aviation] shall be applied to this Agreement.
2. (...)

## **2.28 - Termination**

This provision deals with termination procedures to be followed if one of the parties wishes to terminate the agreement.

### **Portugal - G.D.R., 1975**

#### **Article 18**

The present Agreement shall be concluded for an indefinite period of time. It may be terminated by either Contracting Party through diplomatic channels and shall expire twelve months after the date of receipt of the notice by the other Contracting Party.

### **Portugal - Hellenic Republic, 1986**

#### **Article 19 - Termination**

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 Organization. In such case the Agreement shall terminate 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 acknowledgment of receipt by the other Contracting Party, notice shall be deemed to have been received 14 days after the receipt of the notice by the International Civil Aviation Organization.

### **U.S.A. - Macau, 1991**

#### **Article 15 - Termination**

Either Party may, at any time, give notice in writing to the other Party of its decision to terminate this Agreement. Such notice shall be sent simultaneously to the International Civil Aviation Organization. This Agreement shall terminate at midnight (at the place of receipt of the notice to the other Party) immediately before the first anniversary of the date of receipt of the notice by the other Party, unless the notice is withdrawn by agreement of the Parties before the end of this period.

## **2.29 - Registration**

Related to Article 83 of the Chicago Convention,<sup>93</sup> this Article contains an agreement of the parties to register the Agreement or any Exchange of Notes regarding the Agreement with ICAO. However, this practice is not entirely respected by States. Memoranda of understanding, which often change the meaning of a bilateral air transport agreement, are usually kept secret. Similarly, agreements between the airlines, affecting capacity, are not registered.<sup>94</sup>

### **Hong Kong - Malaysia, 1991**

#### **Article 18 - Registration with the International Civil Aviation Organization**

This Agreement and any amendment thereto shall be registered with the International Civil Aviation Organization.

### **Canada - P.R.C., 1973**

#### **Article 19**

This Agreement and any amendment thereto shall be registered by the Government of Canada with the appropriate international organization.<sup>95</sup>

**Agreements of Portugal - [No provisions].**

**Agreements of U.S.A. - [No provisions].**

### **F.R.G. - Macau, 1992**

#### **Article 18 - Registration with ICAO**

This Agreement, any amendments to it and any exchange of notes under Article 2 (2) of this Agreement shall be communicated by [ ] to the International Civil Aviation Organization (ICAO) for registration.

**Austria - Macau, 1993**

**Article 18 - Registration**

This Agreement and all amendments thereto shall be registered with the Council of the International Civil Aviation Organization and the Secretariat of the United Nations.

**2.30 - Previous Agreement**

This provision is used in case there is a previous bilateral air transport agreement to be replaced.

**Canada - Australia, 1988**

**Article XXIV - Termination of Previous Agreement**

This Agreement shall terminate the Agreement between the Governments of Canada and Australia for Air Services between Canada and Australia done in Ottawa on 11 June 1946 and all amendments thereto.

**F.R.G. - Macau, 1992**

**Article 19 - Previous Agreement**

This agreement shall replace the Agreement of [ ] between the Contracting Parties concerning [ ].

**2.31 - Entry into Force**

This provision gives the date when the agreement will come into force. The four main procedures used in that respect can be described as follows:<sup>96</sup>

- (i) **as from date of signature.** (From the day they are officially signed: upon the conclusion of the negotiations, or *ad referendum*).
- (ii) **provisionally as from date of signature.** (Provisionally upon signing pending the required constitutional approval).

- (iii) **as from date of fulfilment of legal or diplomatic requirements.**(After official signing and once constitutional requirements have been met).
- (iv) **date to be determined.** (On a specified date subsequent to their signing).

"[O]ften the fact that constitutional requirements have been met must be communicated between Contracting Parties, either through a fairly informal exchange of notes or through the more formal procedure of an exchange of instruments of ratification".<sup>97</sup>

**Hong Kong - The Netherlands, 1986**

Article 18 - Entry into Force

- (1) This Agreement shall enter into force on the date on which the Government of the Kingdom of the Netherlands notifies the Government of Hong Kong in writing that its constitutional procedures have been completed.
- (2) As regards the Kingdom of the Netherlands, this Agreement shall apply to the Kingdom in Europe only.

**Hong Kong - Malaysia, 1991**

Article 20 - Entry into Force

This Agreement shall enter into force on the date of signature.

**Spain - P.R.C., 1978**

Article 18

The present agreement shall come into force after both Contracting Parties have respectively completed their legal formalities and notified each other to this effect through exchange of diplomatic notes.

**U.S.A. - P.R.C., 1980**

**Article 18 - Entry into Force and Termination**

This Agreement shall enter into force on the date of its signature and shall remain in force for three years. Thereafter, it shall continue in force but may be terminated by either Party by giving twelve months' written notice to the other Party of its intention to terminate.

**Portugal - Finland, 1971**

**Article 15**

The present Agreement shall come into force 30 days from the date of signature.

**Austria - Qatar, 1991**

**Article 22 - Coming into Force**

The agreement shall be approved according to the Constitutional requirements in the country of each Contracting Party and shall come into force sixty (60) days after an exchange of diplomatic notes confirming that these requirements have been fulfilled.

**F.R.G. - Macau, 1992**

**Article 20 - Ratification, Entry into Force, Duration**

- (1) This Agreement shall be ratified; the instruments of ratification shall be exchanged at [ ] as soon as possible.1)
- (2) This Agreement shall enter into force one month after the exchange of the instruments of ratification.1)
- (3) This Agreement shall be concluded for an unlimited period.
  - 1) Should this Agreement require approval or consent by a national body of only one Contracting Party according to that Party's constitutional provisions, it can be concluded as an intergovernmental agreement. In this case paragraph 3 shall become paragraph 2, and paragraphs 1 and 2 shall be replaced by the following paragraph 1:



"(1) This Agreement shall enter into force one month from the date on which the two Governments have notified each other that the constitutional requirements for the entry into force of this Agreement have been fulfilled."

**The Netherlands - Macau, 1993**

**Article 23 - Entry into force**

The present Agreement shall be provisionally applied from the date of its signature and shall come into force on the day on which the Contracting Parties have informed each other in writing that the formalities constitutionally required therefore in their respective countries have been complied with.

**2.32 - Choice of Languages**

The languages used in bilateral air transport agreements are those of the contracting parties. Should neither of these be English or French then an English or French version is generally provided, these being languages of international civil aviation. Although all versions should be equally valid in terms of law, the contracting parties may decide to specify which language should govern in case of dispute.

**F.R.G. - Macau, 1992**

Done at ..... on .....in duplicate in the German and English languages, both texts being equally authentic.

[or]

Done at ..... on .....in duplicate in the German, ..... and English languages, all three texts being authentic. In case of divergent interpretations of the German and ..... texts, the English text shall prevail.

**The Netherlands - Macau, 1993**

Done in duplicate at .....19.., in the English language.

### 2.33 - Annex(es)

The annexes of a bilateral air transport agreement can contain everything the contracting parties consider should be regulated in an annex or dealt with in greater detail in order to clarify the regulations provided in the agreement itself.

As a general rule, the annex(es) contain the description of the "agreed services" to be operated on the "agreed routes"; the description of the routes to be operated, which may also sometimes be exchanged in the agreement itself, usually in the provision regulating the granting of rights; and the conditions/restrictions applied to the operation of the agreed routes.

The annex(es) may also contain provisions dealing with designation of airlines, capacity, frequencies, type of aircraft, pricing, as well as some technical matters referring, for example, to the identification of airports to be used, air routes (airways), aeronautical information, meteorological services, radio navigation and communication.<sup>98</sup>

As far as concerns the description of the "agreed services", there is sometimes a reiteration of the provision dealing with the granting of rights contained in the agreement itself. At other times there is simply a reference that the "agreed services" will be exercised on the "agreed routes" described. Occasionally, the annex is the only place where the agreed services exchanged between the contracting parties are laid down.

As for the description of a route pattern, there is no standard model and it can take as many forms as the contracting parties to a bilateral air transport agreement may

wish. "As distinct from an air navigation itinerary (airway), a route is a series of points which may be served by a scheduled international air service. Of necessity, points in the territories of both Contracting States must be included: other points will be 'intermediate points', if situated between the points in the Contracting States' territories, or 'points beyond', in other cases."<sup>99</sup> The agreement may mention:<sup>100</sup>

- a) the names of the two countries linked by the route;
- b) the name of a city in one of the countries and the name of the other country;
- c) the names of two cities, one in each of the two countries.

In some cases there is a list of a certain number of "intermediate points or places" specifically named that may be served in exercising the rights granted; in other cases the agreement only mention that traffic rights may be exercised "via intermediate points" without specifying these points. For certain routes, the expression "beyond" is included, implying that the routes may be extended beyond the terminal points in one direction or another. According to Professor Bing Cheng, a route structure can be defined as (i) rigid, (ii) free, (iii) flexible and (iv) semi-flexible. The route structures mentioned above can be characterized as follows:<sup>101</sup>

- (i) rigid - when all the traffic points on a specified route are individually indicated and may be altered only by agreement between the contracting parties (ex: London - Vienna - Belgrade - Athens).
- (ii) free - when there is complete freedom of flight between the contracting parties.
- (iii) flexible - the method enshrined in the Transit and Transport Agreements: "With respect to the privileges specified under paragraphs (...) the undertaking of each Contracting State relates 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" (Transport Agreement, Article I, Section 1).

- (iv) semi-flexible - when it offers a number of predetermined points which the States to which the operating rights are granted may choose (i.e. Bermuda I).

Many combinations of the above route structures are possible.<sup>102</sup> As an example of a possible combination, in a rigid route structure, certain points may be left semi-flexible (London - Lisbon and/or Azores - Bermuda/or Gander - New York or Chicago or Boston; a rigid route structure may also include entirely flexible points; or a semi - flexible route structure may include flexible points or sectors.

As for the conditions/restrictions that can be applicable to the agreed routes or to the exercise of rights along those routes, these can take many forms but it is possible to broadly identify and classify a number of frequently used conditions as follows:<sup>103</sup>

- Allowance for additional traffic point(s).
- Exemption of certain operations or routes from any restrictions.
- Allowance for omission of points with or without permission.
- Time restrictions on exercise of the rights granted.
- Restrictions on designation of airlines.
- Restrictions as to number of points served on route.
- Limitations on capacity, frequency or scheduling on particular route(s).
- Reference to stopover.
- Scheduled all-cargo routes only.
- Non-scheduled routes only.
- Separate agreement or exchange of diplomatic notes concerning the route exchange.
- Geographic restriction on exercise of traffic rights within a country or region.
- Other significant operational or traffic conditions/restrictions.

The granting of routes together with other important matters such as capacity, tariffs, the "agreed services" and the designation of airlines, represents the crucial point in bilateral air transport agreement negotiations. According to Professor Bing Cheng, the

granting of routes can have an important role in the final characterization of a bilateral air transport agreement which can appear to be liberal as far as regards the regulation of capacity and yet turns out to be very restrictive due to the careful granting of routes.<sup>104</sup>

**Hong Kong - Malaysia, 1991**

Annex

Route Schedule

Section 1

Routes to be operated by the designated airline or airlines of Hong Kong:

Hong Kong - intermediate points - points in Malaysia - points beyond.

Notes:

1. The points to be served on the routes specified above are to be jointly determined by the Contracting Parties.
2. The designated airline or airlines of Hong Kong may on any or all flights omit calling at any points on the routes specified above, and may serve intermediate points in any order, provided that the agreed services on these routes begin at Hong Kong.
3. No traffic may be taken on board at an intermediate point or at a point beyond and discharged at points in Malaysia or vice versa, except as may from time to time be jointly determined by the Contracting Parties.
4. No point in the mainland of China may be served as an intermediate point or a point beyond.

Section 2

Routes to be operated by the designated airline or airlines of Malaysia:

Points in Malaysia - intermediate points - Hong Kong -points beyond.

Notes:

1. [The same as in Section 1]
2. The designated airline or airlines of Malaysia may on any or all flights omit calling at any points on the routes specified above, and may serve points in Malaysia in any order, intermediate points in any order and points beyond in any order, provided that the agreed services on these routes begin at points in Malaysia.
3. [The same as in Section 1]
4. [The same as in Section 1]

**U.S.A. -P.R.C., 1980**

Annex II - Charter Air transportation

- (1) In addition to the operation of the agreed services by the designated airlines of the two Parties, any airline(s) of one Party may request permission to operate passenger and/or cargo (separately or in combination) charter flights between the territories of the Parties as well as between a third country and the territory of the Party to which the requests are addressed. Each Party may provide the other Party by diplomatic note a list of airlines qualified under the laws of the first Party to provide charter air transportation .
- (2) The application for charter flight(s) shall be filed with the aeronautical authorities of the other Party at least fifteen (15) days before the anticipated flight(s). The flight(s) can be operated only after permission has been obtained. Permission shall be granted without undue delay in the spirit of equality of opportunity for the airlines of both Parties to operate international charter air transportation, mutual benefit and friendly cooperation.
- (3) The aeronautical authorities of each Party shall minimize the filing requirements and other administrative burdens applicable to charterers and airlines of the other Party. In this connection, the charterers and airlines of a Party shall not be required by the other Party to submit more than the following information

in support of a request for permission to operate a charter flight or series of flights:

- (a) Purpose of flight;
- (b) Nationality of registration, owner and operator of aircraft;
- (c) Type of aircraft;
- (d) Either (i) identification marks and call signs of the aircraft, or (ii) flight number;
- (e) Name of captain and number of crew members;
- (f) The proposed flight plan (the air route, date, hours and destination);
- (g) The identity of the charterer or charterers;
- (h) The number of passengers, and/or the weight of cargo, on board; and
- (i) The price charged by the airline to each charterer.

The information contained in the application for charter flight(s) and required by subparagraphs (d), (e) and (h) may be changed, subject to notification prior to each flight plan.

- (4) In the event that either Party should have reasons to disapprove a particular charter flight or series of charter flights, it shall, under normal circumstances, give timely notification of the reasons therefore, and the applicant may, where appropriate, resubmit an application for approval of the requested flight or flights.
- (5) Neither Party shall require the filing by airlines of the other Party of prices charged to the public for charter transportation originating in the territory of the other Party, or a third country.
- (6) The provisions of Articles 2(4), 4, 5, 6, 7, 8, 9(2) and (4), 10, 11(1), and 14 and Annex III of this Agreement shall apply, mutatis mutandis, to charter air transportation.

**Portugal - Hellenic Republic, 1986**

Annex

Section 1

- 1- Routes to be operated in both directions by the airline designated by the Government of the Republic of Portugal:

Points in Portugal - intermediate points - Athens - points beyond.

- 2- (...)
- 3- To operate the services referred to in paragraph 1 of this section, the airline designated by the Government of the Republic of Portugal shall have the right:
  - a) To put in Athens international traffic in passengers, cargo and mail taken on in the territory of Portugal;
  - b) To take on in Athens international traffic in passengers, cargo and mail destined for the territory of Portugal.
- 4- (...)
- 5- The designated airlines of both Contracting Party's may omit calling at any of the above-mentioned points, provided that points in Greece and Portugal are not so omitted. Inclusion or omission of such points shall be announced to the public in due time.

## Section II

The designated airline of either Contracting Party may use one or several intermediate points and or points beyond, at its choice, on the above specified routes, and shall have the right to carry traffic in passengers, cargo and mail between that Contracting Party's own territory and such points.

## Section III

The designated airline of either Contracting Party may have the right to take on or put down in the territory of the other Contracting Party international traffic in passengers, cargo and mail destined for or originated at intermediate points and or points beyond on the routes specified in section 1, subject to agreement to be established between the designated airlines to be approved by the aeronautical authorities of both Contracting Parties.



**U.S.A. - Macau, 1991**

**Annex I - Scheduled Air Service**

**Section 1**

Airlines of one Party that are designated pursuant to this Agreement shall, in accordance with the terms of their designation, be entitled to perform scheduled international air transportation (1) between points on the following routes, and (2) between points on such routes and points in third countries through points in the territory of the Party that has designated the airlines.

**A. Routes for the airline or airlines designated by the Government of the United States:**

1. For passenger and cargo combination service:  
From the United States via intermediate points to Macau and beyond.
2. For all-cargo service:
  - a. From the United States via intermediate points to Macau and beyond; and
  - b. From Macau to and from points in States other than the People's Republic of China.

**B. Routes for the airline or airlines designated by the Government of Macau: \_\_\_\_\_**

**Section 2**

Each designated airline may, on any or all flights and at its option:

1. operate flights in either or both directions;
2. combine different flight numbers within one aircraft operation;
3. serve points on the routes in any combination and in any order (which may include serving intermediate points as beyond points and beyond points as intermediate points;
4. omit stops at any point or points;

5. transfer traffic from any of its aircraft to any of its other aircraft at any point on the routes,

without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement, provided that the service begins or terminates in the territory of the Party designating the airline.

### Section 3

On any segment or segments of the routes above, a designated airline may perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated, provided that in the outbound direction the transportation beyond such point is a continuation of the transportation from the territory of the Party that has designated the airline and, in the inbound direction, the transportation to the territory of the Party that has designated the airline is a continuation of the transportation beyond such point.

### Section 4

Air freight forwarders and air carriers shall be authorized to do business in the territory of the Parties, or to third countries, with respect to international air freight shipments and all activities incidental thereto, including door to door services, on a fair and equal basis with air freight forwarders or air carriers which are nationals of a Party. Such air freight forwarders, and air carriers (to the extent applicable), shall be granted all licenses and authority necessary to conduct such operations, including, but not limited to, those granting authority to act as a forwarder, consolidator, courier operator, customs broker, and trucker.

### Section 5

In operating or holding out the authorized services on the agreed routes, a designated airline of either Party, which holds appropriate authority to provide such service, may, on the basis of reciprocity, and subject to the requirements normally applied to such agreements, enter into cooperative marketing arrangements with another airline which also holds appropriate authority, provided that the arrangement does not include cabotage or revenue pooling.

Annex II  
Charter Air Services  
Section 1

Airlines of one Party designated under this Annex shall, in accordance with the terms of their designation, have the right to carry international charter traffic of passengers (and their accompanying baggage) and/or cargo (including, but not limited to, freight forwarder, split and combination (passenger/cargo) charters):

- (a) between any point or points in the territory of the Party which has designated the airline and any point or points in the territory of the other Party; and
- (b) between any point or points in the territory of the other Party and any point or points in a third country or countries, provided that such traffic is carried via the carrier's homeland and makes a stopover in the homeland for at least two consecutive nights.

In the performance of services covered by this Annex, airlines of one Party designated under this Annex shall also have the right: (1) to make stopovers at any points whether within or outside of the territory of either Party; (2) to carry transit traffic through the other Party's territory; and (3) to combine on the same aircraft traffic originating in one Party's territory with traffic that originated in the other Party's territory.

Each Party shall extend favourable consideration to applications by airlines of the other Party to carry traffic not covered by this Annex on the basis of comity and reciprocity.

Section 2

In addition to the right to operate charters originating in their homeland, whether on a one-way or round-trip basis, according to the rules specified for application to such charters by its own authorities, an airline or airlines of a Party designated for charter air services shall be permitted to operate charter air services originating in the territory of the other Party, whether on a one-way or round-trip basis, complying at their option, with the charter laws, regulations, and rules of either their homeland or the other Party. If a Party applies different rules, regulations, terms, conditions, or limitations to one or more of its airlines, or to airlines of different countries, each designated airline shall be subject to the least restrictive of such criteria.

However, nothing contained in the above paragraph shall limit the rights of one Party to require the designated airline or airlines of the other Party to adhere to requirements relating to the protection of passenger funds and passenger cancellation and refund rights.

### Section 3

Except with respect to the consumer protection rules referred to above, neither Party shall require a designated airline of the other Party, in respect to the carriage of authorized charter traffic on a one-way or round-trip basis, to submit more than a declaration of conformity with the applicable laws, regulations, and rules referred to under section 2 of this Annex, or a waiver of these regulations or rules granted by the applicable aeronautical authorities.

### **Canada - Australia, 1988**

#### Annex

Route to be operated in both directions by the designated airline of Canada

Points in Canada	Intermediate Points	Points in Australia
Any point or points in Canada	San Francisco Honolulu Tahiti Fiji	Sydney One other point in Australia to be named by Canada

Any point or points specified above may be omitted on any or all services, but all services shall originate or terminate in Canada.

Route to be operated in both directions by the designated airline of Australia

(...)

#### **Note**

1. The additional point in Australia to be named by Canada and the additional point in Canada to be named by Australia shall be any point with an airport designated for international operations.

2. Points to be named by either Contracting Party may be changed on six (6) months notice given to the other Contracting Party.

**Austria - Qatar, 1991**

**Annex I**

- (A) The airline designated by the Austrian Federal Government shall be entitled to operate scheduled air services in both directions on routes specified hereafter:
  1. Points in the territory of the Republic of Austria
  2. Points in the territory of the State of Qatar
- (B) (...)
- (C) Intermediate points and points beyond may be served by the designated airline of each Contracting Party without exercising fifth freedom traffic rights.
- (D) The exercise of fifth freedom traffic rights with respect to intermediate points and points beyond shall be agreed upon by the aeronautical authorities of the two Contracting Parties.

**Annex II**

1. Pursuant to Article 3 of this Agreement, the Government of the State of Qatar hereby designates Gulf Air Co. (GULF AIR) as the designated airline.
2. Pursuant to Article 3 of this Agreement, the Austrian Federal Government hereby designates AUSTRIAN AIRLINES as the designated airline.

## **ENDNOTES - PART II**

1. Vienna Convention on the Law of Treaties, signed at Vienna on May 23, 1969, (1969) 8 Int'l Leg. Mat. 679, Article 53 [hereinafter, Vienna Convention].
2. GIDWITZ, *supra*, Part I, note 61 at 154.
3. In drawing up this list, the contents of the ICAO Doc. 9511 - Digest of Bilateral Air Transport Agreements [hereinafter, ICAO Doc. 9511] have been adhered to closely, complemented with ICAO Circular 63 - AT/6 1962 - Handbook on Administrative Clauses in Bilateral Air Transport Agreements [hereinafter, ICAO Circular 63], GIDWITZ, *ibid.* at 153-154, and practical experience of various bilateral air transport agreements.
4. Hong Kong - The Netherlands, 17/9/1986, ICAO 3361.  
Hong Kong - Canada, 24/6/1988, ICAO 3454.  
Hong Kong - Malaysia, 4/3/1991, ICAO 3631.
5. Canada - People's Republic of China, 11/6/1973, ICAO 2400; CATC (73) 197.  
Spain - People's Republic of China, 19/6/1978, ICAO 3189.  
The Netherlands - People's Republic of China, 20/1/1979, ICAO 2912.  
U.S.A. - People's Republic of China, 17/9/1980, (Washington, D.C.: U.S. Department of State. Bureau of Public Affairs. Selected Documents no. 18). This agreement was amended on 19/8/82, 31/10/90 and 10/2/92.  
Oman - People's Republic of China, 3/5/1983, ICAO 3166; CATC (85) 5.
6. Portugal - Morocco, 3/4/1958, ICAO 1465; CATC (59) 63.  
Portugal - Finland, 14/6/1971, ICAO 2799; CATC (72) 120.  
Portugal - U.S.S.R., 11/12/1974, ICAO 2883; CATC (82) 171.  
Portugal - German Democratic Republic, 17/10/1975, CATC (79) 88.  
Portugal - Hellenic Republic, 16/5/1986, Diário da República no. 17, March 21, 1990.
7. U.S.A. - Canada, 17/1/1966, ICAO 1915.  
Singapore - U.S.A., 31/3/1978, ICAO 2787.  
American Institute in Taiwan (AIT) - Coordination Council for North American Affairs (CCNAA), 5/3/1980 - Air Transport Agreement negotiated and administered on a non-governmental basis by the AIT and the CCNAA, succeeding all previous U.S. - Republic of China Air Transport Agreements (Taipei: American Institute in Taiwan).  
U.S.A. - Macau (U.S.A. draft) 1991, unpublished.

8. United Kingdom - U.S.S.R., 19/12/1957, ICAO 1447. This agreement has only been examined very superficially and the clause of aircraft noise used because of its interest.  
Finland - Thailand, 18/4/86, ICAO 3272.  
Republic of Korea - Republic of China, 14/11/1986, CATC (87) 127.  
Singapore - Kenya, 14/8/1987, ICAO 3358.  
Brunei - Philippines, 24/8/87, ICAO 3348.  
New Zealand - Federal Republic of Germany, 2/11/1987, ICAO 3491.  
Canada - Australia, 5/7/88, ICAO 3392.  
Japan - Austria, 7/3/89, ICAO 3534.  
Austria - Qatar, 6/3/1991, ICAO 3653.  
Luxembourg - Macau (Luxembourg draft) 1992, unpublished.  
Federal Republic of Germany - Macau (F.R.G. draft) 1992, unpublished.  
New Zealand - Macau (New Zealand draft) 1993, unpublished.  
The Netherlands - Macau (New Zealand draft) 1993, unpublished. Austria - Macau (Austria draft) 1993, unpublished.  
Belgium - Macau (Belgium draft) 1993, unpublished.
9. HAANAPPEL, *supra*, Part I, note 9 at 142. See below, Section 2 - Definitions.
10. The term "territory" usually applied is replaced, here, by "area" in view of Hong Kong's special status *vis-à-vis* People's Republic of China.
11. See, for example Spain - P.R.C., 1978.
12. F.R.G. - Macau, 1992: " ... or in both cases any other person or agency authorized to perform the functions incumbent upon the said authorities".
13. CHICAGO CONVENTION, Article 96:

For the purpose of this Convention the expression:

- (a) "Air service" means any scheduled air service performed by aircraft for the public transport of passengers, mail or cargo.
- (b) "International air service" means an air service which passes through the air space over the territory of more than one State.
- (c) "Airline" means any air transport enterprise offering or operating an international air service.
- (d) "Stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers, cargo or mail.

14. In some agreements, namely those signed by the U.S.A., "air transportation" is used instead of "air services" and is intended to have a broader meaning including scheduled and non-scheduled air services.
15. *Ibid.* but related to "international air services".
16. CHICAGO CONVENTION, Article 2 - Territory:  
  
For the purpose of this Convention the territory of a State shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State.
17. Different from tariffs, price includes charter prices.
18. "Schedule" and "annex(es)" appear with the same meaning. Sometimes this point appears not as a definition but as a separate provision.
19. Out of all the agreements examined, the only definitions found were in this agreement and in the agreement between A.I.T.- C.C.N.A.A., 1980.
20. The only example found.
21. The only example found. This definition refers to article 9 of the Chicago Convention. It is worth noting, however, that the Republic of China is not a party to the Convention.

CHICAGO CONVENTION, Article 9 - Prohibited areas:

- (a) Each contracting State may, for reasons of military necessity or public safety, restrict or prohibit uniformly the aircraft of other States from flying over certain areas of its territory, provided that no distinction in this respect is made between the aircraft of the State whose territory is involved, engaged in international scheduled airline services, and the aircraft of the other contracting State likewise engaged. Such prohibited areas shall be of reasonable extent and location so as not to interfere unnecessarily with air navigation. Descriptions of such prohibited areas in the territory of a contracting State, as well as any subsequent alterations therein,



shall be communicated as soon as possible  
to the other contracting States and to the  
International Civil Aviation Organization.

22. In Belgium-Macau, 1993 there is the same definition but instead of "change of aircraft" it is defined as "change of gauge".
23. The only example found.
24. Text identical to that of Article 19 in Hong Kong - Malaysia, 1991.
25. See above, Freedoms of the Air, Part I, Chapter 2, Section 1.1.
26. ICAO Doc. 9511, *supra*, note 3 at En - xxv.
27. *Ibid.* at En - xxv.
28. For a deeper understanding of the subject of cabotage see M.C.G. VILÃO, Air Cabotage: Current Legal Issues (LL.M., Thesis, McGill University, 1991) [hereinafter, VILÃO]; for further information on the different interpretations of Article 7 of the Chicago Convention see L. WEBER, "External Aspects of EEC Air Transport Liberalization" (1990) 15 Air Law 277-287 at 282 [hereinafter, WEBER]; see also I. VLASIC & M.A. BRADLEY (eds.), The Public International Law of Air Transport: Materials and Documents, Vols. 1 & 2 (Montreal: IASL, McGill University, 1974) vol.1 at 87 [hereinafter, VLASIC & BRADLEY] and CHENG, *supra*, Part I, note 24 at 314ff.
29. HAANAPPEL III, *supra*, Part I, note 20 at 241; see also, *ibid.* at 257-259. On the regulation of non-scheduled air services under bilateral agreements see THAKER, *supra*, Part I, note 13.
30. ICAO Doc. 9511, *supra*, note 3 at En - xxvi. On all-cargo services see H.A. WASSENBERGH, "Aspects of Air Law and Civil Air Policy in the Seventies" in VLASIC & BRADLEY, *supra*, note 28 at 279.
31. EL-HUSSAINY, *supra*, Part I, note 20: "There is no international legal instrument (...) which defines stop-over or lays down provisions for its regulation.... It may mean a deliberate interruption of a journey by a passenger, agreed to in advance by the carrier, at a point between the place of departure and the place of destination." [Endnote added by author].
32. The text was provided by Macau's Government in accordance with the wishes of the People's Republic of China.

33. In liberal bilateral air transport agreements the right to designate an "airline or airlines" as in the Bermuda I (multiple designation), is replaced by the "right to designate as many airlines as [the contracting party] wishes (...) and to withdraw or alter such a designation" (unlimited multiple designation): BOGOSIAN, *supra*, Part I, note 135 at 1014. [Endnote added by author].
34. ICAO Doc. 9511, *supra*, note 3 at En-xv.
35. *Ibid.*
36. EL-HUSSAINY, *supra*, Part I, note 20 at 142.
37. GOEDHUIS, *supra*, Part I, note 36 at 213.
38. H.A. WASSENBERGH, Post-War International Civil Aviation Policy and the Law of the Air, 2d rev'd ed. (The Hague: Martinus Nijhoff, 1962) at 62 n. 1 [hereinafter, WASSENBERGH V].
39. Intervention of the Delegate of El Salvador during the Pan American Conference, held in Lima in 1940, in GOEDHUIS, *supra*, Part I, note 36 at 214. "One of the aims of the Conference was to prevent companies owned by German nationals, but registered in South-American States, to operate in the neighbourhood of the Panama Canal. Considerations of security were therefore at the basis of the clause", *ibid.* at 213.
40. In Hong Kong - Canada, 1988, "Government" is replaced by "aeronautical authorities".
41. In Hong Kong - The Netherlands, 1986, paragraph (5) has a different drafting: "When an airline has been so designated and authorised it may begin to operate the agreed services, provided that a tariff established in accordance with the provisions of Article 7 of this Agreement is in force in respect of that service."
42. In this Agreement "substantial ownership and effective control" is not an *a priori* condition for the granting of authorization.
43. CHICAGO CONVENTION, Article 11 - Applicability of air regulations:  
  
Subject to the provisions of this 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, and shall be complied with by

such aircraft upon entering or departing from or while within the territory of that State.

Article 13 - Entry and clearance regulations:

The laws and regulations of a contracting State as to the admission to or departure from its territory of passengers, crew or cargo of aircraft, such as regulations relating to entry, clearance, immigration, passports, customs, and quarantine shall be complied with by or on behalf of such passengers, crew or cargo upon entrance into or departure from, or while within the territory of that State.

44. ICAO Doc 9511, *supra*, note 3 at En-xvi.
45. Hong Kong - The Netherlands, 1986 and Hong Kong - Malaysia, 1991 do not have this provision.
46. CHICAGO CONVENTION, Article 32 - Licenses of personnel:
  - (a) The pilot of every aircraft and the other members of the operating crew of every aircraft engaged in international navigation shall be provided with certificates of competency and licenses issued or rendered valid by the State in which the aircraft is registered.
  - (b) Each contracting State reserves the right to refuse to recognize, for the purpose of flight above its own territory, certificates of competency and licenses granted to any of its nationals by another contracting State.

Article 3 - Recognition of certificates and licenses:

Certificates of airworthiness and certificates of competency and licenses issued or rendered valid by the contracting State in which the aircraft is registered, shall be recognized as valid by the other contracting States, provided that the requirements under which such certificates were issued or rendered valid are equal to or above the minimum standards which may be established from time to time pursuant to this Convention.

47. ICAO Doc. 9511, *supra*, note 3 at En-xvi.
48. CHICAGO CONVENTION, Article 29 - Documents carried in aircraft:

Every aircraft of a contracting State, engaged in international navigation, shall carry the following documents in conformity with the conditions prescribed in this Convention:

- (a) Its certificate of registration;
- (b) Its certificate of airworthiness;
- (c) The appropriate licenses for each member of the crew;
- (d) Its journey book;
- (e) If it is equipped with radio apparatus, the aircraft radio station license;
- (f) If it carries passengers, a list of their names and places of embarkation and destination;
- (g) If it carries cargo, a manifest and detailed declaration of the cargo.

49. CHICAGO CONVENTION, Article 25 - Aircraft in distress:

Each contracting State undertakes to provide such measures of assistance to aircraft in distress in its territory as it may find practicable, and to permit, subject to control by its own authorities, the owners of the aircraft or authorities of the State in which the aircraft is registered to provide such measures of assistance as may be necessitated by the circumstances. Each contracting State, when undertaking search for missing aircraft, will collaborate in coordinated measures which may be recommended from time to time pursuant to this Convention.

Article 26 - Investigation of accidents

In the event of an accident to an aircraft of a contracting State occurring in the territory of another contracting State, and involving death or serious injury, or indicating serious technical defect in the aircraft or air navigation facilities, the State in which the accident occurs will institute an inquiry into the circumstances of the accident, in accordance, so far as the laws permit, with the procedure which may be recommended by the International Civil Aviation Organization. The State in which the aircraft is registered shall be given the opportunity to appoint observers to be present at the inquiry and the State holding the inquiry shall communicate the report and findings in the matter to that State.

50. Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, ICAO Doc. 8364; TIAS 6758; 704 UNTS 219; 1970 Can. T.S. 5; 20 UST 2941.

51. Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970, ICAO Doc. 8920; TIAS 7192; 1972 Can. T.S. 23; 22 UST 1641.
52. Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, ICAO Doc. 8966; TIAS 7570; 1973 Can. T.S. 6; 24 UST 564.
53. ICAO Doc. 9511, *supra*, note 3 at En-xv.
54. *Ibid.* at En-vii.
55. This paragraph was added in the amendment of 10/2/92.
56. See Appendix 7 for an example of a computer reservation systems provision contained in the U.S.A. - Macau, 1991.
57. IATA's 47th Sub-Committee Meeting, Montreal, Oct. 8 and 9, 1981.
58. CHENG, *supra*, Part I, note 24 at 446.
59. LEBLANC, *supra*, Part I, note 123 at 125.
60. ICAO Doc. 9511, *supra*, note 3 at En-xix.
61. H.A. WASSENBERGH & H.P. van FENEMA (eds.), International Air Transport in the Eighties (Deventer, The Netherlands: Kluwer Law & Taxation, 1981) at 140 [hereinafter, WASSENBERGH & FENEMA].
62. BOGOSIAN, *supra*, Part I, note 135 at 1015.
63. Appendix 6 provides a draft of a "country of origin" pricing Article.
64. HAANAPPEL, *supra*, Part I, note 9 at 151.
65. ICAO Doc. 9511, *supra*, note 3 at En - xxi; see also HAANAPPEL, *ibid.* at 152.
66. See HAANAPPEL, *supra*, Part I, note 9 at 149-150; see also BOGOSIAN, *supra*, Part I, note 135 at 1015 n. 27:

"A 'price leader' is an airline that sets new prices independently of the two parties to the agreement" and MERCKY, *supra*, Part I, note 42 at 136-137: "Price leadership - i.e. the right of a carrier to introduce a new price, was traditionally restricted to

the carriers of the two countries involved (third and fourth freedom carriers). Airlines of third countries could match the prices of the two countries' own carriers between these two countries in fifth freedom traffic on the basis of reciprocity - i.e. if third countries permitted the airlines of the parties involved to match the prices offered by the third countries' airlines between such third countries and the territory of the other parties". [emphasis provided]

67. Paragraphs 1, 2 and 3 are nearly similar to the U.S.A. - Macau, 1991 and paragraph 4 is like A.I.T. - C.C.N.A.A., 1980. Attention should be drawn, however to the important differences between what is included in the USA - Macau, 1991 Agreement and the last part of paragraph 3 of the New - Zealand - Macau, 1993: U.S.A. - Macau, 1991  
(...)  
Without such mutual agreement the price shall go into effect or continue in effect. [emphasis provided]
68. Some bilateral air transport agreements, for example the The Netherlands - Macau, 1993 (Article 6) and the Austria - Macau, 1993 (Article 11), when discussing tariffs, only refer to the tariffs to be applied for carriage between the territories of the Contracting Parties and make no comment on the tariffs to be applied, i.e., when they exercise fifth freedom traffic rights, even though those drafts may contain wording which allows this kind of traffic to be granted.
69. ICAO Doc. 9511, *supra*, note 3 at En-viii.
70. See below, Section 19 - Change of Aircraft.
71. HAANAPPEL, *supra*, Part I, note 9 at 35-36.
72. The principles contained in Bermuda-type agreements are based on the principles enshrined in the Bermuda I Agreement. See above, Part I, Chapter 3, Section 3. [Endnote added by author]
73. ICAO Circular 137, *supra*, Part I, note 41 at 5.
74. Ibid. at 6.
75. ICAO Doc. 9511, *supra*, note 3 at En - xxiii.
76. In some bilateral air transport agreements, the duty to provide the other Contracting Party with operating information is laid down in a separate provision. In some cases it is only an exchange of information for the purpose

of reviewing the capacity provided by the designated airline(s) of the other Contracting Party (i.e. F.R.G. - Macau, 1992), but in most cases those conditions should be approved by the respective aeronautical authorities prior to the start of the operation of any agreed service.

- 77. See above, Section 2 - Definitions.
- 78. O.J. LISSITZYN, "Change of Aircraft on International Air Transport Routes" (1947) 14 JALC 57-67 at 57-58 [hereinafter, LISSITZYN].
- 79. *Ibid.* at 58-61; see also CHENG, *supra*, Part I, note 24 at 434ff.
- 80. LISSITZYN, *supra*, note 78 at 66.
- 81. *Ibid.* 24. at 61.
- 82. CHICAGO CONVENTION, Article 15 - Airport and similar charges:

Every airport in a contracting State which is open to public use by its national aircraft shall likewise, subject to the provisions of Article 68, be open under uniform conditions to the aircraft of all the other contracting States. The like uniform conditions shall apply to the use, by aircraft of every contracting State, of all air navigation facilities, including radio and meteorological services, which may be provided for public use for the safety and expedition of air navigation.

Any charges that may be imposed or permitted to be imposed by a contracting State for the use of such airports and air navigation facilities by the aircraft of any other contracting State shall not be higher,

- (a) As to aircraft not engaged in scheduled international air services, than those that would be paid by its national aircraft of the same class engaged in similar operations, and
- (b) As to aircraft engaged in scheduled international air services, than those that would be paid by its national aircraft engaged in similar international air services.

All such charges shall be published and communicated to the International Civil Aviation Organization: provided that, upon representation by an interested contracting State, the charges imposed for the use of airports and other facilities shall be

subject to review by the Council, which shall report and make recommendations thereon for the consideration of the State or States concerned. No fees, dues or other charges shall be imposed by any contracting State in respect solely of the right of transit over or entry into or exit from its territory of any aircraft of a contracting State or persons or property thereon.

83. CHICAGO CONVENTION, Article 24 - Customs duty:

- (a) Aircraft on a flight to, from, or across the territory of another contracting State shall be admitted temporarily free of duty, subject to the customs regulations of the State. Fuel, lubricating oils, spare parts, regular equipment and aircraft stores on board an aircraft of a contracting State, on arrival in the territory of another contracting State and retained on board on leaving the territory of that State shall be exempt from customs duty, inspection fees or similar national or local duties and charges. This exemption shall not apply to any quantities or articles unloaded, except in accordance with the customs regulations of the State, which may require that they shall be kept under customs supervision.
- (b) Spare parts and equipment imported into the territory of a contracting State for incorporation in or use on an aircraft of another contracting State engaged in international air navigation shall be admitted free of customs duty, subject to compliance with the regulations of the State concerned, which may provide that the articles shall be kept under customs supervision and control.

- 84. See Part I, Chapter 1, Section 4 and 4.1; see also Part II, Chapter 2, Section 4 - Grant of rights.
- 85. THAKER, *supra*, Part I, note 13 at 48-49; see also HAANAPPEL III, *supra*, Part I, note 20 at 257-258.
- 86. HAANAPPEL III, *ibid.* at 241.
- 87. See below, for an example, Section 33 - Annex(es), U.S.A. - Macau, 1991.
- 88. ICAO Doc. 9511, *supra*, note 3 at En - xvi.



89. B. CHENG, "The Role of Consultation in Bilateral International Air Services Agreements, as Exemplified by Bermuda I and Bermuda II", (1981) 19 Columbia J. Transnational Law 183-195 at 185ff. [hereinafter, CHENG I].
90. ICAO Doc. 9511, *supra*, note 3 at En - xvi.
91. ICAO Circular 63, *supra*, note 3 at 86-87.
92. The Hong Kong - The Netherlands, 1986 contains the same provision. The inclusion of this provision in the Agreements concluded by the Government of Hong Kong seems to have been justified by the fact that Hong Kong cannot be party to the Chicago Convention in its own right even though, through the U.K. Government, it adhered to the contents.
93. CHICAGO CONVENTION, Article 83 - Registration of new arrangements:

Subject to the provision of the preceding Article, any contracting State may make arrangements not inconsistent with the provisions of this Convention. Any such arrangement shall be forthwith registered with the Council, which shall make it public as soon as possible.
94. HAANAPPEL II, *supra*, Part I, note 11 at 298-299.
95. The People's Republic of China only became a party to the International Civil Aviation Organization on February 15, 1974.
96. ICAO Circular 63, *supra*, note 3 at 93ff; see also HAANAPPEL II, *supra*, Part I, note 11 at 299ff. and above, Part I, Chapter 2, Section 2.
97. HAANAPPEL II, *ibid.* at 299-300.
98. See for example, this Section, U.S.A. - P.R.C., 1980, Annex III. Those matters can also appear in separate provisions in the agreement itself.
99. NAVEAU, *supra*, Part I, note 3 at 43.
100. ICAO Doc. 4798 AT/526 23/10/47 - Bilateral Agreements "Chicago Type" (Study prepared by the Legal Studies Section) at 4 [hereinafter, ICAO Doc. 4798].
101. CHENG, *supra*, Part I, note 24 at 392ff.
102. *Ibid.* at 394ff.

103. ICAO Doc. 9511, *supra*, note 3 at En-xi; for further details see the same document at En-xxvi.
104. CHENG, *supra*, Part I, note 24 at 410.

### **PART III**

### **MACAU**

#### **CHAPTER 1 - MACAU'S BILATERAL AIR TRANSPORT AGREEMENTS UNDER THE APPLICABLE LEGISLATION**

##### **1.1 - MACAU'S POLITICAL AND LEGAL STATUS**

The historical and geographical situation of Macau has already been outlined in the Introduction with an indication of the Territory's status under international law.

Before analyzing the legal framework governing bilateral air transport agreements, particularly regarding the authority to conclude the said agreements both prior to and following the transition period, there should be a brief mention of Macau's political status *vis-à-vis* the Portuguese Republic and the People's Republic of China both now and after December 20, 1999.

The dramatic political changes that took place in Portugal in 1974 were accompanied by subsequent repercussions for Portugal's overseas possessions. As a result, in 1976, Macau was designated a "special territory" of Portugal with the ensuing right to self-government in administration, economy, finance and legislation (Article 292 of the Portuguese Constitution and Article 2 of the Macau Organic Statutes ([hereinafter, MOS])).<sup>1</sup>

The organs of the Government of Macau are the Governor and the Legislative Assembly (MOS - Article 4). The Governor is appointed and dismissed by the President of Portugal to whom he is directly accountable (MOS - Articles 7(1) and 20(1)). The

Governor is assisted in his executive duties by a maximum of seven under-secretaries, while his legislative duties are carried out in conjunction with the Legislative Assembly which consists of twenty three members elected from those citizens eligible to vote (MOS - Articles 6, 5 and 21(1)).

Following negotiations over the issue of Macau, a Joint Declaration on the Question of Macau was signed in Beijing by Portugal and China on April 13, 1987.<sup>2</sup> According to the Sino-Portuguese Joint Declaration, the Government of the Portuguese Republic will be responsible for the administration of Macau until December 20, 1999 (paragraph 3). On this date, the Territory will revert to Chinese sovereignty becoming a Special Administrative Region (paragraphs 1 and 2(1)). Following this date, Macau's present political, economic and social system are to remain unchanged for a further fifty years (paragraph 2).

In all areas other than foreign and defence affairs, the Special Administrative Region will enjoy a high degree of autonomy respecting the current capitalist system (paragraph 2(2)). A special amendment was introduced into the Chinese Constitution to allow the territories of Macau and Hong Kong (which will revert to China two years earlier, in 1997) to be excluded from the application of socialist policies after China resumes sovereignty.<sup>3</sup>

After December 20, 1999, the Special Administrative Region of Macau will be ruled by a Basic Law for which the final draft was adopted on March 31, 1993. The provisions contained in the draft of the Basic Law adhere very closely to the principles and spirit of the Joint Declaration.<sup>4</sup>

## **1.2 - BILATERAL AIR TRANSPORT AGREEMENTS AND MACAU'S LEGAL FRAMEWORK**

Under the terms of the Constitution of the Portuguese Republic (Article 137(i)) and Macau Organic Statutes (Article 3(2)), the power to enter into agreements or international conventions on behalf of Macau is vested in the President of the Portuguese Republic. This power may be delegated in the person of the Governor of Macau whenever dealing with matters of the Territory's exclusive interest (MOS - Article 3(2) at end). The signing of bilateral air transport agreements between Macau and other countries falls within the scope of the power that may be delegated to the Governor of Macau. Once signed and unless otherwise stated, these agreements will come into effect five days after publication in the Official Gazette of the Government of Macau (Article 8 of the Constitution of the Portuguese Republic and Article 73 of the MOS). The Legislative Assembly of Macau has the right of ratification whenever this right is requested by at least six members in one of the five sessions following publication as above (MOS - Article 15(1)).

A Joint Liaison Group, created under Annex II to the Joint Declaration, shall be consulted before the conclusion of any air transport agreements or any other relevant matters. The Joint Liaison Group includes a recently created working committee consisting of Chinese and Portuguese members whose main role is to define the guidelines of the model agreement which Macau should adopt in negotiating bilateral air transport agreements.<sup>5</sup>

Both the previous definition of the general principles governing air policy to be observed in the model agreement and the examination by the Joint Liaison Group of any bilateral air transport agreement before it is signed, can be interpreted as ratification of the acts currently practised by the Portuguese Republic in its administration and thus function as a kind of political guarantee that these agreements will be maintained by the People's Republic of China following the transfer of sovereignty.

Before concluding this section, it should be noted that the domestic law currently in force in Macau is of Portuguese origin although it is not always necessarily the same as the law in force in Portugal. There are some cases in which Macau's law includes norms created by the Territory's own Government which are not applicable to Portugal. Similarly, there are norms applicable to Macau which are no longer in force in Portugal. According to the Joint Declaration, the present legal system will remain basically unchanged until the year 2049 (paragraph 2(4) and 2(12)).

#### **1.2.1 - Macau's Legal Framework Post-1999**

The Sino-British Joint Declaration (section IX)<sup>6</sup> and the Basic Law for the Special Administrative Region of Hong Kong (section 4)<sup>7</sup> both have a chapter entirely devoted to civil aviation which specifies, amongst other details, the power of the future Special Administrative Region in signing future air agreements as well as in renewing or amending agreements in force at the time of transition.

In Macau, however, the situation of civil aviation after 1999 is, for all practical purposes, an unknown quantity. The Sino-Portuguese Joint Declaration makes no mention

of civil aviation whereas the Basic Law only makes a vague, general reference in Article 117 stating that "[w]hen duly authorised by the Central Government of the People's Republic of China, the Government of the Special Administrative Region of Macau may define its own systems for managing civil aviation".

Neither the omission in the Joint Declaration nor the lack of definition in the Basic Law appear to be intentional nor does it appear to be an attempt to give the Special Administrative Region of Macau less authority or autonomy than that allowed to the Special Administrative Region of Hong Kong. There are no obvious current or historical political reasons to explain why China might wish to adopt a more restrictive policy with Macau than with Hong Kong either now or after 1999.

The fact that Macau had no airport when the Joint Declaration was signed may have had some influence on the fact that the documents contain no reference whatsoever to civil aviation, an activity which was non-existent at the time.

The Basic Law, however, could have included norms for regulating specific details concerning the future of civil aviation. Construction of Macau's International Airport is expected to be complete prior to 1999 and consequently there is already a need for structures defining not only who will have the power to deal in the future with matters related to civil aviation, namely negotiating and signing bilateral air transport agreements to be concluded by the Special Administrative Region of Macau and other countries but also what is to happen after December 20, 1999 with agreements signed prior to the transition. Despite this, the Basic Law has remained close to the spirit of the Joint Declaration and civil aviation has only been given a passing mention leaving the

powers of the Special Administrative Region of Macau in the field of civil aviation to be defined at a later stage. Nevertheless, while on the one hand the vagueness of the Basic Law avoids limits being placed on Central Government from the outset, it does, however, mean that the autonomy of the Special Administrative Region has also been left untouched in this respect with no express reference to the Central Government's intention to retain these powers and not delegate them.

The contents of Article 117 seem to point to a fairly wide field of application if taken into account with the other general principles enshrined in the Basic Law.<sup>8</sup> These are vague and broad enough to allow the Special Administrative Region to decide, with the exception of some points which will always be reserved for the Central Government, its own policies for regulating civil aviation.

Obviously, whether or not agreements which are implemented prior to 1999 are to be maintained and the Special Administrative Region's power to enter into new bilateral air transport agreements with third parties shall depend on China's political goodwill and interest. However, it is also China's wish that Macau should become a Special Administrative Region. Consequently, although within the "one country, two systems" *modus operandi* political/ cultural factors do not necessarily offer future guarantees, issues of economic significance are not subject to the same concerns. A failure to maintain political and economic stability would be tantamount to altering the inherent significance of maintaining Macau as a Special Administrative Region and the advantages which this presents to China as a gateway in and out of the continent, a basic requirement for the "open-door" policy China wants to pursue.



## **CHAPTER 2 - MACAU'S CIVIL AVIATION STRUCTURE**

### **2.1 - MACAU INTERNATIONAL AIRPORT**

The future Macau International Airport is being built off Taipa Island on partially reclaimed land. Initially, it will cover a surface area of 191 hectares. Questions of a political and economic nature allegedly arising from technical issues have placed a variety of obstacles in the construction of the airport. One of the most controversial issues encountered so far has been the technical solution submitted for the choice of the structure of the airfield platform. This has meant that the airport will be completed two years later than plans initially indicated. After several detailed studies, it appeared that the most suitable solution had been found. This was to be a mixed solution with a structure on piles for the runway and taxiways and land reclamation for the landing strips and safety areas. However, following intensive negotiations, the mixed solution was recently abandoned and it was decided that the structure should be built entirely on reclaimed land.

Under the terms of a franchise signed by the Government of Macau on March 13, 1989, the construction of the Macau International Airport has been granted to a private company, the Macau Airport Corporation (CAM).<sup>9</sup> The main shareholders are the Government of Macau (51%), the Macau Tourism and Entertainment Corporation (STDM) (36.09%) and other local investors (Portuguese, Chinese and Macanese enterprises) (12.91%).

Under the terms of the franchise agreement, the Macau Airport Corporation will also operate the Macau International Airport as a public service for an initial period of twenty five-years, renewable on expiry (Articles 4 and 8). Operation of the airport is deemed to involve the planning, operation and development of all airport facilities including the flow of passengers, cargo and mail, air traffic control and meteorological services and all other activities required for the safe and efficient operation of the airport (Article 3).

The land where the Macau International Airport is being built has been granted for the duration of the contract for the franchise and development of the service, the maximum time limit being twenty-five years from the date of granting of the lease. It may, however, be renewed prior to December 19, 2049.<sup>10</sup> The conditions specified in the contract, namely those referring to the duration of lease, are in harmony with the Joint Declaration and the Sino-Portuguese Land Group created under the former's Annex II.<sup>11</sup> The Macau International Airport is being built according to a Master Plan which was drawn up in 1988 by an international consortium headed by Airconsult of Frankfurt Airport. Naturally, some changes have been made to the original plan over the course of construction. The essential technical characteristics prepared to meet the forecast demand and considering a period of seven years after the opening, can be described as follows (for a description of the other airport facilities see the chart below):

- The Macau International Airport will be able to handle all civil aircraft presently in operation and those to be developed in the near future. The reference aircraft is the Boeing 747-400.

- The traffic characteristics of the airport will be similar to those of Hong Kong Airport, but operating 24 hours a day.
- It will be a gateway to China, with a terminal for China traffic only. In this terminal, the procedures and formalities will be similar to those in Chinese airports, and performed by the Chinese authorities. (The Chinese area will be served by special buses for mainland China traffic. Transfer possibilities between the two terminals will be provided. Macau and Zhuhai will be linked by a roadway).
- The aircrafts will be predominantly medium and long range with high capacity, as well as medium sized aircraft for feeder services to China.
- The airport will be technically equipped for precision approaches (CAT II in the first phase). - Equipment and facilities subject to expansion should have an initial capacity up to 4.5 million passengers, with further expansion possible in a first increase up to 6 million.

The Master Plan includes plans for the expansion of the terminal area in the future and an area of over fifty hectares is to be made available for this purpose. The Macau International Airport is intended to start operating in mid-1995.

**CHART: Macau Airport Facilities**

[Source: Government of Macau]

**TRAFFIC FORECASTS**

Year	Passengers	Cargo (ton)	Movements
1996*	2 240 000	79 000	14 000
2000	3 780 000	115 000	22 500
2010	7 800 000	241 000	42 400

\* First full year of operation

**SYSTEMS/CAPACITY**

<b>Design Aircraft</b>	<b>Boeing</b>	<b>747-400</b>
<b>Runway: Length</b>	3320m	
	Ref. Temp	32°C
	Wind Coverage	99° %
	Operational Hours	24
	ILS Cat II	direction 34
<b>Taxiways:</b>	Width	44m
	C/L Separation	180m
<b>Apron:</b>	Stands (total)	16
	B747-400	6
	MD-11	10
	Mobile Equip. Area	7 000m <sup>2</sup>
<b>Passenger Terminal:</b>	Design Hour	2 000 Pax (one way)
	Capacity (1st phase)	4.5 million Pax
	Area	50 000m <sup>2</sup>
	Levels	5
	Loading Bridges	4
<b>Multi Storey Car Park</b>	Capacity	600 spaces
<b>Cargo Terminal</b>	Design Daily Volume	200 ton
	Capacity	120 000 ton
	Nose-in Stands	1/2
	Area	12 000m <sup>2</sup>
	Landside Frontage	150m
<b>Aircraft Maintenance</b>	Area	12 000m <sup>2</sup>
	Capacity	1B747-400/2 Medium size A/C

## **2.2 - MACAU'S AIRLINE**

### **2.2.1 - Structure**

An integral feature of the Macau International Airport Master Plan is the creation of a home-based airline as a strategy to attract traffic to the Territory.

In June 1990, a Business Plan (hereinafter, BP) analyzing the feasibility of setting up an airline was drawn up by Avmark International Limited and submitted to the Government of Macau for approval.

According to the Plan, the new airline is to be a Macau registered company, most likely under the name of Air Macau (BP 1.2 at 1). The investors in Air Macau would be a combination of the Government of Macau and Chinese institutions acting as private investors. "Provision should be made for there to be a minority of other potential investors" (BP 1.2 at 1). This airline would, for a considerable period of time, be Macau's sole flag carrier with the exception of services to Taiwan which would be operated with a new airline to be created with a separate identity (BP 1.2 at 1 and 1.2 at 2).

### **2.2.2 - Routes**

The routes to be developed will take into consideration Macau's excellent location and the potential for its airport to operate as a hub-and-spoke in the region. This would give it access to a variety of distinct market segments such as (BP 2.1 at 6):

- "- The market for services to China. This includes traffic from Macau itself and from the nearby Zhuhai SEZ [Special Economic Zone] and surrounding areas of China, as well as

from the broader Asia/Pacific region and including an element of Hong Kong originating traffic.

- The market for services to the surrounding Asia/Pacific region, particularly to Taiwan and Japan. As with the China market, this includes traffic from Macau itself as well as from the nearby Zhuhai SEZ and surrounding areas of China including an element of Hong Kong originating traffic.
- The intercontinental market for services to Europe, Australasia, and the United States."

At the start of operations, routes will be developed only in the two first markets. Scheduled flights to a number of intercontinental destinations will be developed later, by the third year of operation. Limited long-haul services to Europe should be provided, initially, by means of an appropriate commercial agreement with another airline (BP 1.2 at 3).

### 2.2.3 - Fleet

"[T]he ideal fleet procurement policy calculated for the airline involves initially two and later three related aircraft types" (BP 1.3 at 4). The two main alternative fleets proposed in the Plan are as follows (BP 3.3 at 15):

#### Short listed fleet types

##### Airbus types

150 Seats narrow-bodies (NB150)  
Airbus A320-200  
210 Seat wide-bodies (WB210)  
Airbus A310-200  
210 Seat extended-range wide-bodies (ER210)  
Airbus A310-300

##### Boeing types

Boeing 737-400  
Boeing B767-200  
Boeing B767-200ER

According to Avmark's Business Plan, the aircraft should be chosen for each service to be developed, as follows (BP 3.3 at 14):

- for China services - the Airbus A320-200, the Boeing B737-300 and 400 and the McDonnell Douglas MD82 and its derivatives;
- for Asia/Pacific regional services - the Airbus A310-200 and Boeing B767-200; and,
- for the intercontinental services - the B767-200ER and B767-300ER, the A310-300 and A300-600R, MDC MD11 and the A340-100/200.

According to the Business Plan, the fleet requirements for Air Macau will increase from an initial fleet of two 150-seat narrow-bodies and three 210-seat wide-body aircraft to a total of fourteen aircraft of all types, by the seventh year of operations. This includes the original two narrow-bodies and a total of twelve wide-bodies, four of them having an extended range capability (BP 3.3 at 15).

#### **2.2.4 - Corporate structure**

The Macau airline corporate structure will consist of a general board of Directors representing the shareholders on a basis to be agreed. The "role of the shareholders' board will be to determine overall company objectives and to lay down ground rules for the board of management to enable it to determine ways and means of achieving the company objectives. It will be for the management board to implement policies and to manage the company".

The management board shall be comprised of key company executives in charge of the main functions. The airline will be managed by a group of five key executives in addition to the Chief Executive. The board of management will be advised by corporate

and legal advisers. There will be a representative of the shareholders' board acting as a Chairman (BP 4.0, 4.1, 4.2, 4.3 at 26 ff.).

The Business Plan anticipates that the airline would come into operation with the opening of the Macau International Airport.

A review and an up-date of the plans for the Macau-based airline are underway in order to adjust initial expectations to the actual and potential capacity and interests of the new airline to correspond to the developments which have occurred. One of the most significant changes which is expected to be introduced concerns the routes to be developed. The Macau-based airline is thought to be in an excellent position to take advantage of domestic and regional flights. The intercontinental market is no longer being discussed as a potential market to be operated autonomously by the Macau airline although of course there is nothing preventing it from being operated by means of appropriate commercial arrangements with airlines intending to fly to Macau.

The other significant change to the initial Plan is related to the fleet requirements which will be considered under three groups according to the services or markets to be served as follows:

**A. Narrow-body Aircraft.**

This aircraft will be used predominantly for China services, due to airport runway limitations in many of the China's secondary cities, as well as the more limited total markets of the secondary cities. (B737-400 or the Airbus A320; the MD-90 series of aircraft can also be considered)



**B. Wide-body Aircraft.**

The wide body aircraft will be utilized on all Asian regional routes and on at least the Beijing and Shanghai services in China. (Airbus A310-300 and the Boeing B767; twin-engine Airbus 330, the Boeing B777 aircraft and the McDonnell Douglas MD-11 aircraft can also be considered)

**C. Regional/Commuter Aircraft.**

The use of smaller, approximately 50-seat turboprop or jet aircraft has been taken into consideration for the first time. The major advantage of the inclusion in the fleet of this type of aircraft would be the ability to offer services covering a secondary network of Chinese destinations now accessible only through Guangzhou or Shenzhen. (Possible aircraft choices which could fulfil this role would include the Saab 340 and Saab 2000, Fokker 50, Canadair Regional Jet, ATR 42 and 72, and the DeHavilland Dash 8 aircraft).

## **2.3 - THE MACAU CIVIL AVIATION AUTHORITY**

The governmental bodies in charge of the Airport project structure are the Secretary for Public Works and Transportation headed by an under-secretary who directly reports to the Governor of Macau, and the Macau Civil Aviation Authority (AACM). Created on February 4, 1991, AACM is a public entity under the supervision of the Governor of Macau, with administrative, financial and asset autonomy.<sup>12</sup>

"AACM shall lay down all guidelines and rules as well as supervise all civil aviation related matters carried out in the air space of the Territory of Macau and any international air space under the jurisdiction of Macau" [emphasis provided].<sup>13</sup> As the governmental body responsible for all civil aviation related matters, AACM has specific powers, *inter alia*, to lay down the regulations governing the planning, construction and

operation of the airport, negotiate air transport agreements and draft the necessary legislation.<sup>14</sup>

Matters dealing with international air traffic safety, reserved to sovereign States, are the responsibility of the Directorate-General of Civil Aviation (DGAC), the Portuguese government department responsible for civil aviation affairs.

In June 4, 1991, DGAC and AACM signed an agreement which specified rules for cooperation between the two departments and defined the powers of each body. It is thought that within a short time aeronautical powers pertaining to DGAC will be delegated to AACM. The specifications concerning international relations included in the Cooperation Agreement should be pointed out:

1. The territory of Macau will be represented in ICAO (International Civil Aviation Organization) by the Republic of Portugal through the Directorate-General of Civil Aviation.
2. The inclusion in the Air Navigation Plan for the Middle East of documents relating to the Macau Airport is the responsibility of the Directorate-General of Civil Aviation.
3. Current issues concerning the development of civil aviation in the Asia Pacific region and which fall within the scope of the relevant Regional office (The Far East and Pacific Office, in Bangkok) shall be dealt with by the Macau Civil Aviation Authority.
4. The Macau Civil Aviation Authority is responsible for negotiating agreements and memoranda of understanding involving the territory of Macau and countries of prospective flag carriers interested in using the future Macau Airport.

A new Cooperation Agreement is currently being developed. Similarly, new ways in which the Republic of Portugal and the territory of Macau can cooperate and give more autonomy and authority to the Macau Civil Aviation Authority are under study.

#### **2.4 - MACAU'S INTERNATIONAL AIR POLICY**

Macau continues its historical role as a trading post on the South China coast. Due to the physical limitations on the Territory's size and the inability of its domestic economy to carry on self-sustained development, Macau's economy depends almost entirely on imports. On the other hand, a variety of factors, such as cheap man-power has meant the Territory's production is geared towards exports.

The general trading policy adopted, which reflects these aspects, can be described as liberal with little official regulation, free circulation of goods and capital, and a moderate tax system.

The international air policy which the Government of Macau intends to follow will adhere to the general economic model in that it will play an important role in supporting the same system.<sup>15</sup>

In addition to political motives behind the decision to build an airport in Macau such as a desire to strengthen Portugal's presence in the region and guarantee autonomy for the Territory following 1999, a major factor was obviously Macau's development. In view of the fact that Macau is part of an economic unit undergoing rapid growth,

namely the Pearl River Delta region, it is hoped that the new airport will facilitate a better distribution of the goods manufactured locally and in the surrounding region to international markets, thereby contributing to an increase in exports. Furthermore, there is the intention that Macau should develop its business and tourist markets to take advantage of the fact that it functions as a gateway for people and goods to and from China following China's open door policy.

Given that Macau is located in one of most competitive regions in the world as far as concerns air transport, it is willing to follow natural trends, based on a gradual liberalization of air services agreements, in airline privatization and deregulation, creating a competitive environment in this part of the world, and thus attracting more people to fly.

Considering that Hong Kong has a powerful incorporated air transport industry which its Government will always have to protect, Macau hopes to be seen as an alternative to Hong Kong, which assumes a restrictive policy on air traffic rights, especially the granting of fifth freedom rights.

To take advantage of Macau's unique situation and achieve all the goals stated above, the international air policy which the Macau Government intends to adopt is, for the most part, liberal based on the free competition of the market forces and geared to attracting passengers and cargo air services.

There will, however, have to be some restrictions on this liberal policy. These limitations will, on the one hand, be placed on the granting of rights involving the operation of airlines from third countries between Macau and points on the Chinese

mainland, Hong Kong and Taiwan. This traffic will not be permitted, thus implying the total exclusion of traffic rights to and from the above mentioned points and furthermore these may not be served as either intermediate or beyond points.

On the other hand, some protection, at least initially, will be offered to Macau's carrier in the view of the local (regional) market which would thus allow it a reasonable chance of competing from the outset. Nevertheless, protecting the commercial interests of Macau's airline must never take precedence over the air policy in general, given that it will only exist as part of a wider project whose prime objective is to attract air traffic to the Territory.

**ENDNOTES - PART III**

1. Appendix 8 contains a non-official translation of all the relevant Macau legislation.
2. Joint Declaration of the Government of the Republic of Portugal and the Government of the People's Republic of China on the Question of Macau, April 13, 1987, *Boletim Oficial de Macau* (Official Gazette of the Government of Macau), no. 23 3rd supplement, June 7, 1988 [hereinafter, Joint Declaration]. For relevant extracts of the Joint Declaration see Appendix 8.
3. Article 31 of the Constitution of the People's Republic of China reads as follows:

"The State may, when necessary, create special administrative regions. The regime to be adopted in the administrative regions shall be defined in a law to be passed by the National Assembly in the light of the prevailing conditions."
4. Basic Law of Macau Special Administrative Region of the People's Republic of China, March 31, 1993, Consultative Committee for the Basic Law, Macau [hereinafter, Basic Law]. See Appendix 8 for the relevant provisions of the Basic Law.
5. The first meeting of the working committee took place in Macau, on January 7, 8 and 9, 1993.
6. Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong, December 19, 1984. For text see International Legal Materials 1984, 1366.
7. Basic Law of Hong Kong Special Administrative Region of the People's Republic of China, 1990, Consultative Committee for the Basic Law, Hong Kong.
8. See Appendix 8.
9. *Boletim Oficial de Macau* (Official Gazette of the Government of Macau) no. 11, March 13, 1989 at 1186.
10. *Boletim Oficial de Macau* (Official Gazette of the Government of Macau), no. 46 November 13, 1989.
11. *Ibid.*

12. *Boletim Oficial de Macau* (Official Gazette of the Government of Macau) no. 5 February 4, 1991, at 429, Articles 1 and 3.
13. *Ibid.*, Article 4 paragraph 1.
14. *Ibid.*, Article 5.
15. The international air policy intended to be followed is described in the Macau International Airport advertising material (Macau: Civil Aviation Authority).

## **CONCLUSION**

The signing of the Sino-Portuguese Joint Declaration, in 1987, marked the official beginning of the transition period in Macau. This period will come to a close on December 20, 1999, when the People's Republic of China resumes sovereignty over the Territory.

Contrary to what would be expected in the wake of the signing of the Joint Declaration, there has been no indication of instability or stagnation. Instead, although plans and studies already existed, it was really during the years 1987 to 1991 that Macau became the scene of unparalleled progress in the field of major infrastructural projects, namely the construction of a deep water harbour, the new Macau-Taipa bridge, a solid waste incineration station and the Macau International Airport, the last specifically discussed in this work.

Since construction work began on the Macau International Airport, several foreign airlines have approached the local civil aviation authorities in order to establish commercial air services between their countries and Macau. The possibility of concluding the Territory's first bilateral air transport agreements is currently under examination following contacts from different countries, namely the U.S.A., Luxembourg, the Federal Republic of Germany, Austria, The Netherlands, New Zealand and Belgium.

The absence of any precedents in the area of bilateral air transport agreements in Macau has made the negotiation process an extremely interesting task.



As has been outlined, the primary objective of this study has been to draw up a proposal for a bilateral air transport agreement which could serve as the basis for the discussions in which Macau will be involved.

This bilateral air transport agreement must be drafted according to the policy which Macau's Government deems to best serve the interests of Macau. This policy will follow closely the *laissez-faire* trade policy in general and will be predominantly liberal, based on the free competition of market forces and geared to attracting passengers and cargo air services. This will allow the best advantage to be reaped from Macau's special political status and also from its excellent geographical location, as outlined in Part III, Chapter 2, Section 4.

This essentially liberal policy, intended first and foremost to attract traffic to the Territory, will still be subject to certain variations or restrictions. These will be reflected in the air policy adopted for countries in the Asia/Pacific region where there must be some kind of protection in order to give Macau's carrier a chance to compete in its local market.

Likewise, another restriction which must be mentioned is China's demand that points on mainland China, as well as Hong Kong and points in Taiwan, should not be served as intermediate or beyond points, by third countries' airlines.

So, as to reflect the governmental international air policy as described above, the bilateral air transport agreements to be negotiated by the Macau Government should, from the outset, feature provisions which can vary according to whether or not the relevant country is located in the Asia/Pacific region. Similarly, there will be some

provisions featured in both groups of agreements with variations in the wording of the draft depending on the specific commercial interests of each contracting party.

Each group is characterized by the main elements it contains as follows:

**A. Countries outside the Asia/Pacific region**

- a liberal route structure (airline of country A may serve foreign countries from any point in its country, via any intermediate point and to any beyond point).
- free exchange of fifth and sixth freedom rights and, in some special cases, the possibility of granting the seventh freedom for all-cargo services.
- free determination of capacity, frequency and type of aircraft by the designated airlines according to market forces.

**B. Countries in the Asia/Pacific region**

- granting of fifth freedom traffic rights, if such traffic rights are deemed essential for the designated airlines to start operating to Macau and/or in exchange for benefits in kind for the Macau carrier.
- determination of capacity and frequency on a flexible basis with the introduction of clauses permitting adequate protection for the Macau carrier.

**C. Common to both A and B**

- i) Provisions related to Macau's special status.
  - traffic rights between Macau and points in mainland China, Hong Kong and Taiwan may not be exercised by third countries'

airlines, unless it is approved by the People's Republic of China.

ii) Provisions which can be drafted in varying ways depending on the negotiations but which are not dependent on the geographical locations of the contracting parties.

- designation of airlines:

- a) unlimited multiple designation;
- b) single designation; or
- c) multiple designation with route limitation.

- operating authorization:

- a) on the condition that the airline is qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air transportation by the aeronautical authorities of each contracting party;

and also, should it be demanded by the other contracting party,

- b) on the condition that the airline is incorporated and has its principal place of business in the territory of the contracting party designating the airline.<sup>1</sup>

- tariffs: minimal governmental control.

iii) Provisions which are drafted according to a standard, international pattern, namely all the other clauses referred to below deemed fundamental to the drafting of a bilateral air transport agreement.

It is in the best interest to use a standard form as far as possible, given that a model bilateral air transport agreement is, in essence, the codification of any country's air policy. Nevertheless, it is not possible for a country to have a rigid bilateral air transport agreement as negotiations vary depending on the commercial interests/demands or the international air policy of the two countries involved. Obviously, it is in the nature of a contract to provide the contracting parties with the freedom to establish the norms by which they are bound in the contract itself. Consequently, the model agreement should serve as a general draft for any negotiation. With regard to more controversial areas, it should contain various alternatives offering the different perspectives, bearing in mind the necessary care to be taken in concrete situations so as to avoid contradictions in the rationale behind the agreement.

On the basis of the examination of the various kinds of bilateral air transport agreements presented in Part I, Chapter 3, it would appear that the features of the post-Bermuda II fall closest in line with those characteristics deemed appropriate for Macau's bilateral air transport agreements, particularly for those countries outside the Asia/Pacific region. The choice of a draft bilateral air transport agreement based on the U.S.A. "liberal" model would thus seem to be the most appropriate basis for negotiations.<sup>2</sup>

More controversial areas in which choices can be made without any detriment to the homogeneity and rationale behind the agreement can look to some of the characteristic provisions of the Bermuda I and post-Bermuda I agreements which use a broad language, thus permitting greater flexibility in key areas. Furthermore, among those provisions, there is still room for a choice to be made between more restrictive and

broader provisions (hard or light-Bermuda) as demanded by the aims to be achieved or the interests to be protected.

The intention has not been to produce an agreement with an entirely new text but rather to adapt existing material to fit the case in hand in order to maintain as high as possible a degree of uniformity.

The clauses have been chosen from amongst those shown in Part II, Chapter 2 with preference given to those whose text is clearest and most frequently employed. Whenever required, one or more alternatives have been included. Specific provisions relating to Macau's situation have been adopted whenever deemed appropriate. Not all the clauses included in the sections discussed in Part II, Chapter 2 have been chosen, rather only those whose inclusion in a bilateral air transport agreement is considered essential. Those other clauses, which are fundamentally facultative, can be proposed by the country with whom the negotiations are being held, or other drafts of the kind shown in Part II could be adopted.

Bearing in mind Macau's specific features and its civil aviation structure as well as the international air policy to be adopted, it can be concluded that the Macau Government should use, as the basis for the discussions in which it will be involved, a model of a bilateral air transport agreement with the following contents:<sup>3</sup>

- Preamble;<sup>4</sup>
- Article 1 - Definitions;<sup>5</sup>
- Article 2 - Grant of rights;<sup>6</sup>
- Article 3 - Designation and authorization;<sup>7</sup>
- Article 4 - Revocation of authorization;<sup>8</sup>
- Article 5 - Application of laws;<sup>9</sup>
- Article 6 - Recognition of certificates and licenses (Safety);<sup>10</sup>

- Article 7 - Security procedures;<sup>11</sup>
- Article 8 - Commercial operations;<sup>12</sup>
- Article 9 - Tariffs;<sup>13</sup>
- Article 10 - Capacity;<sup>14</sup>
- Article 11 - User charges;<sup>15</sup>
- Article 12 - Customs duties and other charges;<sup>16</sup>
- Article 13 - Consultations;<sup>17</sup>
- Article 14 - Settlement of disputes;<sup>18</sup>
- Article 15 - Amendments;<sup>19</sup>
- Article 16 - Multilateral agreement;<sup>20</sup>
- Article 17 - Termination;<sup>21</sup>
- Article 18 - Registration;<sup>22</sup>
- Article 19 - Entry into force;<sup>23</sup>
- Annex(es).<sup>24</sup>

## MACAU STANDARD AGREEMENT

AIR TRANSPORT AGREEMENT BETWEEN THE GOVERNMENT OF MACAU  
AND THE GOVERNMENT OF \_\_\_\_\_.

The Government of Macau and the Government of \_\_\_\_\_,

Desiring to promote the development of air transportation between Macau and  
\_\_\_\_\_,

Desiring to conclude an Agreement for the purpose of providing the framework  
for such air transportation;

Have agreed as follows:

### ARTICLE 1 DEFINITIONS

1. For the purpose of this Agreement, unless the context otherwise requires, the term:

- (a) "Aeronautical authorities" means, in the case of Macau, the Civil Aviation Authority, or its successor, and in the case of \_\_\_\_\_, \_\_\_\_\_, or its successor;

- (b) "User charge" means a charge applied to airlines for the provision of airport, air navigation, or aviation security facilities and services;
- (c) "Designated airline" means the airline which either Contracting Party has designated to operate the agreed services on the specified routes;
- (d) "Stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers, baggage, cargo and/or mail in air transportation;
- (e) "Air transportation" means any operation performed by aircraft for the public carriage of traffic in passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire;
- (f) "International air transportation" means air transportation which passes through the airspace over the territory of more than one State;
- (g) "Area", with respect to Macau means the City of the Name of God of Macau and the Taipa and Coloane Islands, and, with respect to [ ], has the meaning assigned to Territory in Article 2 of the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944;
- (h) "Agreement" means this Agreement, its Annex(es) and any amendments thereto;
- (i) "Tariff" means the prices to be paid for the carriage of passengers, baggage and cargo and the conditions under which those prices apply, including prices and conditions for agency and other ancillary services, but excluding remuneration or conditions for the carriage of mail;  
(Alternative A)

[or]

"Price" means any fare, rate or charge for the carriage of passengers (and their baggage) and/or cargo (excluding mail) in air transportation charged by airlines, including their agents, and the conditions governing the availability of such fare, rate or charge; (Alternative B)

- (j) "Convention" means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944, and includes any Annex adopted under Article 90 of that Convention

and any amendment of the Annexes or Convention under Articles 90 and 94 thereof;

- (k) "Ground handling" means the processing, loading and unloading of passengers, baggage, cargo, mail and aircraft stores, aircraft cleaning and fuelling, and other rampside and airport terminal activities;
  - (l) "Change of aircraft" means the operation of one of the agreed services by a designated airline in such a way that one or more sectors of the route are flown by aircraft different in capacity from those used on another sector;
  - (m) "Computer Reservation System" (CRS) means a computerized system containing information about airline schedules, seat availability, fares and related services and through which reservations can be made and/or tickets can be issued and which makes some or all of these facilities available to travel agents;
2. The Annexes to the present Agreement shall be deemed to be an integral part thereof.

## **ARTICLE 2**

### **GRANT OF RIGHTS**

1. Each Party grants to the other Party the following rights for the conduct of international air transportation by the airlines of the other Party:
- (a) the right to fly across its area without landing;
  - (b) the right to make stops in its area for non-traffic purposes; and
  - (c) the rights otherwise specified in this Agreement. (Alternative A)
- [or]
- (c) the right to make stops in its area for the purpose of taking up and discharging, while operating the routes specified in the Annex, international traffic in passengers, cargo and mail, separately or in combination. (Alternative B)



2. Nothing in paragraph 1 of this Article shall be deemed to grant the right for one Party's airlines to participate in air transportation between points in the area of the other Party.

### **ARTICLE 3**

#### **DESIGNATION AND AUTHORIZATION**

1. 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 and to withdraw or alter such designations.
2. On receipt of such designation the other Contracting Party shall, subject to the provisions of paragraphs (3) and (4) of this Article, without delay grant to the airline or airlines designated the appropriate authorizations.
3. The aeronautical authorities of one Contracting Party may require an airline designated by the other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air transportation by such authorities.
- [4. Each Contracting Party shall have the right to refuse to grant the operating authorizations referred to in paragraph (2) of this Article, or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 2(1) of this Agreement, in any case where such Contracting Party is not satisfied that airline is incorporated and has its principal place of business in the area of the other Contracting Party. (Alternative A)

[or]

4. (a) The Government of Macau shall have the right to refuse to grant the operating authorizations referred to in paragraph (2) of this Article, or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 2(1) of this Agreement, in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Government of [ ] or its nationals.
- (b) The Government of [ ] shall have the right to refuse to grant the operating authorizations referred to in paragraph (2) of this

Article, or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 2(1) of this Agreement, in any case where it is not satisfied that airline is incorporated and has its principal place of business in Macau. (Alternative B)]

5. When an airline have been so designated and authorized it may begin to operate the agreed services, provided that the airline complies with the applicable provisions of this Agreement.

#### ARTICLE 4 REVOCATION OF AUTHORIZATION

1. Each Contracting Party shall have the right to revoke or suspend an operating authorization for the exercise of rights specified in Article 2(1) of this Agreement by an 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 the case of failure by that airline to comply with the laws or regulations of that Contracting Party granting these rights;
  - [(b) in any case where it is not satisfied that airline is incorporated and has its principal place of business in the area of the Contracting Party;  
(Alternative A)]

[or]

  - (b)
    - (i) in the case of the Government of Macau, in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Government of [ ] or its nationals;
    - (ii) in the case of the Government of [ ], in any case where it is not satisfied that airline is incorporated and has its principal place of business in Macau; (Alternative B)]
  - (c) if that airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.
2. Unless immediate revocation or suspension of the operating authorization mentioned in paragraph (1) of this Article or imposition of the conditions therein

is essential to prevent further infringement of the laws and regulations, such right shall be exercised only after consultations with the other Contracting Party.

3. This Article does not limit the rights of either Party to suspend, limit, or condition air services in accordance with the provisions of Article 7 (Aviation Security).

#### **ARTICLE 5** **APPLICATION OF LAWS**

1. While entering, within or leaving the area of one Party, its laws and regulations relating to the operation and navigation of aircraft shall be complied with by the other Party's airlines.
2. While entering, within, or leaving the area of one Party, its laws and regulations relating to the admission to or departure from its area of passengers, crew, or cargo on aircraft (including regulations relating to entry, clearance, aviation security, immigration, passports, customs, and quarantine or, in the case of mail, postal regulations) shall be complied with by, or on behalf of such passengers, crew, or cargo of the other Party's airlines.

#### **ARTICLE 6** **RECOGNITION OF CERTIFICATES AND LICENSES (SAFETY)**

1. Each Party shall recognize as valid, for the purpose of operating the air transportation provided for in this Agreement, certificates of airworthiness, certificates of competency, and licenses issued or validated by the other Party and still in force, provided that the requirements for such certificates or licenses at least equal the minimum standards which may be established pursuant to the Convention. Each Party may, however, refuse to recognize as valid for the purpose of flight above its own area, certificates of competency and licenses granted to or validated for its own nationals by the other Party.
2. Each Party may request consultations concerning the safety standards maintained by the other Party relating to aeronautical facilities, aircrew, aircraft, and operation of the designated airlines. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards and requirements in these areas that at least equal the minimum standards which may be established pursuant to the Convention, the other Party shall be notified of such findings and the steps considered necessary to conform with these minimum standards; and the other Party shall take appropriate

corrective action. Each Party reserves the right to withhold, revoke, or limit the operating authorization or technical permission of an airline or airlines designated by the other Party in the event the other Party does not take such appropriate corrective action within a reasonable time.

## **ARTICLE 7**

### **SECURITY PROCEDURES**

1. In accordance with their rights and obligations under international law, the Parties reaffirm that their obligation to protect, in their mutual relationship, the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement.
2. The Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of aircraft and other unlawful acts against the safety of passengers, crew, aircraft, airports, and air navigation facilities and any other threat to aviation security.
3. The Parties shall act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970, and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.
4. The Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention; they shall require that operators of airports in their area, operators of aircraft of their registry, and operators of aircraft who have their principal place of business or permanent residence in their area act in conformity with such aviation security provisions.
5. Each Party agrees to observe the security provisions required by the other Party for entry into the area of that other Party, as well as to take adequate measures to protect aircraft and to inspect passengers, crew, their carry-on items, cargo, and aircraft stores, prior to and during boarding or loading. Each Party shall also give positive consideration to any request from the other Party for special security measures to meet a particular threat.
6. When an incident or threat of an incident of unlawful seizure of aircraft or other unlawful acts against the safety of passengers, crew, aircraft, airports, and air navigation facilities occurs, the Parties shall assist each other by facilitating

communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

7. When a Party has reasonable grounds to believe that the other Party has departed from the aviation security provisions of this Article, the aeronautical authorities of that Party may request immediate consultations with aeronautical authorities of the other Party. Failure to reach a satisfactory agreement within 30 days from the date of such request will constitute grounds for a decision to withhold, revoke, limit, or impose permission of an airline or airlines of the other Party. When required by an emergency, a Party may take interim action prior to the expiry of 30 days.

## **ARTICLE 8**

### **COMMERCIAL OPERATIONS**

1. The airlines of one Party may establish offices in the area of the other Party for the promotion and sale of air transportation.
2. The designated airlines of one Party may, in accordance with the laws and regulations of the other Party relating to entry, residence, and employment, bring in and maintain in the area of the other Party managerial, sales, technical, operational, and other specialist staff required for the provision of air transportation.
- [3. Each designated airline may perform its own ground handling in the area of the other Party ("self-handling") or, at its option, select among competing agents for such services in whole or in part. These rights shall be subject only to physical constraints resulting from considerations of airport safety. Where such considerations preclude self-handling, ground services shall be available on an equal basis to all airlines; charges shall be based on the costs of services provided; and such services shall be comparable to the kind and quality of services as if self-handling were possible. (Alternative A)

[or]

3. Each Contracting Party shall grant, on a reciprocal basis, to any designated airline of the other Contracting Party the right for its own handling of passengers, baggage, cargo and mail. This right, however, does not include air-side ground handling services (aircraft ground handling), which remain the prerogative of the airport operators. (Alternative B)

[or]

3. Matters relating to ground handling pertaining to the operation of the agreed services may be agreed upon between the airlines of both Parties, subject to the approval of the aeronautical authorities of both Parties. (Alternative C)]
4. The designated airlines of each Contracting Party shall have the right to engage in the sale of air transportation in the area of the other Contracting Party either directly or through agents. The designated airlines of each Contracting Party shall have the right to sell, and any person shall be free to purchase such transportation, in the local currency or in any freely convertible other currency.
5. A designated airline of Macau shall have the right to convert and remit to Macau on demand, local revenues in excess of sums locally disbursed. A designated airline of [ ] shall have the right to convert and remit to [ ] on demand, local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted without restrictions at the rate of exchange applicable to current transactions which is in effect at the time such revenues are presented for conversion and remittance.
6. The airlines of one Party shall be permitted to pay for local expenses, including purchases of fuel, in the area of the other Party in local currency. At their discretion, the airlines of one Party may pay for such expenses in the area of the other Party in freely convertible currencies according to local currency regulation.

## **ARTICLE 9**

### **TARIFFS**

#### **(Alternative A)**

1. Each Party shall allow prices for air transportation to be established by each designated airline based upon commercial considerations in the marketplace. Intervention by the Parties shall be limited to:
  - (a) prevention of discriminatory prices or practices;
  - (b) protection of consumers from prices that are unreasonably high or restrictive due to the abuse of a dominant position;
  - (c) protection of airlines from prices that are artificially low because of direct or indirect governmental subsidy or support.
2. Each Party may require notification to or filing with its aeronautical authorities of prices proposed to be charged to or from its area by airlines of the other Party.

Notification or filing by the airlines of both Parties may be required no more than 30 days before the proposed date of effectiveness. In individual cases, notification or filing may be permitted on shorter notice than normally required. Neither Party shall require the notification or filing by airlines of the other Party of prices charged by charterers to the public, except as may be required on a non-discriminatory basis for information purposes.

3. Neither Party shall take unilateral action to prevent the inauguration or continuation of a price proposed to be charged or charged by (a) an airline of either Party for international air transportation between the areas of the Parties, or (b) an airline of one Party for international air transportation between the area of the other Party and any other country, including in both cases transportation on an interline or intraline basis. If either Party believes that any such price is inconsistent with the considerations set forth in paragraph (1) of this Article, it shall request consultations and notify the other Party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than 30 days after receipt of the request, and the Parties shall cooperate in securing information necessary for reasoned resolution of the issue. If the Parties reach agreement with respect to a price for which a notice of dissatisfaction has been given, each Party shall use its best efforts to put that agreement into effect. Without such mutual agreement, the price shall go into effect or continue in effect.

[or]

(...) Without mutual agreement, that price shall not go into or continue in effect.  
(Alternative A1)

- [4. Notwithstanding paragraph (3) of this Article, each Party shall allow (a) any designated airline of either Party or any airline of a third Party to meet a lower or more competitive price proposed or charged by any other airline or charterer for air transportation between the areas of the Parties, and (b) any designated airline of one Party to meet a lower or more competitive price proposed or charged by any other airline or charterer for air transportation between the area of the other Party and an intermediate or beyond point. As used herein, the term "meet" means the right to establish on a timely basis, using such expedited procedures as may be necessary, an identical or similar price on a direct, interline or intra-line basis, notwithstanding differences in conditions relating to routing, roundtrip requirements, connections, type of service or aircraft type, or such price through a combination of prices.]

(Alternative B)

1. The tariffs to be charged by a designated airline for one-way or round-trip passenger-carriage which commences in the area of either Contracting Party, on the routes specified in the Annex(es) of this Agreement shall be subject to approval by the aeronautical authorities of the Contracting Party in whose area the point of departure of the carriage (according to the information in the transport documents) is situated.
2. In their tariffs, the designated airlines shall take into account the cost of operation, a reasonable profit, the prevailing conditions of competition and of the market as well as the interests of transport users. The competent aeronautical authorities may refuse to approve a tariff only, if it does not comply with this criterion.
3. The tariffs shall be submitted by the designated airlines to the aeronautical authorities for approval at least one month prior to the envisaged date of their introduction.
4. If the aeronautical authorities of either Contracting Party do not consent to a tariff submitted for their approval, they shall inform the airline concerned within 21 days after the date of submission of the tariff. In such case, this tariff shall not be applied. The tariff applied up to that time which was to be replaced by the new tariff shall continue to be applied.

(Alternative C)

1. The tariffs to be charged by the designated airlines of the Contracting Parties for carriage between Macau and [ ] shall be those approved by the aeronautical authorities of both Contracting Parties and shall be established at reasonable levels, due regard being had to all relevant factors, including the cost of operating the agreed services, the interests of users, reasonable profit and the tariffs of other airlines operating over the whole or part of the same route.
2. The tariffs referred to in paragraph (1) of this Article may be agreed by the designated airlines of the Contracting Parties seeking approval of the tariffs, which may consult, when necessary and possible, other airlines operating over the whole or part of the same route, before proposing such tariffs.
3. Any proposed tariff for carriage between Macau and [ ] shall be filed with the aeronautical authorities of the Contracting Parties by the designated airline or airlines seeking its approval not less than 60 days (or such shorter period as the aeronautical authorities of the Contracting Parties may agree) before the proposed effective date. The proposed tariff shall be treated as having been filed with the



aeronautical authorities of a Contracting Party on the date on which it is received by those aeronautical authorities.

4. Provided it has been filed in accordance with paragraph (3) of this Article, any proposed tariff may be approved by the aeronautical authorities of a Contracting Party at any time but shall be deemed to have been approved by the aeronautical authorities of that Contracting Party unless, within 30 days (or such shorter period as the aeronautical authorities of both Contracting Parties may agree) after the date of filing, the aeronautical authorities of one Contracting Party have served on the designated airline or airlines of the other Contracting Party written notice of disapproval of the proposed tariff.
5. If a tariff has not been approved in accordance with the provisions of paragraph (4) of this Article, the aeronautical authorities of the Contracting Parties may jointly determine the tariff. For this purpose, one Contracting Party may request consultations between the aeronautical authorities of the Contracting Parties in accordance with Article 13 of this Agreement.
6. If a tariff has not been approved by the aeronautical authorities of a Contracting Party in accordance with paragraph (4) of this Article, and if the aeronautical authorities of the Contracting Parties have been unable jointly to determine the tariff in accordance with paragraph (5) of this Article, the dispute may be settled in accordance with the provisions of Article 13 of this Agreement.
7. Pending determination of a new tariff in accordance with the provisions of this Article, the tariffs already in force shall prevail. Except with the agreement of the aeronautical authorities of both Contracting Parties, a tariff shall not be prolonged by virtue of this paragraph for more than 12 months after the date on which it otherwise would have expired.
8. (a) The tariffs to be charged by the designated airlines of Macau for carriage between [ ] and another State shall be subject to approval by the aeronautical authorities of [ ] and, where appropriate, of the other State. The tariffs to be charged by the designated airlines of [ ] for carriage between Macau and a State other than [ ] shall be subject to approval by the aeronautical authorities of Macau and, where appropriate, of the other State.  
  
(b) Any proposed tariff for such carriage shall be filed by the designated airline of one Contracting Party seeking approval of such tariff with the aeronautical authorities of the other Contracting Party not less than 90 days (or such shorter period as they may decide) prior to the proposed effective date. The

proposed tariff shall be treated as having been filed on the date on which it is received by those aeronautical authorities.

- (c) Such tariff may be approved at any time by the aeronautical authorities of the Contracting Party with whom it has been filed but shall be deemed to have been approved by them unless, within 30 days after the date of filing, they have served on the designated airline seeking approval of such tariff written notice of disapproval.
  - (d) The aeronautical authorities of a Contracting Party may withdraw approval of any such tariff approved by them on giving 90 days notice to the designated airline charging such tariff. That airline shall cease to charge such tariff at the end of that period.
9. Notwithstanding the provisions of paragraphs (4) and 8(c) of this Article, the aeronautical authorities of a Contracting Party shall approve any proposed tariff filed with them by a designated airline which corresponds (e.g. in price level, conditions and date of expiry but not necessarily the routing being used) to the tariff charged by an airline of that Contracting Party for comparable services between the same points or is more restrictive or higher than that tariff.

## ARTICLE 10

### CAPACITY

#### (Alternative A)

- 1. Each Party shall allow a fair and equal opportunity for the designated airlines of both Parties to compete in the international air transportation covered by this Agreement.
- 2. Each Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of the airlines of the other Party.
- 3. Neither Party shall unilaterally limit the volume of traffic, frequency, regularity of service, or aircraft type or types operated by the designated airlines of the other Party, except as may be required for customs, technical, operational, or environmental reasons under uniform conditions consistent with Article 15 of the Convention.
- 4. Neither Party shall impose on the other Party's designated airlines a first refusal requirement, uplift ratio, no-objection fee, or any other requirement with respect

to the capacity, frequency, or traffic which would be inconsistent with the purposes of this Agreement.

5. Neither Party shall require the filing of schedules, programs for charter flights, or operational plans by airlines of the other Party for approval, except as may be required on a non-discriminatory basis to enforce uniform conditions as foreseen by paragraph (3) of this Article or as may be specifically authorized in an Annex to this agreement. If a Party requires filings for information purposes, it shall minimize the administrative burdens of filing requirements and procedures on air transportation intermediaries and on designated airlines of the other Party.

**(Alternative B)**

1. The designated airline or airlines of the Contracting Parties shall have a fair and equal opportunity to operate the agreed services covered by this Agreement.
2. The capacity provided by each designated airline shall be such as will enable that airline at a reasonable load factor to provide the agreed services taking full account of the requirements of through-airline operations.
3. Neither Contracting Party may unilaterally impose any restrictions on the designated airline or airlines of the other Contracting Party with respect to capacity, frequency or type of aircraft employed in connection with services over any of the routes specified in the schedule annexed to this Agreement. In the event that one of the Contracting Parties believes that the operation proposed or conducted by the airline of the other Contracting Party unduly affects the agreed services provided by its designated airline, it may request consultation pursuant to Article 13 of this Agreement.

**(Alternative C)**

1. There shall be fair and equal opportunity for the designated airlines of the Contracting Parties to operate the agreed services on the specified routes.
2. In operating the agreed services the designated airlines of each Contracting Party shall take into account the interests of the designated airlines of the other Contracting Party so as not to affect unduly the services which the latter provide on the whole or part of the same routes.
3. The agreed services provided by the designated airlines of the Contracting Parties shall bear a 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 meet the current and reasonably

anticipated requirements for the carriage of passengers and cargo, including mail, originating in or destined for the area of the Contracting Party which has designated the airline. Provision for the carriage of passengers and cargo, including mail, both taken on board and discharged at points on the specified routes other than points in the area of the Contracting Party which designated the airline shall be made in accordance with the general principles that capacity shall be related to:

- (a) traffic requirements to and from the area of the Contracting Party which has designated the airline;
  - (b) traffic requirements of the region through which the agreed service passes, taking account of other air services established by airlines of the States comprising that region; and
  - (c) the requirements of through airline operation.
4. The capacity to be provided on the specified routes shall be such as is from time to time jointly determined by the Contracting Parties.

#### **ARTICLE 11**

#### **USER CHARGES**

The charges which either of the Contracting Parties may impose, or permit to be imposed, on the designated airlines of the other Contracting Party for the use of airports and other facilities under its control shall be just and reasonable and not higher than would be paid for the use of such airports and facilities by the airlines of the most favoured nation or by any national airline of the first Contracting Party engaged in international air services.

#### **ARTICLE 12**

#### **CUSTOMS DUTIES AND OTHER CHARGES**

1. On arriving in the area of one Party, aircraft operated in international air transportation by the designated airlines of the other Party, their regular equipment, ground equipment, fuel, lubricants, consumable technical supplies, spare parts (including engines), aircraft stores (including but not limited to such items of food, beverages and liquor, tobacco, and other products destined for sale to or use by passengers in limited quantities during flights) and other items intended for or used solely in connection with the operation or servicing of aircraft engaged in international air transportation shall be exempt, on the basis of reciprocity, from all import restrictions, property taxes, and similar fees and

charges, imposed by the national authorities and not based on the cost of services provided, provided that such equipment and supplies remain on board the aircraft.

2. There shall also be exempt, on the basis of reciprocity, from the taxes, duties, fees, and charges referred to in paragraph (1) of this Article, with the exception of charges based on the cost of the service provided:
  - (a) aircraft stores introduced into or supplied in the area of one Party and taken on board, within reasonable limits, for use on outbound aircraft of an airline of the other Party engaged in international air transportation, even when these stores are to be used on a part of the journey performed over the area of the Party in which they are taken on board;
  - (b) ground equipment and spare parts including engines introduced into the area of a Party for the servicing, maintenance, or repair of aircraft of an airline of the other Party used in international air transportation; and
  - (c) fuel, lubricants, and consumable technical supplies introduced into or supplied in the area of a Party for use in an aircraft of an airline of the other Party engaged in international air transportation, even when these supplies are to be used on a part of the journey performed over the area of the Party in which they are taken on board.
3. Equipment and supplies referred to in paragraphs (1) and (2) of this Article may be required to be kept under the supervision or control of the appropriate authorities.
4. The exemptions provided by this Article shall also be available where the airlines of one Party have contracted with another airline, which similarly enjoys such exemptions from the other Party, for the loan or transfer in the area of the other Party of the items specified in paragraphs (1) and (2) of this Article.

### **ARTICLE 13** **CONSULTATIONS**

One Contracting Party may at any time request consultations on the implementation, interpretation, application or amendment of this Agreement. Such consultations, which may be between the aeronautical authorities of the Contracting Parties, shall begin within 60 days from the date the other Contracting Party receives such request in writing, unless otherwise agreed by the Contracting Parties.

**ARTICLE 14**  
**SETTLEMENT OF DISPUTES**

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place endeavour to settle it by direct negotiations.
2. If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body, or the dispute may, at the request of either Contracting Party, be submitted for decision to a tribunal of three arbitrators, one to be nominated by each Contracting Party and the third to be appointed by the two so nominated. Each of the Contracting Parties shall nominate an arbitrator within a period of 60 days from the date of receipt by either Contracting Party from the other of a notice through appropriate channels requesting arbitration of the dispute and the third arbitrator shall be appointed within a further period of 60 days. If either of the Contracting Parties fails to nominate an arbitrator within the period specified or the third arbitrator is not appointed, the president of the Council of the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators, as the case requires. In such case, the third arbitrator shall be a national of a third State and shall act as president of the arbitral body.
3. The Contracting Parties undertake to comply with any decision given under paragraph (2) of this Article.
4. If and so long as either Contracting Party or the designated airline of either Contracting Party fails to comply with the decision given under paragraph (2) of this Article, the other Contracting Party may limit, suspend or revoke any rights or privileges which it has granted by virtue of this Agreement to the Contracting Party in default.
5. Each Contracting Party shall pay the expenses of the arbitrator it has nominated. The remaining expenses of the arbitral tribunal shall be shared equally by the Contracting Parties.

**ARTICLE 15**  
**AMENDMENTS**

1. If either of the Contracting Parties considers it desirable to modify any provision of this Agreement, it may, at any time, request consultation to the other Contracting Party. Such consultation shall begin within a period of 60 days from the date of the request.

2. Any amendment or modification of this Agreement shall be settled between the Contracting Parties according to their own constitutional procedures and shall come into effect when it has been confirmed by an exchange of notes through appropriate channels.
3. Modification to the Annex(es) may be effected by direct agreement between the aeronautical authorities of the Contracting Parties and shall come into force by an exchange of notes through appropriate channels.

#### **ARTICLE 16** **MULTILATERAL AGREEMENT**

1. The provisions of the Convention [Convention on International Civil Aviation] shall be applied to this Agreement.
2. This Agreement and its Annex(es) shall be amended so as to conform with any multilateral convention which may become binding on both Contracting Parties.

#### **ARTICLE 17** **TERMINATION**

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 Organization. In such case the Agreement shall terminate 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 acknowledgment of receipt by the other Contracting Party, notice shall be deemed to have been received 14 days after the receipt of the notice by the International Civil Aviation Organization.

#### **ARTICLE 18** **REGISTRATION**

This Agreement and any amendment thereto shall be registered with the International Civil Aviation Organization.

**ARTICLE 19**  
**ENTRY INTO FORCE**

This Agreement shall enter into force on the date of signature. (Alternative A)

[or]

This Agreement shall enter into force as soon as the Contracting Parties have given notice in writing to each other that any necessary procedures have been completed. (Alternative B)

[or]

The present Agreement shall be provisionally applied from the date of its signature and shall come into force on the day on which the Contracting Parties have informed each other in writing that the formalities constitutionally required therein have been complied with. (Alternative C)

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed the present Agreement.

Done in duplicate at ..... on....., in the English language. (Alternative A)

[or]

Done at ..... on ..... in duplicate in the Portuguese, Chinese, .....  
and English languages, all ... texts being authentic. In case of divergent interpretations  
of the Portuguese, Chinese, and ..... texts, the English text shall prevail.

(Alternative B)

For the Government of Macau    For the Government of [   ]



**ANNEX(ES)**

**(Alternative A)**

**Annex I - Scheduled Air Services**

**Section 1**

1. Airlines of one Party that are designated pursuant to this Agreement shall, in accordance with the terms of their designation, be entitled to perform scheduled international air transportation (1) between points on the following routes, and (2) between points on such routes and points in third countries through points in the area of the Party that has designated the airlines.

**A. Routes for the airline(s) designated by the Government of [ ]:**

From [ ] via intermediate points to Macau and points beyond.

**Note:** No points in the mainland China, Hong Kong and points in Taiwan may be served as intermediate points or points beyond, unless it is approved by the People's Republic of China.

**B. Routes for the airline(s) designated by the Government of Macau:**

From Macau via intermediate points to [ ] and points beyond.

**Section 2**

Each designated airline may, on any or all flights and at its option:

1. operate flights in either or both directions;
2. combine different flight numbers within one aircraft operation;
3. serve points on the routes in any combination and in any order (which may include serving intermediate points as beyond points and beyond points as intermediate points;
4. omit stops at any point or points;
5. transfer traffic from any of its aircraft to any of its other aircraft at any point on the routes,

without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement, provided that the service begins or terminates in the area of the Party designating the airline.

### Section 3

On any segment or segments of the routes above, a designated airline may perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated, provided that in the outbound direction the transportation beyond such point is a continuation of the transportation from the area of the Party that has designated the airline and, in the inbound direction, the transportation to the area of the Party that has designated the airline is a continuation of the transportation beyond such point.

## Annex II

### Charter Air Services

#### Section 1

Airlines of one Party designated under this Annex shall, in accordance with the terms of their designation, have the right to carry international charter traffic of passengers (and their accompanying baggage) and/or cargo (including, but not limited to, freight forwarder, split and combination (passenger/cargo) charters):

- (a) between any point or points in the area of the Party which has designated the airline and any point or points in the area of the other Party; and
- (b) between any point or points in the area of the other Party and any point or points in a third country or countries, provided that such traffic is carried via the carrier's homeland and makes a stopover in the homeland for at least two consecutive nights.

In the performance of services covered by this Annex, airlines of one Party designated under this Annex shall also have the right: (1) to make stopovers at any points whether within or outside of the area of either Party; (2) to carry transit traffic through the other Party's area; and (3) to combine on the same aircraft traffic originating in one Party's area with traffic that originated in the other Party's area.

Each Party shall extend favourable consideration to applications by airlines of the other Party to carry traffic not covered by this Annex on the basis of comity and reciprocity.

## Section 2

In addition to the right to operate charters originating in their homeland, whether on a one-way or round-trip basis, according to the rules specified for application to such charters by its own authorities, an airline or airlines of a Party designated for charter air services shall be permitted to operate charter air services originating in the area of the other Party, whether on a one-way or round-trip basis, complying at their option, with the charter laws, regulations, and rules of either their homeland or the other Party. If a Party applies different rules, regulations, terms, conditions, or limitations to one or more of its airlines, or to airlines of different countries, each designated airline shall be subject to the least restrictive of such criteria.

However, nothing contained in the above paragraph shall limit the rights of one Party to require the designated airline or airlines of the other Party to adhere to requirements relating to the protection of passenger funds and passenger cancellation and refund rights.

## Section 3

Except with respect to the consumer protection rules referred to above, neither Party shall require a designated airline of the other Party, in respect to the carriage of authorized charter traffic on a one-way or round-trip basis, to submit more than a declaration of conformity with the applicable laws, regulations, and rules referred to under section 2 of this Annex, or a waiver of these regulations or rules granted by the applicable aeronautical authorities.

### **(Alternative B)**

#### Annex

#### Route Schedule

Routes to be operated by the designated airline(s) of Macau:  
Macau / intermediate points / points in [ ] / points beyond.

Routes to be operated by the designated airline(s) of [ ]:  
Points in [ ] / intermediate points / Macau / points beyond.

Notes:

- [1. The points to be served on the routes specified above are to be jointly determined by the Contracting Parties.]
2. The airline(s) designated by each Contracting Party may on any or all flights omit calling at any points on the routes specified above, and may serve intermediate points in any order, provided that the agreed services on these routes begin at the area of the Contracting Party designating the airline(s).
- [3. No traffic may be taken on board at an intermediate point or at a point beyond and discharged at points in the area of the other Contracting Party or vice versa, except as may from time to time be jointly determined by their aeronautical authorities.]
4. No points in mainland China, Hong Kong and points in Taiwan may be served as intermediate points or points beyond, by the airline(s) designated by [ ], unless it is approved by the People's Republic of China.

### ENDNOTES - Concluding Remarks

1. For a better understanding, see *infra*, note 7.
2. The U.S.A. was the first country to be involved in bilateral air transport agreement talks with Macau. Although an agreement has still not been reached, these talks have had a major influence on the model bilateral air transport agreement to be adopted as they coincide with the international air policy the Macau Government intends to follow.
3. In order to give a picture of the trends followed in choosing the clauses for this model agreement, the source of each Article is shown along with the relevant changes introduced.
4. In Hong Kong - The Netherlands, 1986; "air services" was replaced by "air transportation" to provide the agreement with a broad scope including both scheduled and charter transportation; "areas" was replaced by the name of the contracting parties.
5. The definitions shown below serve to clarify those concepts which are deemed essential:

1.

- (a) "Aeronautical authorities" in U.S.A. - Macau, 1991;
  - (b) "User charge" in U.S.A. - Macau, 1991;
  - (c) "Designated airline" in Portugal - G.D.R., 1975;
  - (d) "Stop for non-traffic purposes" in U.S.A. - Macau, 1991;
  - (e) "Air transportation" *ibid.*
  - (f) "International air transportation" *ibid.*
  - (g) "Area" in Hong Kong - Malaysia, 1991; as per Hong Kong agreements instead of "territory", "area" is used in order to prevent the possibility of there being doubts as regards Macau's status, an issue which has not been entirely clarified.
  - (h) "Agreement" in U.S.A. - Macau, 1991;
  - (i) "Tariff" in The Netherlands - P.R.C., 1979;
- [or]
- "Price" in U.S.A. - Macau, 1991;
- (j) "Convention" in Singapore - Kenya, 1987; should it be necessary, the following can be added: "... in so far as those Annexes and amendments are applicable to both Contracting Parties." Macau is not a party to the Chicago Convention as only sovereign States are eligible. Consequently, Macau's participation is always indirect, via the Portuguese Republic up to December 19, 1999 and via People's Republic of China following this date. Nevertheless, a bilateral air transport agreement can always make reference to a multilateral agreement even though the contracting parties are not signatories to the latter. The definition of a term used in a bilateral

agreement serves as a reference, an indication of the contents or the meaning to be given to this term in subsequent mentions.

- (k) "Ground handling" in U.S.A. - Macau, 1991;
- (l) "Change of aircraft" in The Netherlands - Macau, 1993;
- (m) "Computer Reservation System" (CRS) in The Netherlands - Macau, 1993.

2. The Annexes ..., in Portugal - U.S.S.R., 1974.

- 6. In U.S.A. - Macau, 1991, Article 2; as for **Alternative B** for sub-paragraph (c), in Luxembourg - Macau, 1992, Article 2, paragraph (1)(c). Either text is suitably open-ended allowing for a broad degree of flexibility in negotiations over the granting of routes and the rights to be exercised. The intention is that there should be a certain balance between **Alternative A** of sub-paragraph (c) and the first example in the Annex(es), and similarly between **Alternative B** and the second example.
- 7. In New Zealand - Macau, 1993, Article 3; as for **Alternative B** for paragraph (4) in Hong Kong - Malaysia, 1991, Article 4, paragraph (3). In view of the fact that Macau is not a sovereign State and that consequently there are no Macau nationals, it cannot undertake to ensure that the "substantial ownership and the effective control" of the airline(s) that Macau will designate be vested in the "nationals" of Macau. Therefore, it is suggested, on a basis of reciprocity, the freedom to designate or, as an alternative, that the designated airline is incorporated and has its principal place of business in the area of the contracting party designating the airline.

Another option to be considered is that chosen for some Hong Kong agreements which draw a distinction between airlines designated by Hong Kong and airlines designated by the other contracting party. As far as concerns the former, the designated airline must be incorporated and must have its principal place of business in Hong Kong; as for the latter, the "substantial ownership and effective control" condition applies. These alternatives, demonstrated respectively in paragraphs (4) as **Alternatives A and B**, should only be suggested if the other contracting party so demands. Should this not occur, then this paragraph will not be applied and paragraph (5) will become paragraph (4).

- 8. In New Zealand - Macau, 1993, Article 4; as for **Alternative B** for paragraph (1)(b) in Hong Kong - Malaysia, 1991, Article 5, paragraph (1) (a); with regard to paragraph (3) in U.S.A. - Macau, 1991, Article 4, paragraph (3). Paragraph (1)(b) of this clause should follow the same rationale as that adopted in Article 4, paragraph (4) of this Agreement (see, *supra*, note 7) and should only be used when demanded by the other contracting party. Should this not occur, then this paragraph will not be applied.
- 8. In U.S.A. - Macau, 1991, Article 5.
- 10. In U.S.A. - Macau, 1991, Article 6.

11. In U.S.A. - Macau, 1991, Article 7.
12. Paragraphs (1), (2), (3) (**Alternative A**) and (6) in U.S.A. - Macau, 1991, Article 8; paragraph (4) in Hong Kong - Malaysia, 1991, Article 12, paragraph (2); paragraph (5) in Hong Kong - The Netherlands, 1986, Article 11; regarding **Alternative B** for paragraph (3) in F.R.G. - Macau, 1992, Article 11, paragraph (3) and as for **Alternative C** for the same paragraph in U.S.A. - P.R.C., 1980, Article 11, paragraph (1). Paragraph (3) can only be employed when the need arises from concrete negotiations and it shall be at this point that the best option shall be chosen.
13. **Alternative A** in U.S.A. - Macau, 1991, Article 12; as for the alternative version in the last sentence of paragraph (3) **Alternative A1** in New Zealand - Macau, 1993, Article 10. This **Alternative A1** represents a liberal pricing Article as far as regards the establishment of tariffs. Nevertheless, in case the contracting parties consider the price inconsistent with the considerations set forth in paragraph (1) of the same Article, mutual agreement must be obtained for that price to go into or continue in effect. For paragraph (4) in A.I.T. - C.C.N.A.A., 1980, Article 11. This paragraph, the most liberal version of the U.S.A. pricing Article, can be employed or not depending on a case by case examination.

**Alternative B**, example of a "country of origin" pricing Article in F.R.G. - Macau, 1992, Article 10. A more liberal perspective would allow the use of the U.S. Standard "country of origin" contained in Appendix 6.

**Alternative C** in Hong Kong - Malaysia, 1991, Article 7; as for paragraph (7) in Oman - P.R.C., 1983, Article 13, paragraph (5). Paragraph (1) was removed as the definition of tariffs already appears in Article 1; tacit disapproval was replaced with tacit approval in paragraphs (4) and (8)(c); This **Alternative C** involves a different regime for third/fourth freedoms and for the fifth freedom.

14. **Alternative A** in U.S.A. - Macau, 1991, Article 11, for a free determination of capacity; **Alternative B** following the post-Bermuda I agreements and considered as a "light" Bermuda, in Luxembourg - Macau, 1992, Article 9; **Alternative C** in Hong Kong - Malaysia, 1991, Article 6; this alternative allows capacity to be regulated on a case by case basis.
15. In Japan - Austria, 1989, Article 5.
16. In U.S.A. - Macau, 1991, Article 9.
17. In Hong Kong - Malaysia, 1991, Article 14.
18. In Portugal - Hellenic Republic, 1986, Article 18; "diplomatic channels" were replaced by "appropriate channels" as Macau has no diplomatic services.

19. In Portugal - Hellenic Republic, 1986, Article 16.
20. Paragraph (1) in The Netherlands - Macau, 1993, Article 21, paragraph 1 and paragraph (2) in Portugal - Finland, 1971, Article 13.
21. In Portugal - Hellenic Republic, 1986, Article 19.
22. In Hong Kong - Malaysia, 1991, Article 18.
23. **Alternative A** in Hong Kong - Malaysia, 1991, Article 20; **Alternative B** was provided by the People's Republic of China through the Sino-Portuguese Joint Liaison Group Working Committee and is based on the bilateral air transport agreement between Hong Kong and Switzerland, 1988, Article 21, not examined here. **Alternative C** in The Netherlands - Macau, 1993, Article 23. The alternatives are based on the different constitutional practices of each contracting party.
24. It is almost an impossible task to show a model for the Annex(es) of a bilateral air transport agreement, since they reflect a crucial point of negotiations; consequently, only two possible examples are shown. **Alternative A** in U.S.A. - Macau, 1991. Given that this is a model agreement, the routes were simplified and Sections 4 and 5 of Annex I removed; in Section 1 of the same Annex there is an additional limitation/restriction on the routes for the airlines designated by the Government of [ ].  
  
**Alternative B** in Hong Kong - Malaysia, 1991. This model Annex may or may not be restrictive depending on the way in which paragraphs (1) and (3) are to be employed which may be included or not subject to a case by case analysis.



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## APPENDIX 1

PROVISIONAL CONVENTION BETWEEN THE NETHERLANDS AND GERMANY  
RELATING TO AIR NAVIGATION

(SIGNED AT THE HAGUE, 24TH JULY 1922).

(Translation)

The Government of the Netherlands and the German Government, desiring to conclude a provisional Convention relating to air navigation, the Undersigned :

His Excellency Jonkheer H. A. VAN KARNEBEK, Minister for Foreign Affairs of Her Majesty the Queen of the Netherlands, and

His Excellency Freiherr H. LUDWIG VON STROBBER, Envoy Extraordinary and Minister Plenipotentiary of the German Reich at The Hague,

duly authorised thereto by their Governments, have agreed as follows :

ARTICLE 1. — Each of the contracting States undertakes in time of peace to accord to aircraft duly registered in the other contracting State, liberty of innocent passage above its territory provided that the conditions set forth in the present Convention are observed.

For the purpose of this Convention the word "territory" shall be understood as including the territorial waters ; the word "aircraft" shall be understood to mean private aircraft only.

ART. 2. — Until otherwise provided, flight over the frontiers of the two contracting States will be permitted at any point.

ART. 3. — Each of the contracting States shall have the right to prohibit air traffic over certain areas of its territory. The areas above which air traffic is thus prohibited shall be notified to the other contracting State.

ART. 4. — Any aircraft which finds itself over a prohibited area shall give the signal of distress described in the Rules of the Air in force in the State flown over and shall land immediately at an aerodrome situated in such State outside such prohibited area.

ART. 5. — Aerodromes open to public use shall be open to the aircraft of the two States.

After arrival in, and before departure from, one of the two contracting States, the first landing and the final departure shall take place only at or from one of the aerodromes open to public use, in which the formalities of customs clearance can be carried out ; any landing between the frontier and such aerodrome being prohibited.

In exceptional cases and with the permission of the competent authority, the first landing ; the final departure may be allowed to be made at or from other places where customs formalities can be carried out ; any landing between the frontier and such places being also prohibited.

Each of the contracting States will communicate to the other State a list of the aerodromes open for the time being to public use. Such list shall also designate the places at which customs formalities can be carried out.



Any modification of such li and any restriction, even temporary, of the right to use any of these aerodromes, shall be notified immediately to the other contracting State.

Art. 6. — All aircraft shall carry clear and visible marks whereby they may be recognised during flight.

All aircraft shall be provided with the certificates and documents prescribed for air navigation in their country.

The members of the crew — that is to say, all the persons in the aircraft except the passengers — in so far as they perform duties in the aircraft in respect of which a special permit is required in their country, shall be provided with all documents prescribed by the regulations in force in their country; the other members of the crew shall carry documents showing their duties in the aircraft, their profession, identity and nationality.

The airworthiness certificate, certificates of competency and licences issued or rendered valid by one of the contracting States in respect of an aircraft or its crew shall have the same validity in the other contracting State as the corresponding documents issued or rendered valid by the latter.

Each of the contracting States reserves the right, for the purpose of flight within its own territory, to refuse to recognise certificates of competency and licences issued to nationals of that contracting State by the other contracting State.

Art. 7. — Unless otherwise specially provided, and subject to the provisions of Article 6, the members of the crew and the passengers shall be provided with the documents required by the general regulations relating to traffic between the two countries.

Art. 8. — Aircraft of one of the contracting States shall only carry wireless apparatus and use such apparatus in the territory of the other contracting State in so far as this is permitted in the territory of both contracting States. Such apparatus shall only be used by such members of the crew as are provided with a special licence for the purpose issued by the authorities of their country of origin.

Both contracting States reserve the right, for reasons of safety, to issue regulations relative to the obligatory equipment of aircraft with wireless apparatus.

Art. 9. — Aircraft, their operating crew and their passengers, shall be prohibited from carrying, as freight or in any other manner, arms, munitions, asphyxiating gases or explosives. The carriage of carrier pigeons or photographic or cinematographic apparatus shall not be effected except by permission of the competent authorities of the territory within whose air space the aircraft is navigating.

Art. 10. — All aircraft carrying passengers and goods shall be provided with a list of the passengers' names, a manifest of the goods showing the nature and quantity of the goods, together with the necessary customs declarations.

If on arrival of any aircraft any discrepancy is noted between the goods carried and the manifest, the customs officials at the arrival aerodrome may at once communicate with the competent customs officials of the other contracting State.

The conveyance of mails may form the subject of a special direct arrangement between the postal departments of the two contracting States.

Art. 11. — Upon the departure or landing of any aircraft each contracting State, within its own territory and through its competent authorities, may search the aircraft of the other contracting State and examine the certificates and other documents prescribed.

Art. 12. — Each of the contracting States shall have the right to make the carriage for hire of persons or goods to, from or within its territory, subject to special regulations.

The carriage for hire of persons or goods between two points within the territory of the State may be reserved to its national aircraft.

The establishment of air lines and the working of a regular air service above the territory of one of the contracting States may be subjected to special authorisation.

Art. 13. — As ballast, only fine sand or water may be dropped from an aircraft.

Art. 14. — No article or substance, other than ballast, may be unloaded or otherwise discharged

in the course of flight unless special permission for such purpose shall have been given by the State in whose territory such unloading or discharge takes place.

Art. 15. - The two contracting States shall communicate to each other the regulations relating to air traffic in force in their respective territories.

Art. 16. - The present Convention may be denounced by either of the contracting States at any time by giving three months' notice.

Each of the contracting States shall have the right under exceptional circumstances and with immediate effect to restrict or to prohibit air traffic over the whole or over parts of its territory.

Art. 17. - The present Convention shall be ratified and the exchange of the instruments of ratification shall take place at The Hague as soon as possible. It shall enter into force on the date of the exchange of ratifications.

In faith whereof the respective Plenipotentiaries have signed the present Convention and affixed thereto their seals.

Done at The Hague, in duplicate in the Dutch and German languages, 24th July 1922.

(L.S.) V. KAENNEBERG.

(L.S.) V. LUCIUS.

#### ADDITIONAL PROTOCOL

The Netherlands Government and the German Government have decided to amend and to supplement in the following manner the Provisional Convention concluded between them on the 24th July 1922 :

Article 1. - In Article 8 the two following sentences are substituted for the first sentence : Aircraft shall not carry wireless apparatus unless they have obtained special permission for the purpose from their country of origin. In respect of the use of such apparatus over the territory of one of the Contracting Parties, the provisions in force in that regard in such State are applicable.

Art. 2. - The aircraft of each of the Contracting Parties, whilst within the territory of the other contracting Party, shall be subject to the obligations resulting from the legislation in force for the time being in such State, in particular the regulations relating to air traffic in general in so far as these regulations apply to all foreign aircraft without distinction of nationality, and also the regulations relating to customs and other dues, export and import prohibitions, the carriage of persons and goods and public security and order.

They shall also be subject to the other obligations resulting from the general legislation in force for the time being, except in so far as they may be inconsistent with the provisions of the present agreement.

Art. 3. - The present Additional Protocol is incorporated in the Provisional Convention between the Netherlands and Germany relating to air navigation dated 24th July 1922 and enters into force on the same date as the said Convention.

Done at The Hague the 17th August 1928 in duplicate in the Dutch and German languages.

## APPENDIX 2

AIR TRANSPORT AGREEMENT

Between

PORTUGAL AND THE NETHERLANDS (1946)

The Governments of Portugal and Netherlands, desiring to stimulate civil air transportation between Portuguese and Netherlands territories and having in mind the resolution signed under date of December 7th, 1944 at the International Civil Aviation Conference in Chicago, Illinois, U.S.A., for the adoption of a standard form of agreement for provisional air routes and services, hereby conclude the following agreement, covering the scheduled airline services between their respective territories, which shall be governed by the following provisions:

ARTICLE 1

The contracting parties grant the rights specified in the Annex hereto necessary for establishing the international civil air routes and services therein described, whether such services be inaugurated immediately or at a later date at the option of the contracting party to whom the rights are granted.

ARTICLE 2

(a) Each of the air services so described shall be placed in operation as soon as the contracting party to whom the right has been granted by Article 1 to designate an airline or airlines for the route concerned has authorized an airline for such route, and the contracting party granting the right shall, subject to Article 7 hereof, be bound to give the appropriate operating permission to the airline or airlines concerned; provided that the airline 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; and provided that in areas of hostilities or of military occupation, or in areas affected thereby, such inauguration shall be subject to the approval of the competent military authorities.

(b) It is understood that any 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.

ARTICLE 3

Operating rights which may have been granted previously by any of the contracting parties to any state not a party to this Agreement or to an airline shall continue in force according to their terms.

ARTICLE 4

In order to prevent discriminatory practices and to assure equality of treatment, it is agreed that:

/(a)

(a) Each of the contracting parties may impose or permit to be imposed just and reasonable charges for the use of airports, and other facilities. Each of the contracting parties agrees, however, that these charges 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.

(b) Fuel, lubricating oils and spare parts introduced into or taken on board aircraft in the territory of one contracting party by the other contracting party or its nationals, and intended solely for use by aircraft of the other contracting party shall be accorded national and most-favoured-nation treatment with respect to the imposition of customs duties, inspection fees or other national duties or charges by the contracting party whose territory is entered.

(c) Aircraft operated on the agreed services, supplies of fuel, lubricating oils, spare parts, regular equipment and aircraft stores retained on board civil aircraft of the airlines of the contracting parties authorized to operate the routes and services described in the Annex shall, upon arriving in or leaving the territory of the other contracting party, be exempt from customs, inspection fees or similar duties or charges, even the such supply be used or consumed by such aircraft on flights in that territory.

(d) Goods so exempted, may only be unloaded with the approval of the customs authorities of the other contracting party. These goods which are to be re-exported shall be kept until re-exportation under customs supervision.

ARTICLE 5

Certificates of airworthiness, certificates of competency and licences issued or rendered valid by one contracting party shall be recognised 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 recognise for the purpose of flight above its own territory, certificates of competency and licences granted to its own nationals by another state.

ARTICLE 6

(a) 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 applied to the aircraft of the other contracting party and shall be complied with by such aircraft upon entering or departing from or while within the territory of that party.

(b) The laws and regulations of a contracting party as to the admission to or departure from its territory of passengers, crew, or cargo of aircraft, such as regulations relating to entry, clearance, immigration, passports, customs, and quarantine shall be complied with by or on behalf of such passengers, crew or cargo upon entrance into or departure from or while within the territory of that party.

ARTICLE 7

Each contracting party reserves the right to withhold or revoke a /certificate

certificate or permit to an airline of the other contracting party in any case where it is not satisfied, that substantial ownership and effective control are vested in nationals of either contracting party, or in case of failure of an airline to comply with the laws of the State over which it operates, as described in Article 6 hereof, or to perform its obligations under this Agreement.

#### ARTICLE 6

This Agreement and all contracts connected therewith shall be registered with the Provisional International Civil Aviation Organisation.

#### ARTICLE 9

In the event either of the contracting parties consider it desirable to modify the routes or conditions set forth in the attached Annex, it may request consultation between the competent aeronautical authorities of both contracting parties, such consultation to begin within the period of 60 days from the date of the request. When these authorities mutually agree on new or revised conditions affecting the Annex their recommendations on the matter will come into effect after they have been confirmed by an exchange of diplomatic notes.

#### ARTICLE 10

Any dispute between the contracting parties relating to the interpretation or application of this Agreement or of the Annex thereto shall be referred for decision to the Interim Council in accordance with the provisions of Article III, section 6 (3) of the Interim Agreement on International Civil Aviation signed at Chicago on 7th December 1944, unless the contracting parties agree to settle the dispute by reference to an Arbitral Tribunal or to some other person or body appointed by agreement between the contracting parties. The contracting parties undertake to comply with the decision given.

#### ARTICLE 11

If a general multilateral air Convention which is accepted by both contracting parties comes into force the present Agreement shall be amended so as to conform with the provisions of the said Convention.

#### ARTICLE 12

Either contracting party may at any time give notice to the other if it desires to terminate this Agreement. Such notice shall be simultaneously communicated to the Provisional International Civil Aviation Organisation. If such notice is given, this Agreement shall terminate twelve 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 days after the receipt of the notice by the Provisional International Civil Aviation Organisation.

#### ARTICLE 13

The Agreement will come into force on the day of signature:

/Done

original languages each of which will be of equal authenticity, this 12th of April 1946.

For the Government of Portugal, António de Oliveira Salazar.

For the Government of the Netherlands, P. A. van Rottinck Wilkens.

#### ANNEX

1. The airline(s) operating the air services on the routes specified in Schedule I to this Annex shall be designated by the Government of Portugal.

2. The airline(s) operating the air services on the routes specified in Schedule II to this Annex shall be designated by the Government of the Netherlands.

3. For the purpose of operating air services on the routes specified in Schedule I the designated Portuguese airline(s) referred to in Paragraph 1 above shall be accorded in Netherlands territory rights of transit and non-traffic stops as well as the right to pick up and discharge in international traffic passengers, cargo and mail as hereinafter provided, and the use on said routes of aerodromes and ancillary facilities designated for international traffic.

4. For the purpose of operating air services on the routes specified in Schedule II the designated Netherlands airline(s) referred to in Paragraph 2 above shall be accorded in Portuguese territory rights of transit and of non-traffic stops as well as the rights to pick up and discharge in international traffic passengers, cargo and mail as hereinafter provided, the use on the said routes of aerodromes and ancillary facilities designated for international traffic.

5. The air transport facilities available to the travelling public shall bear a close relationship to the requirements of the public for such transport.

6. There shall be a fair and equal opportunity for the airlines of two nations to operate on any route between their respective territories covered by the Agreement and the Annex.

7. In the operation by the airlines of either Government of the air services described in Schedules I and II of this Annex, the interest of the airlines of the other Government 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.

#### II

8. It is understood by both Governments that services provided by a designated airline under the Agreement and this Annex shall retain as their primary objective the provision of capacity adequate to the traffic demand between the country of which such airline is a national and the country of

/ultimate

ultimate destination of the traffic. The right to embark or disembark on such services in international traffic passengers, cargo and mail destined for and coming from third countries at a point or points on the routes specified in this Annex shall be applied in accordance with the general principles of orderly development to which both Governments subscribe and shall be subject to the general principles that capacity should be related:

(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.

9. Should a route or part of a route as mentioned in Schedules I and II to this Annex be served by the airlines of both contracting parties, the airlines concerned shall consult with each other with a view to arriving at a form of co-operation on this route or part of such route.

Should a form of co-operation be agreed on, it shall be submitted for approval to the competent aeronautical authorities of the respective contracting parties.

10. For the purposes of paragraphs 8 and 9 of this Annex, the Netherlands Government formally recognises the very special nature of the air services between Portugal and Brazil, which will be considered as having the same character as the services mentioned in the last category of letter c) of paragraph 8.

11. The determination of rates in accordance with the following paragraphs shall be made 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 airlines as well as the characteristics of each service.

### III

12. Tariffs to be charged on routes or parts of a route operated by the airlines of both contracting parties shall be agreed in the first instance between those airlines. Any tariffs so agreed shall be subject to the approval of the aeronautical authorities of the respective contracting parties. In fixing these tariffs account shall be taken of the recommendation of the International Air Transport Association. In the event of disagreement between the airlines the contracting parties shall endeavour to reach agreement. In case such an agreement cannot be reached the procedure of Article 10 of the agreement shall apply.

13. It is understood that this agreement will not prevent either of the contracting parties to conclude arrangements of division of traffic with any of the countries covered by the routes mentioned in Schedules I and II.

### SCHEDULE I

#### Portuguese Routes Terminating in/or Traversing Netherlands Territory.

1. Lisbon-Amsterdam and Amsterdam-Lisbon and to points beyond in both directions.
2. Lisbon-Lisbon-Paris-Brussels-Amsterdam and Amsterdam-Brussels-Lisbon and to points beyond in both directions.

The above mentioned routes may be altered after agreement between the competent aeronautical authorities of both contracting parties.

Note. - With regard to the application by the Portuguese Government to the establishment of the routes Macau-Portuguese Timor (with or without intermediate landings in the Netherlands East Indies) and Portuguese Timor-Koepang, it is understood that this application requires the approval of Government of the Netherlands East Indies. The Netherlands Government however undertakes the obligation of doing everything in its power in order that such approval be granted.

### SCHEDULE II

#### Netherlands Routes Terminating in/or Traversing Portuguese Territory.

1. The Netherlands via the Western side of the Pyrenees to Lisbon via the Western side of the Pyrenees to the Netherlands either via intermediate points or directly.
2. The Netherlands to Lisbon via Geneva and Madrid (or Barcelona) and Lisbon to the Netherlands via Madrid (or Barcelona) and Geneva either via intermediate points or directly.
3. The Netherlands to the Netherlands territories in the Western hemisphere via Lisbon and probably Sal and the Netherlands territories in Western hemisphere to the Netherlands either via Sal and Lisbon or via Lisbon, either via intermediate points or directly and to points beyond in both directions.
4. The Netherlands to South America via Lisbon (Casablanca); Dakar or Sal, Natal, Rio de Janeiro and South America to the Netherlands via Rio de Janeiro, Natal, Dakar or Sal (Casablanca), Lisbon and to points beyond in both directions.
5. The Netherlands to North America and/or the Netherlands territories in the Western hemisphere via the Azores and North America and/or the Netherlands territories in the Western hemisphere to the Netherlands via the Azores either via intermediate points or directly and to points beyond in both directions.
6. The Netherlands to South Africa via Portuguese territory and vice versa, the application to be submitted later on and the conditions to be fixed at the same time by both contracting parties.

/the

The above mentioned routes may be altered after agreement between the competent aeronautical authorities of both contracting parties.

Note. - It is understood that the provision of article 4 of this annex regarding the right to pick up and set down in international traffic passengers, cargo and mail, will not apply in regard to routes I and II on any points between Portugal and Spain. However, until (a) Portuguese airline(s) designated by the Government of Portugal starts (start) operating between Portugal and Spain, and provided there is no objection on the part of the Government of Spain, the airline(s) designated by the Government of the Netherlands will be allowed to pick up and set down in such international traffic passengers, cargo and mail between Portugal and Spain.

CEV.32091.

## APPENDIX 3



A U.S. Standard "Bermuda I" Agreement

AIR TRANSPORT AGREEMENT

BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA

AND THE GOVERNMENT OF \_\_\_\_\_

The Government of the United States of America and the Government of \_\_\_\_\_,

Recognizing the increasing importance of international air travel between the two countries and desiring to conclude an agreement which will assure its continued development in the common welfare, and

Being parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944,

Have agreed as follows:

ARTICLE 1

For the purpose of the present Agreement:

A. "Agreement" shall mean this Agreement, the Schedule attached thereto, and any amendments thereto.

B. "Aeronautical authorities" shall mean in the case of the United States of America, the Federal Aviation Administration with respect to the technical permission, safety standards, and requirements referred to in Articles 3 and 6(B) respectively, otherwise the Civil Aeronautics Board, and in the case of \_\_\_\_\_, or in both cases, any person or agency authorized to perform the functions exercised at present by those authorities.

C. "Designated airline" shall mean an airline that one Contracting Party has notified the other Contracting Party to be an airline which will operate a specific route or routes listed in the schedule to this Agreement. Such notification shall be communicated in writing through diplomatic channels.

D. "Territory", in relation to a State, shall mean the land areas under the sovereignty, suzerainty, protection, jurisdiction or trusteeship of that State, and territorial waters adjacent thereto.

E. "Air service" shall mean any scheduled air service performed by aircraft for the public transport of passengers, cargo or mail, separately or in combination.

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F. "International air service" shall mean an air service which passes through the air space over the territory of more than one State.

G. "Stop for non-traffic purposes" shall mean a landing for any purpose other than taking on or discharging passengers, cargo or mail.

ARTICLE 2

Each Contracting Party grants to the other Contracting Party rights for the conduct of air services by the designated airline or airlines, as follows:

- (1) To fly across the territory of the other Contracting Party without landing;
- (2) To land in the territory of the other Contracting Party for non-traffic purposes; and
- (3) To make stops at the points in the territory of the other Contracting Party named on each of the routes specified in the appropriate paragraph of the Schedule of this Agreement for the purpose of taking on and discharging international traffic in passengers, cargo, and mail, separately or in combination.

ARTICLE 3

Air service on a route specified in the Schedule to this Agreement may be inaugurated by an airline or airlines of one Contracting Party at any time after that Contracting Party has designated such airline or airlines for that route and the other Contracting Party has granted the appropriate operating and technical permission. Such other Contracting Party shall, subject to Articles 4 and 6, grant this permission, provided that the designated airline or airlines may be required to qualify before the competent aeronautical authorities of that Contracting Party, under the laws and regulations normally applied by those authorities, before being permitted to engage in the operations contemplated in this Agreement.

ARTICLE 4

A. Each Contracting Party reserves the right to withhold or revoke the operating permission referred to in Article 3 of this Agreement with respect to an airline designated by the other Contracting Party, or to impose conditions on such permission, in the event that:

- (1) Such airline fails to qualify under the laws and regulations normally applied by the aeronautical authorities of that Contracting Party;

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- (2) Such airline fails to comply with the laws and regulations referred to in Article 5 of this Agreement; or
- (3) That Contracting Party is not satisfied that substantial ownership and effective control of such airline are vested in the Contracting Party designating the airline or in nationals of that Contracting Party.

B. Unless immediate action is essential to prevent infringement of the laws and regulations referred to in Article 5 of this Agreement, the right to revoke such permission shall be exercised only after consultation with the other Contracting Party.

#### ARTICLE 5

A. 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 applied to the aircraft of the airline or airlines designated by the other Contracting Party and shall be complied with by such aircraft upon entrance into or departure from and while within the territory of the first Contracting Party.

B. The laws and regulations of one Contracting Party relating to the admission to or departure from its territory of passengers, crew, cargo or mail of aircraft, including regulations relating to entry, clearance, immigration, passports, customs, and quarantine, shall be complied with by or on behalf of such passengers, crew, cargo or mail of the airlines of the other Contracting Party upon entrance into or departure from and while within the territory of the first Contracting Party.

#### ARTICLE 6

A. Certificates of airworthiness, certificates of competency, and licenses issued or rendered valid by one Contracting Party, and still in force, shall be recognized as valid by the other Contracting Party for the purpose of operating the routes and services provided for in this Agreement, provided that the requirements under which such certificates or licenses were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the Convention on International Civil Aviation. Each Contracting Party reserves the right, however, to refuse to recognize, for the purpose of flights above its own territory, certificates of competency and licenses granted to its own nationals by the other Contracting Party.

B. The competent aeronautical authorities of each Contracting Party may request consultations concerning the safety standards and requirements relating to aeronautical facilities, airmen, aircraft, and the operation of the designated airlines which are maintained and administered by the other Contracting Party. If, following such consultations, the competent aeronautical authorities of either Contracting Party find that the other Contracting Party does not effectively maintain and administer safety standards and requirements in these areas that are equal to or above the minimum standards which may be established pursuant to the Convention on International Civil Aviation, they will notify the other Contracting Party of such findings and the steps considered necessary to bring the safety standards and requirements of the other Contracting Party to standards at least equal to the minimum standards which may be established pursuant to said Convention, and the other Contracting Party will take appropriate corrective action. Each Contracting Party reserves the right to withhold or revoke the technical permission referred to in Article 3 of this Agreement with respect to an airline designated by the other Contracting Party, or to impose conditions on such permission, in the event the other Contracting Party does not take such appropriate action within a reasonable time.

#### ARTICLE 7

Each Contracting Party may impose or permit to be imposed just and reasonable charges for the use of public airports and other facilities under its control, provided that such charges shall not be higher than the charges imposed for the use of such airports and facilities by its national aircraft engaged in similar international services.

#### ARTICLE 8

A. Each Contracting Party shall exempt the designated airline or airlines of the other Contracting Party to the fullest extent possible under its national law from import restrictions, customs duties, excise taxes, inspection fees, and other national duties and charges on fuel, lubricants, consumable technical supplies, spare parts including engines, regular equipment, ground equipment, stores, and other items intended for use solely in connection with the operation or servicing of aircraft of the airlines of such other Contracting Party engaged in international air service. The exemptions provided under this paragraph shall apply to items:

- (1) Introduced into the territory of one Contracting Party by or on behalf of the designated airlines of the other Contracting Party;
- (2) Retained on aircraft of the designated airlines of one Contracting Party upon arriving in

or leaving the territory of the other Contracting Party; or

- (3) Taken on board aircraft of the designated airlines of one Contracting Party in the territory of the other and intended for use in international air service;

whether or not such items are used or consumed wholly within the territory of the Contracting Party granting the exemption.

B. The exemptions provided for by this Article shall also be available in situations where the designated airline or airlines of one Contracting Party have entered into arrangements with another airline or airlines for the loan or transfer in the territory of the other Contracting Party of the items specified in paragraph A, provided such other airline or airlines similarly enjoy such exemptions from such other Contracting Party.

#### ARTICLE 9

A. There shall be a fair and equal opportunity for the airlines of each Contracting Party to operate on any route covered by this Agreement.

B. In the operation by the airlines of either Contracting Party of the air services described in this Agreement, the interest of the airlines of the other Contracting Party shall be taken into consideration so as not to affect unduly the services which the latter provide on all or part of the same routes.

C. The air services made available to the public by the airlines operating under this Agreement shall bear a close relationship to the requirements of the public for such services.

D. Services provided by a designated airline under this Agreement shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country of which such airline is a national and the countries 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 or points on the routes specified in this Agreement 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 to:

- (1) traffic requirements between the country of origin and the countries of ultimate destination of the traffic;

- (2) the requirements of through airline operations; and,

- (3) the traffic requirements of the area through which the airline passes, after taking account of local and regional services.

E. Without prejudice to the right of each Contracting Party to impose such uniform conditions on the use of airports and airport facilities as are consistent with Article 15 of the Convention on International Civil Aviation, neither Contracting Party shall unilaterally restrict the airline or airlines of the other Contracting Party with respect to capacity, frequency, scheduling or type of aircraft employed in connection with services over any of the routes specified in the Schedule to this Agreement. In the event that one of the Contracting Parties believes that the operations conducted by an airline of the other Contracting Party have been inconsistent with the standards and principles set forth in this Article, it may request consultations pursuant to Article 12 of this Agreement for the purpose of reviewing the operations in question to determine whether they are in conformity with said standards and principles.

#### ARTICLE 10

A. All rates to be charged by an airline of one Contracting Party for carriage to or from the territory of the other Contracting Party shall be established at reasonable levels, due regard being paid to all relevant factors, such as costs of operation, reasonable profit, and the rates charged by any other airlines, as well as the characteristics of each service. Such rates shall be subject to the approval of the aeronautical authorities of the Contracting Parties, who shall act in accordance with their obligations under this Agreement, within the limits of their legal competence.

B. Any rate proposed to be charged by an airline of either Contracting Party for carriage to or from the territory of the other Contracting Party shall, if so required, be filed by such airline with the aeronautical authorities of the other Contracting Party at least thirty (30) days before the proposed date of introduction unless the Contracting Party with whom the filing is to be made permits filing on shorter notice. The aeronautical authorities of each Contracting Party shall use their best efforts to insure that the rates charged and collected conform to the rates filed with either Contracting Party, and that no airline rebates any portion of such rates by any means, directly or indirectly, including the payment of excessive sales commissions to agents.

C. It is recognized by both Contracting Parties that, during any period for which either Contracting Party has approved the traffic conference procedures of the International Air

Transport Association, or other association of international air carriers, any rate agreements concluded through these procedures and involving an airline or airlines of that Contracting Party will be subject to the approval of the aeronautical authorities of that Contracting Party.

D. If the aeronautical authorities of a Contracting Party, on receipt of the notification referred to in paragraph B above, are dissatisfied with the rate proposed, the other Contracting Party shall be so informed at least fifteen (15) days prior to the date that such rate would otherwise become effective, and the Contracting Parties shall endeavor to reach agreement on the appropriate rate.

E. If the aeronautical authorities of a Contracting Party, upon review of an existing rate charged for carriage to or from the territory of that Party by an airline or airlines of the other Contracting Party are dissatisfied with that rate, the other Contracting Party shall be so informed and the Contracting Parties shall endeavor to reach agreement on the appropriate rate.

F. In the event that an agreement is reached pursuant to the provisions of paragraph D or E, each Contracting Party will exercise its best efforts to put such rate into effect.

G. If:

- (1) under the circumstances set forth in paragraph D, no agreement can be reached prior to the date that such rate would otherwise become effective; or
- (2) under the circumstances set forth in paragraph E, no agreement can be reached prior to the expiration of sixty (60) days from the date of notification,

then the aeronautical authorities of the Contracting Party raising the objection to the rate may take such steps as may be considered necessary to prevent the inauguration or the continuation of the service in question at the rate complained of; provided, however, that the aeronautical authorities of the Contracting Party raising the objection shall not require the charging of a rate higher than the lowest rate charged by its own airline or airlines for comparable service between the same points.

H. When in any case under paragraph D and E the Contracting Parties cannot agree within a reasonable time upon the appropriate rate after consultation initiated by either of them, the terms of Article 13 of this Agreement shall apply. In rendering its decision or award, the arbitral tribunal shall be guided by the principles laid down in this Article.

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## ARTICLE 11

The following provisions shall govern the sale of air transportation and the conversion and remittance of revenues:

A. Each designated airline shall have the right to engage in the sale of air transportation in the territory of the other Contracting Party directly and, in its discretion, through its agents. Such airline shall have the right to sell such transportation, and any person shall be free to purchase such transportation, in the currency of that territory or in freely convertible currencies of other countries.

B. Any rate specified in terms of the national currency of one of the Contracting Parties shall be established in an amount which reflects the effective exchange rate (including all exchange fees or other charges) at which the airlines of both Parties can convert and remit the revenues from their transport operations into the national currency of the other Party.

C. Each designated airline shall have the right to convert and remit to its country local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted promptly and without restrictions at the rate of exchange in effect for the sale of transportation at the time such revenues are presented for conversion and remittance and shall be exempted from taxation to the fullest extent permitted by national law. If a Contracting Party does not have a convertible currency and requires the submission of applications for conversion and remittance, the airlines of the other Contracting Party shall be permitted to file such applications as often as weekly free of burdensome or discriminatory documentary requirements.

## ARTICLE 12

Either Contracting Party may at any time request consultations on the interpretation, application or amendment of this Agreement. Such consultations shall begin within a period of sixty (60) days from the date the other Contracting Party receives the request.

## ARTICLE 13

A. Any dispute with respect to matters covered by this Agreement not satisfactorily adjusted through consultation shall, upon request of either Contracting Party, be submitted to arbitration in accordance with the procedures set forth herein.

B. Arbitration shall be by a tribunal of three arbitrators constituted as follows:

- (1) One arbitrator shall be named by each Contracting Party within sixty (60) days of the date of

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delivery by either Contracting Party to the other of a request for arbitration. Within thirty (30) days after such period of sixty (60) days, the two arbitrators so designated shall by agreement designate a third arbitrator, who shall not be a national of either Contracting Party.

- (2) If either Contracting Party fails to name an arbitrator or if the third arbitrator is not agreed upon in accordance with paragraph (1), either Contracting Party may request the President of the Council of the International Civil Aviation Organization to designate the necessary arbitrator or arbitrators.

C. Each Contracting Party shall use its best efforts consistent with its national law to put into effect any decision or award of the arbitral tribunal.

D. The expenses of the arbitral tribunal, including the fees and expenses of the arbitrators, shall be shared equally by the Contracting Parties.

#### ARTICLE 14

This Agreement and all amendments thereto shall be registered with the International Civil Aviation Organization.

#### ARTICLE 15

Either Contracting Party may at any time notify the other of its intention to terminate this Agreement. Such notice shall be sent simultaneously to the International Civil Aviation Organization. This Agreement shall terminate one year after the date on which the notice of termination is received by the other Contracting Party, unless withdrawn before the end of this period by agreement between the Contracting Parties.

#### ARTICLE 16

This agreement will come into force on the day it is signed.

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed the present Agreement.

Done in duplicate at \_\_\_\_\_ in the English and \_\_\_\_\_ languages, both texts being equally authentic, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

For the Government of the United States of America:

For the Government of \_\_\_\_\_:

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#### SCHEDULE

A. An airline or airlines designated by the Government of the United States shall be entitled to operate air services on each of the specified routes, in both directions, and to make scheduled landings in \_\_\_\_\_ at the points specified in this paragraph:

1. ....

B. An airline or airlines designated by the Government of \_\_\_\_\_ shall be entitled to operate air services on each of the specified routes, in both directions, and to make scheduled landings in the United States at the points specified in this paragraph:

1. ....

C. Points on any of the specified routes may at the option of the designated airlines be omitted on any or all flights.

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## APPENDIX 4

#### IV LEGISLATIVE TEXTS/LÉGISLATION

### AIR SERVICES AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND (BERMUDA 2)\*

The Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland;

Resolved to provide safe, adequate and efficient international air transportation responsive to the present and future needs of the public and to the continued development of international commerce;

Desiring the continuing growth of adequate, economical and efficient air transportation by airlines at reasonable charges, without unjust discrimination or unfair or destructive competitive practices;

Resolved to provide a fair and equal opportunity for their designated airlines to compete in the provision of international air services;

Desiring to ensure the highest degree of safety and security in international air transportation;

Seeking to encourage the efficient use of available resources, including petroleum, and to minimize the impact of air services on the environment;

Believing that both scheduled and charter air transportation are important to the consumer interest and are essential elements of a healthy international air transport system;

Reaffirming their adherence to the Convention on International Civil Aviation opened for signature at Chicago on 7 December 1944; and

Desiring to conclude a new agreement complementary to that Convention for the purpose of replacing the Final Act of the Civil Aviation Conference held at Bermuda, from 15 January to 11 February 1946, and the annexed Agreement between the Government of the United States of America and the Government of the United Kingdom relating to Air Services between their Respective Territories, as subsequently amended ("the 1946 Bermuda Agreement");

Have agreed as follows:

#### ARTICLE 1

##### Definitions

For the purposes of this Agreement unless otherwise stated, the term:

(a) "Aeronautical authorities" means, in the case of the United States, the Department of Transportation, the Civil Aeronautics Board, or their successor agencies; and in the case of the United Kingdom, the Secretary of State for Trade, the Civil Aviation Authority, or their successors;

(b) "Agreement" means this Agreement, its Annexes, and any amendments thereto;

\* Reprinted from the US Department of Transportation Washington DC 205 90 July 23, 1977.

(c) "Air service" means scheduled air service or charter air service or both, as the context requires, performed by aircraft for the public transport of passengers, cargo or mail, separately or in combination, for compensation;

(d) "Airport" means a landing area, terminals and related facilities used by aircraft;

(e) "All-cargo air service" means air service performed by aircraft on which cargo or mail (with ancillary attendants) is carried, separately or in combination, but on which revenue passengers are not carried;

(f) "Combination air service" means air service performed by aircraft on which passengers are carried and on which cargo or mail may also be carried if authorized by the relevant national license or certificate;

(g) "Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, and includes: (i) any amendment thereto which has entered into force under Article 94(a) thereof and has been ratified by both Contracting Parties; and (ii) any Annex or any amendment thereto adopted under Article 90 of that Convention, in so far as such amendment or Annex is at any given time effective for both Contracting Parties;

(h) "Designated airline" means an airline designated and authorized in accordance with Article 3 of this Agreement;

(i) "Gateway route segment" means that part of a route described in Annex 1 which lies between the point of last departure or first arrival served by a designated airline in its homeland and the point or points served by that airline in the territory of the other Contracting Party;

(j) "International air service" means an air service which passes through the air space over the territory of more than one State;

(k) "Revenue passenger" means a passenger paying 25 percent or more of the normal applicable fare;

(l) "Stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers, cargo or mail carried for compensation;

(m) "Tariff" means the price to be charged for the public transport of passengers, baggage and cargo (excluding mail) on scheduled air services including the conditions governing the availability or applicability of such price and the charges and conditions for services ancillary to such transport but excluding the commissions to be paid to air transportation intermediaries;

(n) "Territory" means the land areas under the sovereignty, jurisdiction, protection, or trusteeship of a Contracting Party, and the territorial waters adjacent thereto; and

(o) "User charge" means a charge made to airlines for the provision for aircraft, their crews and passengers of airport or air navigation property or facilities, including related services and facilities.

#### ARTICLE 2

##### Grant of Rights

(1) Each Contracting Party grants to the other Contracting Party the following rights for the conduct of international air services by its airlines:

(a) the right to fly across its territory without landing; and

(b) the right to make stops in its territory for non-traffic purposes.

(2) Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement for the purposes of operating scheduled international air services on the routes specified in Annex 1. Such services and routes are hereinafter called "the agreed services" and "the specified routes" respectively. The airlines designated by each Contracting Party may make stops in the territory of the other Contracting Party at the points specified and to the extent specified for each route in Annex 1 for the purpose of taking on board and discharging passengers, cargo or mail, separately or in combination, in scheduled international air service.

(3) Each Contracting Party grants to the other Contracting Party the rights

specified in Annex 4 for the purposes of operating charter international air services.

(4) Nothing in paragraphs (2) or (3) of this Article shall be deemed to confer on the airline or airlines of one Contracting Party the rights to take on board, in the territory of the other Contracting Party, passengers, cargo or mail carried for compensation and destined for another point in the territory of that other Contracting Party except to the extent such rights are authorized in Annex 1 or Annex 4.

(5) If because of armed conflict, political disturbances or developments, or special and unusual circumstances, a designated airline of one Contracting Party is unable to operate a service on its normal routing, the other Contracting Party shall use its best efforts to facilitate the continued operation of such service through appropriate rearrangements of such routes, including the grant of rights for such time as may be necessary to facilitate viable operations.

### ARTICLE 3

#### Designation and Authorization of Airlines

(1) (a) Each Contracting Party shall have the right to designate an airline or airlines for the purpose of operating the agreed services on each of the routes specified in Annex 1 and to withdraw or alter such designations. Such designations shall be made in writing and shall be transmitted to the other Contracting Party through diplomatic channels.

(b) A Contracting Party may request consultations with regard to the designation of an airline or airlines under subparagraph (a) of this paragraph. If, however, agreement is not reached within 60 days from the date of the designation, the designation shall be regarded as a proper designation under this Article.

(2) Notwithstanding paragraph (1) of this Article, for the purpose of operating the agreed combination air services on US Routes 1 and 2, and UK Routes 1, 2, 3, 4 and 5, each Contracting Party shall have the right to designate not more than:

(a) two airlines on each of two gateway route segments of its own choosing; or  
(b) one airline on each gateway route segment other than those selected under subparagraph (a) of this paragraph, except that each Contracting Party may designate not more than:

(i) two airlines on any gateway route segment other than those selected under subparagraph (a) of this paragraph, provided: (A) the total on-board passenger traffic carried by the designated airlines of both Contracting Parties in scheduled air service on a gateway route segment exceeds 600,000 one-way revenue passengers in each of two consecutive twelve month periods; or (B) the total on-board passenger traffic carried by its designated airline in scheduled air service on the gateway route segment exceeds 450,000 one-way revenue passengers in each of two consecutive twelve month periods. For the purpose of this subparagraph, the revenue passenger levels specified must be reached for the first time after the entry into force of this Agreement; and

(ii) two airlines on any gateway route segment other than those selected under subparagraph (a) or permitted under subparagraph (b)(i) of this paragraph, where either the other Contracting Party has not made a designation three years after the right to operate that gateway route segment becomes effective or the airline designated by it does not by then operate, (either nonstop or in combination with another gateway route segment) or operates fewer than 100 round trip combination flights within a twelve month period. An additional designation under this subparagraph shall continue in force notwithstanding subsequent regular operation by an airline of the other Contracting Party.

If coincident gateway route segments appear on more than one route, the limitations set forth in this paragraph apply to the coincident segments taken together. A Contracting Party making designations under this paragraph shall specify which subparagraph applies.

(3) Notwithstanding paragraph (1) of this Article, for the purpose of operating

the agreed all-cargo air services on US Route 7 and on UK Routes 10, 11 and 12 (taken together), each Contracting Party shall have the right to designate not more than a total of three airlines, except that, if the airline or airlines designated by one Contracting Party are licensed or certificated by their own aeronautical authorities and authorized by the other Contracting Party to offer all-cargo air services on a gateway route segment on which the airline or airlines designated by the other Contracting Party are not licensed or certificated by their own aeronautical authorities to offer such services, that other Contracting Party may designate an additional airline on the relevant route or routes to operate all-cargo air services only on that gateway route segment, notwithstanding the fact that such designation will result in the designation of more than three airlines on the relevant route or routes.

(4) Notwithstanding paragraph (1) of this Article, a Contracting Party receiving a designation of an airline which is authorized by that airline's own aeronautical authorities only to operate aircraft having a maximum passenger capacity of 30 seats or less and a maximum payload capacity of 7,500 pounds or less and which was not designated under the 1946 Bermuda Agreement may refuse to regard such designation as a proper designation under this Article if it would result in more than three such airlines or more than the number designated under the 1946 Bermuda Agreement (whichever is greater), operating at any point in the territory of the Contracting Party receiving the designation.

(5) If either Contracting Party wishes to designate an airline or airlines for the routes set forth in paragraphs (2) or (3) of this Article, in addition to the designations specifically permitted by those paragraphs, it shall notify the other Contracting Party. The second Contracting Party may either: (i) accept such further designation; or (ii) request consultations. After consultations the second Contracting Party may decline to accept the designation.

(6) On receipt of a designation made by one Contracting Party under the terms of paragraphs (1), (2) or (3) of this Article, or accepted under the terms of paragraph (5) of this Article, and on receipt of an application or applications from the airline so designated for operating authorizations and technical permissions in the form and manner prescribed for such applications, the other Contracting Party shall grant the appropriate operating authorizations and technical permissions, provided:

(a) substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in its nationals;

(b) the designated airline is qualified to meet the conditions prescribed under the laws and regulations normally applied to the operation of international air services by the Contracting Party considering the application or applications; and

(c) the other Contracting Party is maintaining and administering the standards set forth in Article 8 (Airworthiness).

If the aeronautical authorities of the Contracting Party considering the application or applications are not satisfied that these conditions are met at the end of a 90-day period from receipt of the application or applications from the designated airlines, either Contracting Party may request consultations, which shall be held within 30 days of the request.

(7) When an airline has been designated and authorized in accordance with the terms of this Article, it may operate the relevant agreed services on the specified routes in Annex 1, provided, however, that the airline complies with the applicable provisions of this Agreement.

### ARTICLE 4

#### Application of Laws

(1) 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 applied to the aircraft of the airline or airlines designated by the other Contracting Party and shall be complied with by such aircraft upon entrance into or departure from and while within the territory of the first Contracting Party.

(2) The laws and regulations of one Contracting Party relating to the admission to or departure from its territory of passengers, crew, cargo or mail of aircraft, including regulations relating to entry, clearance, immigration, passports, customs and quarantine, shall be complied with by or on behalf of such passengers, crew, cargo or mail of the airlines of the other Contracting Party upon entrance into or departure from and while within the territory of the first Contracting Party.

#### ARTICLE 5

##### Revocation or Suspension of Operating Authorization

(1) Each Contracting Party shall have the right to revoke, suspend, limit or impose conditions on the operating authorizations or technical permissions of an airline designated by the other Contracting Party where:

(a) substantial ownership and effective control of that airline are not vested in the Contracting Party designating the airline or in nationals of such Contracting Party; or

(b) that airline has failed to comply with the laws or regulations of the first Contracting Party; or

(c) the other Contracting Party is not maintaining and administering safety standards as set forth in Article 6 (Airworthiness).

(2) Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph (1) of this Article is essential to prevent further non-compliance with subparagraphs (b) or (c) of paragraph (1) of this Article, such rights shall be exercised only after consultation with the other Contracting Party.

#### ARTICLE 6

##### Airworthiness

(1) Certificates of airworthiness, certificates of competency, and licenses issued or rendered valid by one Contracting Party, and still in force, shall be recognized as valid by the other Contracting Party for the purpose of operating the air services provided for in this Agreement, provided that the requirements under which such certificates or licenses were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the Convention. Each Contracting Party reserves the right, however, to refuse to recognize as valid for the purpose of flights above its own territory, certificates of competency and licenses granted to its own nationals by the other Contracting Party.

(2) The competent aeronautical authorities of each Contracting Party may request consultations concerning the safety, and security standards and requirements maintained and administered by the other Contracting Party relating to aeronautical facilities, aircrew, aircraft, and the operation of the designated airlines. If, following such consultations, the competent aeronautical authorities of either Contracting Party find that the other Contracting Party does not effectively maintain and administer safety and security standards and requirements in these areas that are equal to or above the minimum standards which may be established pursuant to the Convention, they will notify the other Contracting Party of such findings and the steps considered necessary to bring the safety and security standards and requirements of the other Contracting Party to standards at least equal to the minimum standards which may be established pursuant to the Convention, and the other Contracting Party shall take appropriate

corrective action. Each Contracting Party reserves the right to withhold, revoke or limit, pursuant to Articles 2 (Grant of Rights), 3 (Designation and Authorization of Airlines), and 5 (Revocation or Suspension of Operating Authorization), the operating authorization or technical permission of an airline or airlines designated by the other Contracting Party, in the event the other Contracting Party does not take such appropriate action within a reasonable time.

#### ARTICLE 7

##### Aviation Security

The Contracting Parties reaffirm their grave concern about acts or threats against the security of aircraft, which jeopardize the safety of persons or property, adversely affect the operation of air services and undermine public confidence in the safety of civil aviation. The Contracting Parties agree to provide maximum aid to each other with a view to preventing hijackings and sabotage to aircraft, airports and air navigation facilities and threats to aviation security. They reaffirm their commitments under and shall have regard to the provisions of the Convention on Offences and certain other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970, and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971. The Contracting Parties shall also have regard to applicable aviation security provisions established by the International Civil Aviation Organization. When incidents or threats of hijacking or sabotage against aircraft, airports or air navigation facilities occur, the Contracting Parties shall assist each other by facilitating communications intended to terminate such incidents rapidly and safely. Each Contracting Party shall give sympathetic consideration to any request from the other for special security measures for its aircraft or passengers to meet a particular threat.

#### ARTICLE 8

##### Commercial Operations

(1) The designated airline or airlines of one Contracting Party shall be entitled, in accordance with the laws and regulations relating to entry, residence and employment of the other Contracting Party, to bring in and maintain in the territory of the other Contracting Party those of their own managerial, technical, operational and other specialist staff who are required for the provision of air services.

(2) Each Contracting Party agrees to use its best efforts to ensure that the designated airlines of the other Contracting Party are offered the choice, subject to reasonable limitations which may be imposed by airport authorities, of providing their own services for ground handling operations; of having such operations performed entirely or in part by another airline, an organization controlled by another airline, or a servicing agent, as authorized by the airport authority; or of having such operations performed by the airport authority.

(3) Each Contracting Party grants to each designated airline of the other Contracting Party the right to engage in the sale of air transportation in its territory directly and, at the airline's discretion, through its agents. Each airline shall have the right to sell such transportation, and any person shall be free to purchase such transportation, in the currency of that territory or in freely convertible currencies of other countries.

(4) Each designated airline shall have the right to convert and remit to its country on demand local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted without restrictions at the rate of exchange applicable to current transactions which is in effect at the time such revenues

are presented for conversion and remittance. Both Contracting Parties have accepted the obligations set out in Article VIII of the Articles of Agreement of the International Monetary Fund.

(5) Each Contracting Party shall use its best efforts to secure for the designated airlines of the other Contracting Party on a reciprocal basis an exemption from taxes, charges and fees imposed by State, regional and local authorities on the items listed in paragraphs (1) and (2) of Article 9 (Customs Duties), as well as from fuel through-put charges, in the circumstances described under those paragraphs, except to the extent that the charges are based on the actual cost of providing the service.

## ARTICLE 9

### Customs Duties

(1) Aircraft operated in international air services by the designated airlines of either Contracting Party, their regular equipment, fuel, lubricants, consumable technical supplies, spare parts including engines, and aircraft stores including but not limited to such items as food, beverages and tobacco, which are on board such aircraft, shall be relieved on the basis of reciprocity from all customs duties, national excise taxes, and similar national fees and charges not based on the cost of services provided, on arriving in the territory of the other Contracting Party, provided such equipment and supplies remain on board the aircraft.

(2) There shall also be relieved from the duties, fees and charges referred to in paragraph (1) of this Article, with the exception of charges based on the cost of the service provided:

(a) aircraft stores, introduced into or supplied in the territory of a Contracting Party, and taken on board, within reasonable limits, for use on outbound aircraft engaged in an international air service of a designated airline of the other Contracting Party;

(b) spare parts including engines introduced into the territory of a Contracting Party for the maintenance or repair of aircraft used in an international air service of a designated airline of the other Contracting Party; and

(c) fuel, lubricants and consumable technical supplies introduced into or supplied in the territory of a Contracting Party for use in an aircraft engaged in an international air service of a designated airline of the other Contracting Party, even when these supplies are to be used on a part of the journey performed over the territory of the Contracting Party in which they are taken on board.

(3) Equipment and supplies referred to in paragraphs (1) and (2) of this Article may be required to be kept under the supervision or control of the appropriate authorities.

(4) The reliefs provided for by this Article shall also be available in situations where the designated airlines of one Contracting Party entered into arrangements with another airline or airlines for the loan or transfer in the territory of the other Contracting Party of the items specified in paragraphs (1) and (2) of this Article provided such other airline or airlines similarly enjoy such reliefs from such other Contracting Party.

## ARTICLE 10

### User Charges

(1) Each Contracting Party shall use its best efforts to ensure that user charges imposed or permitted to be imposed by its competent charging authorities on the designated airlines of the other Contracting Party are just and reasonable. Such charges shall be considered just and reasonable if they are determined and

imposed in accordance with the principles set forth in paragraphs (2) and (3) of this Article, and if they are equitably apportioned among categories of users.

(2) Neither Contracting Party shall impose or permit to be imposed on the designated airlines of the other Contracting Party user charges higher than those imposed on its own designated airlines operating similar international air services.

(3) User charges may reflect, but shall not exceed, the full cost to the competent charging authorities of providing appropriate airport and air navigation facilities and services, and may provide for a reasonable rate of return on assets, after depreciation. In the provision of facilities and services, the competent authorities shall have regard to such factors as efficiency, economy, environmental impact and safety of operation. User charges shall be based on sound economic principles and on the generally accepted accounting practices within the territory of the appropriate Contracting Party.

(4) Each Contracting Party shall encourage consultations between its competent charging authorities and airlines using the services and facilities, where practicable through the airlines' representative organizations. Reasonable notice should be given to users of any proposals for changes in user charges to enable them to express their views before changes are made.

(5) For the purposes of paragraph (4) of this Article, each Contracting Party shall use its best efforts to encourage the competent charging authorities and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles set out in this Article.

(6) In the event that agreement is reached between the Contracting Parties that an existing user charge should be revised, the appropriate Contracting Party shall use its best efforts to put the revision into effect promptly.

## ARTICLE 11

### Fair Competition

(1) The designated airline or airlines of one Contracting Party shall have a fair and equal opportunity to compete with the designated airline or airlines of the other Contracting Party.

(2) The designated airline or airlines of one Contracting Party shall take into consideration the interests of the designated airline or airlines of the other Contracting Party so as not to affect unduly that airline's or those airlines' services on all or part of the same routes. In particular, when a designated airline of one Contracting Party proposes to inaugurate services on a gateway route segment already served by a designated airline or airlines of the other Contracting Party, the incumbent airline or airlines shall each refrain from increasing the frequency of their services to the extent and for the time necessary to ensure that the airline inaugurating service may fairly exercise its rights under paragraph (1) of this Article. Such obligation to refrain from increasing frequency shall not last longer than two years or beyond the point when the inaugurating airline matches the frequencies of any incumbent airline, whichever occurs first, and shall not apply if the services to be inaugurated are limited as to their capacity by the license or certificate granted by the designating Contracting Party.

(3) Services provided by a designated airline under this Agreement shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country of which such airline 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 or points on the routes specified in this Agreement shall be exercised in accordance with the general principles of orderly development of international air transport to which both Contracting Parties subscribe and shall be subject to the general principle that capacity should be related to:

(a) the traffic requirements between the country of origin and the countries of ultimate destination of the traffic;

(b) the requirements of through airline operations; and

(c) the traffic requirements of the area through which the airline passes, after taking account of local and regional services.

(4) The frequency and capacity of services to be provided by the designated airlines of the Contracting Parties shall be closely related to the requirements of all categories of public demand for the carriage of passengers and cargo including mail in such a way as to provide adequate service to the public and to permit the reasonable development of routes and viable airline operations. Due regard shall be paid to efficiency of operation so that frequency and capacity are provided at levels appropriate to accommodate the traffic at load factors consistent with tariffs based on the criteria set forth in paragraph (2) of Article 12 (tariffs).

(5) The Contracting Parties recognize that airline actions leading to excess capacity or to the underprovision of capacity can both run counter to the interests of the travelling public. Accordingly, in the particular case of combination air services on the North Atlantic routes specified in paragraph (1) of Annex 2, they have agreed to establish the procedures set forth in Annex 2. With respect to other routes and services, if one Contracting Party believes that the operations of a designated airline or airlines of the other Contracting Party have been inconsistent with the principles set forth in this Article, it may request consultations pursuant to Article 16 (Consultations) for the purpose of reviewing the operations in question to determine whether they are in conformity with these principles. In such consultations there shall be taken into consideration the operations of all airlines serving the market in question and designated by the Contracting Party whose airline or airlines are under review. If the Contracting Parties conclude that the operations under review are not in conformity with the principles set forth in this Article, they may decide upon appropriate corrective or remedial measures, except that, where frequency or capacity limitations are already provided for a route specified in Annex 1, the Contracting Parties may not vary those limitations or impose additional limitations except by amendment of this Agreement.

(6) Neither Contracting Party shall unilaterally restrict the operations of the designated airlines of the other except according to the terms of this Agreement or by such uniform conditions as may be contemplated by the Convention.

## ARTICLE 12

### Tariffs

(1) Tariffs of the designated airlines of the Contracting Parties for carriage between their territories shall be established in accordance with the procedures set out in this Article.

(2) The tariffs charged by the designated airlines of one Contracting Party for public transport to or from the territory of the other Contracting Party shall be established at the lowest level consistent with a high standard of safety and adequate return to efficient airlines operating on the agreed routes. Each tariff shall, to the extent feasible, be based on the costs of providing such service assuming reasonable load factors. Additional relevant factors shall include among others the need of the airline to meet competition from scheduled or charter air services, taking into account differences in cost and quality of service, and the prevention of unjust discrimination and undue preferences or advantages. To further the reasonable interests of users of air transport services, and to encourage the further development of civil aviation, individual airlines should be encouraged to initiate innovative, cost-based tariffs.

(3) The tariffs charged by the designated airlines of one Contracting Party for public transport between the territory of the other Contracting Party and the

territory of a third State shall be subject to the approval of the other Contracting Party and such third State; provided, however, that a Contracting Party shall not require a different tariff from the tariff of its own airlines for comparable service between the same points. The designated airlines of each Contracting Party shall file such tariffs with the other Contracting Party, in accordance with its requirements.

(4) Any tariff agreements with respect to public transport between the territories of the Contracting Parties concluded as a result of intercarrier discussions, including those held under the traffic conference procedures of the International Air Transport Association, or any other association of international airlines, and involving the airlines of the Contracting Parties will be subject to the approval of the aeronautical authorities of those Contracting Parties, and may be disapproved at any time whether or not previously approved. The submission of such agreements is not the filing of a tariff for the purposes of the provisions of paragraph (5) of this Article. Such agreements shall be submitted to the aeronautical authorities of both Contracting Parties for approval at least 105 days before the proposed date of effectiveness, accompanied by such justification as each Contracting Party may require of its own designated airlines. The period of 105 days may be reduced with the consent of the aeronautical authorities of the Contracting Party with whom a filing is made. The aeronautical authorities of each Contracting Party shall use their best efforts to approve or disapprove (in whole or in part) each agreement submitted in accordance with this paragraph on or before the 60th day after its submission. Each Contracting Party may require that tariffs reflecting agreements approved by it be filed and published in accordance with its laws.

(5) Any tariff of a designated airline of one Contracting Party for public transport between the territories of the Contracting Parties shall, if so required, be filed with the aeronautical authorities of the other Contracting Party at least 75 days prior to the proposed effective date unless the aeronautical authorities of that Contracting Party permit the filing to be made on shorter notice. Such tariff shall become effective unless action is taken to continue in force the existing tariff as provided in paragraph (7) of this Article.

(6) If the aeronautical authorities of one Contracting Party, on receipt of any filing referred to in paragraph (5) of this Article, are dissatisfied with the tariff proposed or desire to discuss the tariff with the other Contracting Party, the first Contracting Party shall so notify the other Contracting Party through diplomatic channels within 30 days of the filing of such tariff, but in no event less than 15 days prior to the proposed effective date of such tariff. The Contracting Party receiving the notification may request consultations and, if so requested, such consultation shall be held at the earliest possible date for the purpose of attempting to reach agreement on the appropriate tariff. If notification of dissatisfaction is not given as provided in this paragraph, the tariff shall be deemed to be approved by the aeronautical authorities of the Contracting Party receiving the filing and shall become effective on the proposed date.

(7) If agreement is reached on the appropriate tariff under paragraph (6) of this Article, each Contracting Party shall exercise its best efforts to put such tariff into effect. If an agreement is not reached prior to the proposed effective date of the tariff, or if consultations are not requested, the aeronautical authorities of the Contracting Party expressing dissatisfaction with that tariff may take action to continue in force the existing tariffs beyond the date on which they would otherwise have expired at the levels and under the conditions (including seasonal variations) set forth therein. In this event the other Contracting Party shall similarly take any action necessary to continue the existing tariffs in effect. In no circumstances, however, shall a Contracting Party require a different tariff from the tariff of its own designated airlines for comparable service between the same points.

(8) The aeronautical authorities of each Contracting Party shall exercise their best efforts to ensure that the designated airlines conform to the agreed tariffs filed with the aeronautical authorities of the Contracting Parties, and that no airline rebates any portion of such tariffs by any means, directly or indirectly.

(c) In order to avoid tariff disputes to the greatest extent possible:  
 (a) a continuing Tariff Working Group shall be established to make recommendations on tariff-making standards, as provided in Annex 3;  
 (b) the aeronautical authorities will keep one another informed of such guidance as they may give to their own airlines in advance of or during traffic conferences of the International Air Transport Association; and  
 (c) during the period that the aeronautical authorities of either Contracting Party have agreements under consideration pursuant to paragraph (4) of this Article, the Contracting Parties may exchange views and recommendations, orally or in writing. Such views and recommendations shall, if requested by either Contracting Party, be presented to the aeronautical authorities of the other Contracting Party, who will take them into account in reaching their decision.

## ARTICLE 13

### Commissions

(1) The airlines of each Contracting Party may be required to file with the aeronautical authorities of both Contracting Parties the level or levels of commissions and all other forms of compensation to be paid or provided by such airline in any manner or by any device, directly or indirectly, to or for the benefit of any person (other than its own *bona fide* employees) for the sale of air transportation between the territories of the Contracting Parties. The aeronautical authorities of each Contracting Party shall exercise their best efforts to ensure that the commissions and compensation paid by the airlines of each Contracting Party conform to the level or levels of commissions and compensation filed with the aeronautical authorities.

(2) The level of commissions and other forms of compensation paid with respect to the sale, within the territory of a Contracting Party, of air transportation, shall be subject to the laws and regulations of such Contracting Party, which shall be applied in a nondiscriminatory fashion.

## ARTICLE 14

### Charter Air Service

(1) The Contracting Parties recognize the need to further the maintenance and development, where a substantial demand exists or may be expected, of a viable network of scheduled air services, consistently and readily available, which caters for all segments of demand and particularly for those needing a wide and flexible range of air services.

(2) The Contracting Parties also recognize the substantial and growing demand from that section of the travelling public which is price rather than time sensitive, for air services at the lowest possible level of fares. The Contracting Parties, therefore, taking into account the relationship of scheduled and charter air services and the need for a total air service system, shall further the maintenance and development of efficient and economic charter air services so as to meet that demand.

(3) The Contracting Parties shall therefore apply the provisions of Annex 4 to charter air services between their territories.

## ARTICLE 15

### Transitional Provisions

(1) Designation. On the entry into force of this Agreement, and until 1 November 1977, all designations and authorizations in effect pursuant to the 1946 Bermuda Agreement shall remain in effect. Additional designations shall

be subject to the provisions of Article 3 (Designation and Authorization of Airlines) of this Agreement. By 1 November 1977, each Contracting Party shall indicate to the other all the initial designations applicable under this Agreement. Notwithstanding the provisions of Article 3, until 1 November 1977:

(a) the United States shall be entitled to retain two designated airlines to operate combination air services on each of three gateway route segments on US Routes 1 and 2, taken together; and

(b) the United Kingdom shall be entitled to retain three designated airlines to operate combination air services on one gateway route segment on UK Routes 1, 2, 3, 4 and 5, taken together.

(2) Capacity. Notwithstanding the provisions of Annex 2, as regards the winter traffic season of 1977/78 the following procedures shall apply:

Paragraph (2): Airlines shall file schedules not later than 120 days prior to the winter traffic season, instead of 180 days.

Paragraph (3): Airlines shall refile amendments not later than 105 days prior to the winter traffic season, instead of 165 days.

Paragraph (4): A Contracting Party's notice of inconsistency shall be given within 90 days, instead of 150 days.

Paragraph (5): If requested, consultations shall begin not later than 75 days prior to the winter traffic season, instead of 90 days.

Paragraph (6): If agreement on capacity to be operated is not achieved, paragraph (6) procedures shall apply within 60 days prior to the winter traffic season, instead of 75 days.

(3) Tariffs. All tariffs filed to become effective on or after 1 November 1977, and all agreements filed to become effective on or after 1 January 1978 shall be subject to the provisions of Article 12 (Tariffs). Agreements filed to become effective prior to 1 January 1978 shall be subject to the provisions of Article 12 to the greatest extent feasible. Tariffs filed to become effective prior to 1 November 1977 shall be subject to the provisions of the 1946 Bermuda Agreement, and all tariffs in effect under the 1946 Bermuda Agreement shall continue in force, but either Contracting Party may notify the other Contracting Party of its dissatisfaction with any such tariffs, and the procedures set forth in this Agreement shall then apply.

## ARTICLE 16

### Consultations

Either Contracting Party may at any time request consultations on the implementation, interpretation, application or amendment of this Agreement or compliance with this Agreement. Such consultations shall begin within a period of 60 days from the date the other Contracting Party receives the request, unless otherwise agreed by the Contracting Parties.

## ARTICLE 17

### Settlement of Disputes

(1) Any dispute arising under this Agreement, other than disputes where self-executing mechanisms are provided in Article 12 (Tariffs) and Annex 2, which is not resolved by a first round of formal consultations, may be referred by agreement of the Contracting Parties for decision to some person or body. If the Contracting Parties do not so agree, the dispute shall at the request of either Contracting Party be submitted to arbitration in accordance with the procedures set forth below.

(2) Arbitrations shall be by a tribunal of three arbitrators to be constituted as follows:

(a) within 30 days after the receipt of a request for arbitration, each Contract-

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one Party shall name one arbitrator. Within 60 days after these two arbitrators have been nominated, they shall by agreement appoint a third arbitrator, who shall act as President of the arbitral tribunal.

(b) If either Contracting Party fails to name an arbitrator, or if the third arbitrator is not appointed in accordance with subparagraph (a) of this paragraph, either Contracting Party may request the President of the International Court of Justice to appoint the necessary arbitrator or arbitrators within 30 days. If the President is of the same nationality as one of the Parties, the most senior Vice-President who is not disqualified on that ground shall make the appointment.

(3) Except as otherwise agreed by the Contracting Parties, the arbitral tribunal shall determine the limits of its jurisdiction in accordance with this Agreement, and shall establish its own procedure. At the direction of the tribunal or at the request of either of the Contracting Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held no later than 15 days after the tribunal is fully constituted.

(4) Except as otherwise agreed by the Contracting Parties or prescribed by the tribunal, each Party shall submit a memorandum within 45 days of the time the tribunal is fully constituted. Replies shall be due 60 days later. The tribunal shall hold a hearing at the request of either Party or at its discretion within 15 days after replies are due.

(5) The tribunal shall attempt to render a written decision within 30 days after completion of the hearing or, if no hearing or, if no hearing is held, after the date both replies are submitted, whichever is sooner. The decision of the majority of the tribunal shall prevail.

(6) The Contracting Parties may submit request for clarification of the decision within 15 days after it is rendered and any clarification given shall be issued within 15 days of such request.

(7) Each Contracting Party shall, consistent with its national law, give full effect to any decision or award of the arbitral tribunal. In the event that one Contracting Party does not give effect to any decision or award, the other Contracting Party may take such proportionate steps as may be appropriate.

(8) The expenses of the arbitral tribunal, including the fees and expenses of the arbitrators, shall be shared equally by the Contracting Parties. Any expenses incurred by the President of the International Court of Justice in connection with the procedures of paragraph (2)(b) of this Article shall be considered to be part of the expenses of the arbitral tribunal.

## ARTICLE 18

### Amendment

Any amendments or modifications of this Agreement agreed by the Contracting Parties shall come into effect when confirmed by an Exchange of Notes.

## ARTICLE 19

### Termination

Either Contracting Party may at any time give notice in writing to the other Contracting Party of its decision to terminate this Agreement. Such notice shall be sent simultaneously to the International Civil Aviation Organization. This Agreement shall terminate at midnight (at the place of receipt of the notice) immediately before the first anniversary of the date of receipt of the notice by the other Contracting Party, unless the notice is withdrawn by agreement before the end of this period.

## ARTICLE 20

### Registration with ICAO

This Agreement and all amendments thereto shall be registered with the International Civil Aviation Organization.

## ARTICLE 21

### Entry into Force

This Agreement shall enter into force on the date of signature.  
IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Agreement.  
DONE in duplicate at Bermuda this 23rd day of July, Nineteen Hundred and Seventy-Seven.

FOR THE GOVERNMENT OF  
THE UNITED STATES OF  
AMERICA  
FOR THE GOVERNMENT OF  
THE UNITED KINGDOM OF  
GREAT BRITAIN AND  
NORTHERN IRELAND:

Brock Adams

Alan S. Boyd

Edmund Dell

W. Patrick Shovelton

## ANNEX I ROUTE SCHEDULES

(See Official Publication by the U.S. Department of Transportation)

### ANNEX 2 - Capacity on the North Atlantic

(1) In order to ensure the sound application of the principles set forth in Article 11 (Fair Competition) of this Agreement and in view of the special circumstances of North Atlantic air transport, the Contracting Parties have agreed to the following procedures with respect to combination air services on US Routes 1 and 2 and UK Routes 1, 2, 3, 4 and 5, specified in Annex 1.

(2) The purpose of this Annex is to provide a consultative process to deal with cases of excess provision of capacity, while ensuring that designated airlines retain adequate scope for managerial initiative in establishing schedules and that the overall market share achieved by each designated airline will depend upon passenger choice rather than the operation of any formula or limitation mechanism. In keeping with these objectives, the Contracting Parties desire to avoid unduly frequent invocation of the consultative mechanism or limitation provision in order to avoid undue burden of detailed supervision of airline scheduling for the Contracting Parties.

(3) Not later than 180 days before each summer and winter traffic season, each designated airline shall file with both Contracting Parties its proposed schedules for services on each relevant gateway route segment for that season. Such schedules shall specify the frequency of service, type of aircraft and all the points to be served. The designated airlines may amend their filings in the light

of the schedules so filed and shall file such amendments with both Contracting Parties not later than 105 days before each summer and winter traffic season. In the event that adjustments in schedules are later required, such adjustments shall be filed with both Contracting Parties on a timely basis. A resulting increase in frequency by an airline on any gateway route segment shall be subject to the approval of the other Contracting Party.

(4) If a Contracting Party (the "Receiving Party") believes that an increase in frequency of service on a gateway route segment contained in any of the schedules so filed with it by a designated airline of the other Contracting Party (the "Requesting Party") may be inconsistent with the principles set forth in Article 11 of this Agreement, it shall, not later than 150 days before the next traffic season, notify the Requesting Party, giving the reasons for its belief and, in its discretion, indicating the increase, if any, in frequency of service on the gateway route segment which it considers consistent with the Agreement. Such notification shall not, however, be permitted in respect of a schedule for a summer traffic season which specifies a total of 120 or fewer round trip frequencies on any gateway route segment or for a winter traffic season which specifies 88 or fewer such frequencies. The Requesting Party shall review the increase in frequency of service called into question in the light of the principles set forth in Article 11, taking into account the public requirement for adequate capacity, the need to avoid uneconomic excess capacity, the development of routes and services, the need for viable airline operations, and the capacity offered by airlines of third countries between the points in question. The Requesting Party shall, not later than 120 days before the next traffic season notify the Receiving Party of the extent to which it considers that the increase in frequency is consistent with the principles set forth in Article 11.

(5) If the Receiving Party is not satisfied with the Requesting Party's determination with respect to the increase in frequency in question, it shall so notify the Requesting Party not later than 105 days before the next traffic season, and consultations shall be held as soon as possible and in any event not later than 90 days before that traffic season. In such consultations, the Parties shall exchange relevant economic data, including forecasts of the percentage increase in total on-board revenue passenger traffic expected on the gateway route segment in question when the next traffic season is compared with the previous corresponding season.

(6) If, 75 days before the traffic season begins, agreement has not been reached through such consultations, each designated airline on the gateway route segment in question shall be entitled to operate during the next traffic season the schedule it proposes to operate, but not more than the sum of:

(a) the total number of round trip frequencies (excluding extra-sections) which that airline was allowed under this Annex to operate on that gateway route segment during the previous corresponding season; and

(b) such number of round trip frequencies as are determined by applying to the number described in subparagraph (a) the average of the forecast percentages mentioned in paragraph (5) of this Annex. An addition of 20 round trip frequencies during a summer traffic season or 15 during a winter traffic season shall in any event be permitted.

In no event shall a designated airline be required to operate fewer than 120 round trip frequencies during a summer traffic season or 88 during a winter traffic season.

(7) A designated airline of one Contracting Party which inaugurates service on a gateway route segment already served by a designated airline or airlines of the other Contracting Party shall not be bound by the limitations set forth in paragraph (6) of this Annex for a period of two years or until it matches the frequencies of any incumbent airline of that other Contracting Party, whichever occurs first.

(8) Operations of Concorde aircraft by United Kingdom designated airlines shall not be subject to the provisions of this Annex. In order, however, that this exclusion should not unfairly affect United States designated airlines, the United States airline designated to operate combination air services on the

Washington-London gateway route segment may not be required, under paragraph (6) of this Annex, to operate fewer than seven round trip flights per week.

(9) Each Contracting Party shall allow filed schedules which have not been questioned under paragraph (5) of this Annex to become effective on their proposed commencement dates. Each Contracting Party shall allow schedules which may have been determined by agreement through consultations or, in the absence of such agreement, as provided in paragraph (6) of this Annex, to become effective on their proposed commencement dates. Each Contracting Party may take such steps as it considers necessary to prevent the operation of schedules which include frequencies greater than those permitted or agreed under this Annex.

(10) Each designated airline shall be entitled to operate extra sections on any gateway route segment, provided that such extra sections are not advertised or held out as separate flights.

(11) In the event that either Contracting Party believes that this Annex is not achieving the objectives set forth in paragraph (2), they may consult at any time, pursuant to Article 16 (Consultations) of this Agreement, to consider alterations to the procedures or numerical limitations.

(12) Subject to Article 19 (Termination) of this Agreement, this Annex shall remain in force for a period of five years. The Contracting Parties shall consult during the first quarter of the fifth year after the entry into force of this Agreement to review the operation of the Annex and to decide as to its extension or revision. If the Contracting Parties do not agree on extension or revision, this Annex shall remain in force for a further period of two years and shall then lapse.

(13) For the purposes of this Annex, "summer and winter traffic seasons" mean, respectively, the periods from 1 April through 31 October and from 1 November through 31 March.

### ANNEX 3 - Tariffs

(1) A tariff Working Group shall be established and shall consist of experts from each Contracting Party in areas such as accounting, statistics, financial analysis, economics, pricing and marketing.

(2) The Tariff Working Group shall meet within 90 days of the entry into force of this Agreement and thereafter as necessary to accomplish the objectives of this Agreement.

(3) The Tariff Working Group shall develop procedures for the exchange, on a recurrent basis, of verified financial and traffic statistics in order to assist each Contracting Party in assessing tariff proposals.

(4) The Tariff Working Group shall, by 23 July 1978, make recommendations to the Contracting Parties on load factor standards and evaluation and review criteria for North Atlantic tariffs.

(5) The Contracting Parties shall review the recommendations of the Tariff Working Group and, subject to the outcome of this review, shall give due consideration to these recommendations in reviewing tariffs and agreements reached under the auspices of the International Air Transport Association.

(6) Either Contracting Party may from time to time request that the Tariff Working Group be convened to consider specific issues.

### ANNEX 4 - Charter Air Service

(1) The Memorandum of Understanding on Passenger Charter Air Services between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, applying from 1 April 1977, shall be regarded as being incorporated in this Annex for as long as it remains in force.

(2) Articles 1, 2 (paragraphs (1), (4), and (4)<sup>1</sup>; 4, 6, 8 (except that paragraph (3) shall apply only to the extent authorized by the aeronautical authorities in the relevant territory), 9, 10, 14, 16, 17, 18, 19, 20 and 21 of this Agreement shall apply to airlines authorized by both Contracting Parties to operate charter international air services between the territories of the two Contracting Parties.

(3) In furtherance of paragraphs (1) and (2) of Article 14 of this Agreement, the Contracting Parties agree that it is desirable to work toward a multilateral arrangement for charter air services in the North Atlantic market. The Contracting Parties also agree that a bilateral agreement would be an appropriate means of achieving their common objective. Such bilateral agreement should include, among other matters, progressive charterworthiness conditions, freedom of market access, arrangements for designation and authorization of charter airlines which lead to the issue of permits rather than individual flight licenses, minimization of administrative burdens, all-cargo charter arrangements, and capacity and price arrangements consistent with those contained in the Memorandum of Understanding on Passenger Charter Air Services. The Contracting Parties shall enter into negotiations as soon as possible and, in any event, not later than 31 December 1977, to work towards the foregoing objectives. In the absence of agreement by 31 March 1978, the Contracting Parties agree to consult further with a view to a continuation of liberal arrangements for charter air services.

## APPENDIX 5



# A U.S. STANDARD "POST 1977" AGREEMENT

## Air Transport Agreement

Between the Government of the United States of America  
and the Government of \_\_\_\_\_

The Government of the United States of America and the Government of \_\_\_\_\_:

Desiring to promote an international air transport system based on competition among airlines in the marketplace with minimum governmental interference and regulation;

Desiring to facilitate the expansion of international air transport opportunities;

Desiring to make it possible for airlines to offer the traveling and shipping public a variety of service options at the lowest prices that are not predatory or discriminatory and do not represent abuse of a dominant position and wishing to encourage individual airlines to develop and implement innovative and competitive prices;

Desiring to ensure the highest degree of safety and security in international air transport and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardize the safety of persons or property and adversely affect the operation of air transportation, and undermine public confidence in the safety of civil aviation;

Being Parties to the Convention on International Civil Aviation opened for signature at Chicago on December 7, 1944; and

Desiring to conclude a new agreement covering all commercial air transportation to replace the Air Transport Agreement concluded between them and signed at \_\_\_\_\_ on \_\_\_\_\_;

Have agreed as follows:

### ARTICLE 1

#### Definitions

For the purposes of this Agreement, unless otherwise stated, the term:

- (a) "Aeronautical authorities" means, in the case of the United States, the Department of Transportation or its successor agency, and in the case of \_\_\_\_\_ the \_\_\_\_\_ or its successor agency;
- (b) "Agreement" means this Agreement, its Annexes, and any amendments thereto;
- (c) "Air transportation" means any operation performed by aircraft for the public carriage of traffic in passengers, baggage, cargo and mail, separately or in combination for remuneration or hire;

(d) "Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on December 7, 1944, and includes:

(i) any amendment which has entered into force under Article 54(a) of the Convention and has been ratified by both Parties, and

(ii) any Annex or any amendment thereto adopted under Article 90 of the Convention, insofar as such Annex or amendment is at any given time effective for both Parties;

(e) "Designated airline" means an airline designated and authorized in accordance with Article 3 of this Agreement;

(f) "Price" means any fare, rate or charge for the carriage of passengers (and their baggage) and/or cargo (excluding mail) in air transportation charged by airlines, including their agents, and the conditions governing the availability of such fare, rate or charge;

(g) "International air transportation" means air transportation which passes through the air space over the territory of more than one State;

(h) "Stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers, baggage, cargo and/or mail in air transportation;

(i) "Territory" means the land areas under the sovereignty, jurisdiction, protection, or trusteeship of a Party, and the territorial waters adjacent thereto;

(j) "User charge" means a charge made to airlines for the provision of airport, air navigation or aviation security property, or facilities; and

(k) "Full economic costs" means the direct cost of providing service plus a reasonable charge for administrative overhead.

### ARTICLE 2

#### Grant of Rights

(1) Each Party grants to the other Party the following rights for the conduct of international air transportation by the airlines of the other Party:

(a) the right to fly across its territory without landing;

(b) the right to make stops in its territory for non-traffic purposes;

(c) the rights otherwise specified in this Agreement.

(2) Nothing in paragraph (1) of this Article shall be deemed to grant the right for one Party's airlines to participate in air transportation between points in the territory of the other Party.

### ARTICLE 3

#### Designation and Authorization

- (1) Each Party shall have the right to designate as many airlines as it wishes to conduct international air transportation in accordance with this Agreement and to withdraw or alter such designations. Such designations shall be transmitted to the other Party in writing through diplomatic channels, and shall identify whether the airline is authorized to conduct the type of air transportation specified in Annex I or in Annex II or both.
- (2) On receipt of such a designation, and of applications in the form and manner prescribed from the designated airline for operating authorizations and technical permissions, the other Party shall grant appropriate authorizations and permissions with minimum procedural delay, provided:
  - (a) substantial ownership and effective control of that airline are vested in the Party designating the airline, nationals of that Party, or both;
  - (b) the designated airline is qualified to meet the conditions prescribed under the laws and regulations normally applied to the operation of international air transportation by the Party considering the application or applications; and
  - (c) the Party designating the airline is maintaining and administering the standards set forth in Article 6 (Safety) and Article 7 (Security).

### ARTICLE 4

#### Revocation of Authorization

- (1) Each Party may revoke, suspend or limit the operating authorizations or technical permissions of an airline designated by the other Party where:
  - (a) substantial ownership and effective control of that airline are not vested in the other Party, the other Party's nationals, or both;
  - (b) that airline has failed to comply with the laws and regulations referred to in Article 5 (Application of Laws) of this Agreement; or
  - (c) the other Party is not maintaining and administering the standards as set forth in Article 6 (Safety).
- (2) Unless immediate action is essential to prevent further non-compliance with subparagraphs (1)(b) or (1)(c) of this Article, the rights established by this Article shall be exercised only after consultation with the other Party.
- (3) This Article does not limit the rights of either Party to suspend, limit or condition air services in accordance with the provisions of Article 7 (Aviation Security).

### ARTICLE 5

#### Application of Laws

- (1) While entering, within or leaving the territory of one Party, its laws and regulations relating to the operation and navigation of aircraft shall be complied with by the other Party's airlines.
- (2) While entering, within or leaving the territory of one Party, its laws and regulations relating to the admission to or departure from its territory of passengers, crew, or cargo on aircraft (including regulations relating to entry, clearance, aviation security, immigration, passports, customs and quarantine or, in the case of mail, postal regulations) shall be complied with by or on behalf of such passengers, crew or cargo of the other Party's airlines.

### ARTICLE 6

#### Safety

- (1) Each Party shall recognize as valid, for the purpose of operating the air transportation provided for in this Agreement, certificates of airworthiness, certificates of competency, and licenses issued or validated by the other Party and still in force, provided that the requirements for such certificates or licenses at least equal the minimum standards which may be established pursuant to the Convention. Each Party may, however, refuse to recognize as valid for the purpose of flight above its own territory, certificates of competency and licenses granted to or validated for its own nationals by the other Party.
- (2) Each Party may request consultations concerning the safety standards maintained by the other Party relating to aeronautical facilities, aircrew, aircraft, and operation of the designated airlines. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards and requirements in these areas that at least equal the minimum standards which may be established pursuant to the Convention, the other Party shall be notified of such findings and the steps considered necessary to conform with these minimum standards; and the other Party shall take appropriate corrective action. Each Party reserves the right to withhold, revoke or limit the operating authorization or technical permission of an airline or airlines designated by the other Party in the event the other Party does not take such appropriate action within a reasonable time.

### ARTICLE 7

#### Aviation Security

- (1) In accordance with their rights and obligations under international law, the Parties reaffirm that their obligation to protect, in their mutual relationship, the security of civil aviation against acts of unlawful interference forms an integral part of this agreement.
- (2) The Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of aircraft and other unlawful acts against the safety of passengers, crew, aircraft, airports and air navigation facilities and any other threat to aviation security.

(3) The Parties shall act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 15 December 1970 and the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation signed at Montreal on 23 September 1971.

(4) The Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization; they shall require that operators of aircraft of their registry or operators who have their principal place of business or permanent residence in their territory act in conformity with such aviation security provisions.

(5) Each Party agrees to observe the security provisions required by the other Contracting Party for entry into the territory of that other Contracting Party and to take adequate measures to protect aircraft and to inspect passengers, crew, their carry-on items as well as cargo and aircraft stores prior to and during boarding or loading. Each Party shall also give positive consideration to any request from the other Party for special security measures to meet a particular threat.

(6) When an incident or threat of an incident of unlawful seizure of aircraft or other unlawful acts against the safety of passengers, crew, aircraft, airports and air navigation facilities occurs, the Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

(7) When a Party has reasonable grounds to believe that the other Party has departed from the aviation security provisions of this article, the aeronautical authorities of that Party may request immediate consultations with the aeronautical authorities of the other Party. Failure to reach a satisfactory agreement within 15 days from the date of such request will constitute grounds to withhold, revoke, limit or impose conditions on the operating authorization or technical permission of an airline or airlines of the other Party. When required by an emergency, a Party may take interim action prior to the expiry of 15 days.

## ARTICLE B

### Commercial Opportunities

(1) The airlines of one Party may establish offices in the territory of the other Party for promotion and sale of air transportation.

(2) The designated airlines of one Party may, in accordance with the laws and regulations of the other Party relating to entry, residence and employment, bring in and maintain in the territory of the other Party managerial, sales, technical, operational and other specialist staff required for the provision of air transportation.

(3) Each designated airline may perform its own ground-handling in the territory of the other Party ("self-handling") or, at its option, select among competing agents for such services. These rights shall be subject only to physical constraints resulting from considerations of airport safety. Where such considerations preclude self-handling, ground services shall be available on an equal basis to all airlines; charges shall be based on the costs of services provided; and such services shall be comparable to the kind and quality of services if self-handling were possible.

(4) Each designated airline may engage in the sale of air transportation in the territory of the other Party directly and, at the airline's discretion, through its agents, except as may be specifically provided by the charter regulations of the country in which the charter originates. Each airline may sell such transportation, and any person shall be free to purchase such transportation, in the currency of that territory or in freely convertible currencies.

(5) Each designated airline may convert and remit to its country, on demand, local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted promptly without restrictions or taxation in respect thereof at the rate of exchange applicable to current transactions and remittance.

## ARTICLE C

### Customs Duties and Taxes

(1) On arriving in the territory of one Party, aircraft operated in international air transportation by the designated airlines of the other Party, their regular equipment, ground equipment, fuel, lubricants, consumable technical supplies, spare parts (including engines), aircraft stores (including but not limited to such items of food, beverages and liquor, tobacco and other products destined for sale to or use by passengers in limited quantities during flight) and other items intended for or used solely in connection with the operation or servicing of aircraft engaged in international air transportation shall be exempt, on the basis of reciprocity, from all import restrictions, property taxes and capital levies, customs duties, excise taxes, and similar fees and charges imposed by the national authorities, and not based on the cost of services provided, provided such equipment and supplies remain on board the aircraft.

(2) There shall also be exempt, on the basis of reciprocity, from the taxes, duties, fees and charges referred to in paragraph (1) of this Article, with the exception of charges based on the cost of the service provided:

(a) aircraft stores introduced into or supplied in the territory of one Party and taken on board, within reasonable limits, for use on outbound aircraft of a designated airline of the other Party engaged in international air transportation, even when these stores are to be used on a part of the journey performed over the territory of the Party in which they are taken on board;

(b) ground equipment and spare parts including engines introduced into the territory of a Party for the servicing, maintenance or repair of aircraft of a designated airline of the other Party used in international air transportation; and

(c) fuel, lubricants and consumable technical supplies introduced into or supplied in the territory of a Party for use in an aircraft of a designated airline of the other Party engaged in international air transportation, even when these supplies are to be used on a part of the journey performed over the territory of the Party in which they are taken on board.

(3) Equipment and supplies referred to in paragraphs (1) and (2) of this Article may be required to be kept under the supervision or control of the appropriate authorities.

(4) The exemptions provided by this Article shall also be available where the designated airlines of one Party have contracted with another airline, which similarly enjoys such exemptions from the other Party, for the loan or transfer in the territory of the other Party of the items specified in paragraphs (1) and (2) of this Article.

- (5) Each Party shall use its best efforts to secure for the designated airlines of the other Party, on the basis of reciprocity, an exemption from taxes, duties, charges and fees imposed by State, regional and local authorities on the items specified in paragraphs (1) and (2) of this Article, as well as from fuel through-put charges in the circumstances described in this Article, except to the extent that the charges are based on the actual cost of providing the service.

## ARTICLE 10

### User Charges

- (1) User Charges imposed by the competent charging authorities on the airlines of the other Party shall be just, reasonable, and non-discriminatory.
- (2) User charges imposed on the designated airlines of the other Party may reflect, but shall not exceed, an equitable portion of the full economic cost to the competent charging authorities or bodies of providing the airport, air navigation, and aviation security facilities and services. Facilities and services for which charges are made shall be provided on an efficient and economic basis. Reasonable notice shall be given prior to changes in user charges. Each Party shall encourage consultations between the competent charging authorities in its territory and airlines using the services and facilities, and shall encourage the competent charging authorities and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges.

## ARTICLE 11

### Fair Competition

- (1) Each Party shall allow a fair and equal opportunity for the designated airlines of both Parties to compete in the international air transportation covered by this Agreement.
- (2) Each Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of the airlines of the other Party.
- (3) Neither Party shall unilaterally limit the volume of traffic, frequency or regularity of service, or the aircraft type or types operated by the designated airlines of the other Party, except as may be required for customs, technical, operational or environmental reasons under uniform conditions consistent with Article 15 of the Convention.
- (4) Neither Party shall impose on the other Party's designated airlines a first refusal requirement, uplift ratio, no objection fee, or any other requirement with respect to the capacity, frequency or traffic which would be inconsistent with the purposes of this Agreement.
- (5) Neither Party shall require the filing of schedules, programs for charter flights, or operational plans by airlines of the other Party for approval, except as may be required on a non-discriminatory basis to enforce uniform conditions as foreseen by Paragraph (3) of this Article or as may be specifically authorized in an Annex to this Agreement. If a Party requires filings for information purposes, it shall minimize the administrative burdens of filing requirements and procedures on air transportation intermediaries and on designated airlines of the other Party.

## ARTICLE 12

### Pricing (Mutual Disapproval)

- (1) Each Party shall allow prices for air transportation to be established by each designated airline based upon commercial considerations in the marketplace. Intervention by the Parties shall be limited to:
- (a) prevention of predatory or discriminatory prices or practices;
  - (b) protection of consumers from prices unduly high or restrictive because of the abuse of a dominant position; and
  - (c) protection of airlines from prices that are unduly low because of direct or indirect governmental subsidy or support.
- (2) Each Party may require notification to or filing with its aeronautical authorities of prices proposed to be charged to or from its territory by airlines of the other Party. Notification or filing by the airlines of both Parties may be required no more than 30 days before the proposed date of effectiveness. In individual cases, notification or filing may be permitted on shorter notice than normally required. Neither Party shall require the notification or filing by airlines of the other Party of prices charged by charterers to the public, except as may be required on a non-discriminatory basis for information purposes.
- (3) Neither Party shall take unilateral action to prevent the inauguration or continuation of a price proposed to be charged or charged by (a) an airline of either Party for international air transportation between the territories of the Parties, or (b) an airline of one Party for international air transportation between the territory of the other Party and any other country, including in both cases transportation on an interline or intraline basis. If either Party believes that any such price is inconsistent with the considerations set forth in paragraph (1) of this Article, it shall request consultations and notify the other Party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than 30 days after receipt of the request, and the Parties shall cooperate in securing information necessary for reasoned resolution of the issue. If the Parties reach agreement with respect to a price for which a notice of dissatisfaction has been given, each Party shall use its best efforts to put that agreement into effect. Without mutual agreement, that price shall go into or continue in effect.
- (4) Notwithstanding paragraph (3) of this Article, each Party shall allow (a) any airline of either Party or any airline of a third country to meet a lower or more competitive price proposed or charged by any other airline or charterer for international air transportation between the territories of the Parties, and (b) any airline of one Party to meet a lower or more competitive price proposed or charged by any other airline or charterer for international air transportation between the territory of the other Party and a third country. As used herein, the term "meet" means the right to establish on a timely basis, using such expedited procedures as may be necessary, an identical or similar price on a direct, interline or intra-line basis, notwithstanding differences in conditions relating to routing, roundtrip requirements, connections, type of service or aircraft type or such price through a combination of prices.

## ARTICLE 13

### Consultations

Either Party may, at any time, request consultations relating to this Agreement. Such consultations shall begin at the earliest possible date, but not later than 60 days from the date the other Party receives the request unless otherwise agreed. Each Party shall prepare and present during such consultations relevant evidence in support of its position in order to facilitate informed, rational and economic decisions.

## ARTICLE 14

### Settlement of Disputes

(1) Any dispute arising under this Agreement which is not resolved by a first round of formal consultations, except those which may arise under paragraph 3 of Article 12 (Pricing), may be referred by agreement of the Parties for decision to some person or body. If the Parties do not so agree, the dispute shall at the request of either Party be submitted to arbitration in accordance with the procedures set forth below.

(2) Arbitration shall be by a tribunal of three arbitrators to be constituted as follows:

(a) within 30 days after the receipt of a request for arbitration, each Party shall name one arbitrator. Within 60 days after these two arbitrators have been named, they shall by agreement appoint a third arbitrator, who shall act as President of the arbitral tribunal;

(b) If either Party fails to name an arbitrator, or if the third arbitrator is not appointed in accordance with subparagraph (a) of this paragraph, either Party may request the President of the Council of the International Civil Aviation Organization to appoint the necessary arbitrator or arbitrators within 30 days. If the President of the Council is of the same nationality as one of the Parties, the most senior Vice President who is not disqualified on that ground shall make the appointment.

(3) Except as otherwise agreed, the arbitral tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedure. At the direction of the tribunal or at the request of either of the Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held no later than 15 days after the tribunal is fully constituted.

(4) Except as otherwise agreed, each Party shall submit a memorandum within 45 days of the time the tribunal is fully constituted. Replies shall be due 60 days later. The tribunal shall hold a hearing at the request of either Party or at its discretion within 15 days after replies are due.

(5) The tribunal shall attempt to render a written decision within 30 days after completion of the hearing or, if no hearing is held, after the date both replies are submitted. The decision of the majority of the tribunal shall prevail.

(6) The Parties may submit requests for clarification of the decision within 15 days after it is rendered and any clarification given shall be issued within 15 days of such request.

(7) Each Party shall, consistent with its national law, give full effect to any decision or award of the arbitral tribunal.

(8) The expenses of the arbitral tribunal, including the fees and expenses of the arbitrators, shall be shared equally by the Parties. Any expenses incurred by the President of the Council in connection with the procedures of paragraph (2)(b) of this Article shall be considered to be part of the expenses of the arbitral tribunal.

## ARTICLE 15

### Termination

Either Party may, at any time give notice in writing to the other Party of its decision to terminate this Agreement. Such notice shall be sent simultaneously to the International Civil Aviation Organization. This Agreement shall terminate at midnight (at the place of receipt of the notice to the other Party) immediately before the first anniversary of the date of receipt of the notice by the other Party, unless the notice is withdrawn by agreement of the Parties before the end of this period.

## ARTICLE 16

### Multilateral Agreement

If a multilateral agreement, accepted by both Parties, concerning any matter covered by this Agreement enters into force, this Agreement shall be amended so as to conform with the provisions of the multilateral agreement.

## ARTICLE 17

### Registration with ICAO

This Agreement and all amendments thereto shall be registered with the International Civil Aviation Organization.

## ARTICLE 18

### Entry into Force

This Agreement shall enter into force on the date of signature.

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed the Present Agreement.

Done in duplicate at \_\_\_\_\_ in the English and \_\_\_\_\_ languages, each of which shall be of equal authenticity this \_\_\_\_\_ day of \_\_\_\_\_ Nineteen hundred and \_\_\_\_\_.

For the Government of  
The United States of America

For the Government of \_\_\_\_\_

## ANNEX I

### SCHEDULED AIR SERVICE

#### Section 1

Airlines of one Party whose designation identifies this Annex shall, in accordance with the terms of their designation, be entitled to perform scheduled international air transportation (1) between points on the following routes, and (2) between points on such routes and points in third countries through points in the territory of the Party which has designated the airlines.

A. Routes for the airline or airlines designated by the Government of the United States:

B. Routes for the airline or airlines designated by the Government of \_\_\_\_\_:

#### Section 2

Each designated airline may, on any or all flights and at its option, operate flights in either or both directions and without directional or geographic limitation, serve points on the routes in any order, and omit stops at any point or points outside the territory of the Party which has designated that airline without loss of any right to carry traffic otherwise permissible under this Agreement.

#### Section 3

On any international segment or segments of the routes above (as may be later agreed upon by the Parties), each designated airline may perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated, provided that in the outbound direction the transportation beyond such point is a continuation of the transportation from the territory of the Party which has designated the airline and, in the inbound direction, the transportation to the territory of the Party which has designated the airline is a continuation of the transportation beyond such point.

May 15, 1969

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## ANNEX II

### CHARTER AIR SERVICE

#### Section 1

Airlines of one Party designated under this Annex shall, in accordance with the terms of their designation, be entitled to perform international charter air transportation of passengers (and their baggage and/or cargo including, but not limited to, freight forwarder, solid, and combination charters):

(a) between any point or points in the territory of the Party which has designated the airline and any point or points in the territory of the other Party; and

(b) between any point or points in the territory of the other Party and any point or points in a third country or countries provided that such traffic is carried via the carrier's homeland and makes a stopover in the homeland for at least two consecutive nights.

In the performance of services covered by this Annex, airlines of one Party designated under this Annex shall also have the right: (1) to make stopovers at any points whether within or outside of the territory of either Party; (2) to carry transit traffic through the other Party's territory; and (3) to combine on the same aircraft traffic originating in one Party's territory with traffic that originated in the other Party's territory.

Each Party shall extend favorable consideration to applications by airlines of the other Party to carry traffic not covered by this Annex on the basis of comity and reciprocity.

#### Section 2

The designated airline or airlines of one Party performing charter air transport originating in the territory of the other Party shall have the option of complying with the charter laws, regulations, and rules of either its homeland or of the other Party. If a Party applies different rules, regulations, terms, conditions, or limitations to one or more of its airlines, or to airlines of different countries, each designated airline shall be subject to the least restrictive of such criteria.

However, nothing contained in the above paragraph shall limit the rights of one Party to require the designated airline or airlines of the other Party to adhere to requirements relating to the protection of passenger funds and passenger cancellation and refund rights, or adherence to requirements established in the interests of national security.

#### Section 3

Neither Party shall require a designated airline of the other Party, in respect of the carriage of traffic from the territory of that other Party on a one-way or roundtrip basis, to submit more than a declaration of conformity with the laws, regulations and rules of that other party referred to under Section 2 of this Annex or of a waiver of these regulations or rules granted by the aeronautical authorities of that other party.

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## APPENDIX 6

A U.S. Standard "Country-of-Origin" Pricing Article

- (1) Each Party shall allow prices for air transportation to be established by each designated airline based upon commercial considerations in the marketplace. Intervention by the Parties shall be limited to:

- (a) prevention of predatory or discriminatory prices or practices;
- (b) protection of consumers from prices that are high or restrictive because of the abuse of monopoly power; and
- (c) protection of airlines from prices that are artificially low because of direct or indirect governmental subsidy or support.

- (2) Each Party may require notification to or filing with its aeronautical authorities of prices proposed to be charged to or from its territory by airlines of the other Party. Notification or filing by the airlines of both Parties may be required no more than 60 days before the proposed date of effectiveness. In individual cases, notification or filing may be permitted on shorter notice than normally required. Neither Party shall require the notification or filing by airlines of the other Party or by airlines of third countries of prices charged by charterers to the public for traffic originating in the territory of that other Party.

- (3) If either Party believes that a price proposed or charged by:

- (a) an airline of the other Party or an airline of a third country for international air transportation between the territories of the Parties; or
- (b) an airline of the other Party for international air transportation between the territory of the first Party and a third country, including in both cases transportation on an interline or intra-line basis,

is inconsistent with the considerations set forth in paragraph (1) of this Article, it shall notify the other Party of the reasons for its dissatisfaction as soon as possible. In the case of a proposed price, such notice of dissatisfaction shall be given to the other Party within 30 days of receiving the notification or filing of the price. Either Party may then request consultations which shall be held as soon as possible, and in no event later than 30 days after receipt of the request. The Parties shall cooperate in securing information necessary for reasoned resolution of the issue.

- (4) If the Parties reach agreement with respect to a price for which a notice of dissatisfaction has been given, each Party shall use its best efforts to put that agreement into effect.

- (5) If,

- (a) with respect to a proposed price, consultations are not requested or an agreement is not reached as a result of consultations; or
- (b) with respect to a price already being charged when notice of dissatisfaction is given, consultations are not requested within 30 days of receipt of the notice or an agreement is not reached as a result of consultations within 60 days of receipt of the notice,

either Party may take action to prevent the inauguration or continuation of the price for which a notice of dissatisfaction has been given, but only with respect to traffic where the first point on the itinerary (as evidenced by the document authorizing transportation by air) is in its own territory. Neither Party shall take unilateral action to prevent the inauguration or continuation of any price subject to this Article, except as provided in this paragraph.

- (6) Notwithstanding paragraph (5) of this Article, each Party shall allow

- (a) any airline of either Party or any airline of a third country to meet a lower or more competitive price proposed or charged by any other airline or charterer for international air transportation between the territories of the Parties, and
- (b) any airline of one Party to meet a lower or more competitive price proposed or charged by any other airline or charterer for international air transportation between the territory of the other Party and a third country. As used herein, the term "meet" means the right to establish on a timely basis, using such expedited procedures as may be necessary, an identical or similar price on a direct, interline or intra-line basis, notwithstanding differences in conditions relating to routing, roundtrip requirements, connections, type of service or aircraft type.



## APPENDIX 7

Draft

PRINCIPLES OF NON-DISCRIMINATION WITHIN AND  
COMPETITION AMONG COMPUTER RESERVATIONS SYSTEMS

The Government of the United States of America and the Government of Macau ("the two Governments"),

Recognizing that Article 11 (Fair Competition) of the U.S.-Macau Air Transport Agreement guarantees to the airlines of both Parties "a fair and equal opportunity to compete,"

Considering that one of the most important aspects of the ability of an airline to compete is its ability to inform the public of its services in a fair and impartial manner, and that, therefore, the quality of information about airline services available to travel agents who directly distribute such information to the travelling public and the ability of an airline to offer those agents competitive computer reservations systems (CRSs) represent the foundation for an airline's competitive opportunities,

Considering that it is equally necessary to ensure that the interests of the consumers of air transport products are protected from any misuse of such information and its misleading presentation and that airlines and travel agents have access to effectively competitive computer reservations systems,

Have reached the following understandings with respect to the agreed international scheduled passenger services under the U.S.-Macau Air Transport Agreement ("agreed services"):

(1) The Contracting Parties agree with respect to CRSs with integrated primary displays that:

(a) information regarding international air services, including the construction of connections on those services, shall be edited and displayed on non-discriminatory and objective criteria that are not influenced, directly or indirectly, by airline or market identity. Such criteria shall apply uniformly to all airlines.

(b) CRS data bases shall be as comprehensive as possible.

(c) CRS vendors shall not delete information submitted by participating airlines; such information shall be accurate and transparent; for example, code-shared and change-of-gauge flights and flights with stops should be clearly identified as having those characteristics.

(d) All CRSs which are available to travel agents who directly distribute information about airline services to the travelling public in either Contracting Party's territory shall

be entitled to operate in conformance with the CRS rules that apply in the territory where the CRS is being operated.]

(e) Travel agents shall be allowed to use any of the secondary displays available through the CRS so long as the travel agent makes a specific request for that display.

(2) A Contracting Party which allows a multi-access CRS to be operated in its territory without a fully functional neutral, integrated display shall require that the partition of an airline which owns such a CRS, and/or the airline offering the most scheduled services in that Contracting Party's territory, shall include at least one display that processes information on international airline services in compliance with the requirements of paragraph (1). This display must be as easy to access and as fully functional as any display maintained by the airline based on carrier identity, and its data base shall contain accurate information, be as comprehensive as possible, and not favor the services of the airline whose partition is being accessed. This display shall be presented to the travel agent accessing the airline's partition unless the agent specifically calls up a different display for each individual transaction.

(3) A Contracting Party shall require that each CRS vendor operating in its territory allows all airlines willing to pay any applicable non-discriminatory fee to participate in its CRS. A Contracting Party shall require that all distribution

which a system vendor provides shall be offered on a non-discriminatory basis to participating airlines. A Contracting Party shall require that CRS vendors display, on a non-discriminatory, objective, carrier-neutral and market-neutral basis, the international air services of participating airlines in all markets in which they wish to sell those services. Upon request, a CRS vendor shall disclose details of its data base update and storage procedures, its criteria for editing and ranking information, the weight given to such criteria, and the criteria used for selection of connect points and inclusion of connecting flights.

(4) CRS vendors operating in the territory of one Contracting Party shall be entitled to bring in, maintain, and make freely available their CRSs to travel agencies or travel companies whose principal business is the distribution of travel-related products in the territory of the other Contracting Party, if the CRS complies with these principles.

(5) Neither Contracting Party shall, in its territory, impose or permit to be imposed on the CRS vendors of the other Contracting Party more stringent requirements with respect to access to and use of communication facilities, selection and use of technical CRS hardware and software, and the technical installation of CRS hardware, than those imposed on its own CRS vendors.

(6) Neither Contracting Party shall, in its territory, impose or permit to be imposed on the CRS vendors of the other Contracting Party more restrictive requirements with respect to CRS displays (including edit and display parameters), operation, or sale than those imposed on its own CRS vendors.

(7) CRSs in use in the territory of one Contracting Party, which comply with these principles and other relevant non-discriminatory regulatory, technical, and security standards, shall be entitled to effective and unimpaired access in the territory of the other Contracting Party. One aspect of this is that a designated airline shall participate in such a system as fully in its homeland territory as it does in any system offered to travel agents in the territory of the other Contracting Party. Owners/operators of CRSs of one Contracting Party shall have the same opportunity to own/operate CRSs that conform to these principles within the territory of the other Contracting Party as do owners/operators of that Contracting Party. Each Contracting Party shall ensure that its airlines and its CRS vendors do not discriminate against travel agents in their homeland territory because of their use or possession of a CRS also operated in the territory of the other Contracting Party.

## APPENDIX 8

CONSTITUTION OF THE REPUBLIC OF PORTUGAL

Article 8  
(International Law)

...  
2. Those norms in international agreements which have been ratified or approved through the normal channels shall be adopted in domestic law following official publication and for so long as they bind the Portuguese State internationally.  
...

Article 137

The President of the Republic is vested with the authority, on his own power:

...  
i) to carry out all acts concerning the Territory of Macau provided for in the relevant Statutes;  
...

Article 138

The President of the Republic is vested with the authority, in international relations:

...  
b) to ratify international treaties once these have been duly approved;  
...

Article 292

(Statutes of Macau)

1. The Territory of Macau shall, as long as it remains under Portuguese administration, be governed by statutes appropriate to its specific situation.  
...

## ORGANIC STATUTES OF MACAU

### Article 2

The Territory of Macau shall be organised as a corporation in which the people enjoy civil rights and, except as provided otherwise in the Constitution of the Republic of Portugal and these Organic Statutes, the right of self-government in administration, economy, finance and legislation.

### Article 3

...

2. The authority to represent Macau in foreign relations and the signing of international agreements is vested in the President of the [Portuguese] Republic who may, in matters of exclusive interest to the Territory, delegate this authority to the Governor.

3. The organs of Macau's government shall first discuss any international agreements for the signing of which authority has not been delegated to the Governor of Macau prior to them being enforced in the Territory

### Article 4

The governing bodies of the territory of Macau shall be the Governor and the Legislative Council. The Governor shall be advised by a Consultative Council.

### Article 5

The Legislative Council and the Governor shall be responsible for the legislation.

### Article 6

The Governor, with the assistance of the Under-Secretaries for the Administration, shall be responsible for the implementation of laws.

### Article 7

1. The Governor shall be appointed by the President, and powers shall be conferred upon him by the President.

...

### Article 15

1. Decree-Laws other than those approved under the authority provided for in Article 13, paragraph 3 [acts of the exclusive competence of the governor] may be subject to ratification in the Legislative Assembly on a request lodged by six Members in one of the five sessions following publication of the same.

...

### Article 20

1. The Governor is politically responsible to the President of the Republic.

...

### Article 21

1. The Legislative Council shall be composed of twenty three members, chosen as follows from among those citizens qualified to be electors:

- a) seven appointed by the Governor from among residents who enjoy recognised prestige in the local community;
- b) eight elected by direct universal suffrage;
- c) eight elected by indirect suffrage.

...

### Article 73

Unless otherwise stated, ordinances will take effect in Macau five days after publication in the Government Gazette.

SINO-PORTUGUESE JOINT DECLARATION ON THE QUESTION OF MACAU

1. The Government of the Portuguese Republic and the Government of the People's Republic of China declare that Macau (including the Peninsula of Macau, Taipa Island and Coloane Island, hereinafter referred to as "Macau") is an integral part of China's territory and that the Government of the People's Republic of China will resume sovereignty over Macau with effect from 20th December 1999.

2. The Government of the People's Republic of China declares that in line with the principle of "one country, two systems" the People's Republic of China will adopt the following basic policies regarding Macau:

(1) In accordance with the provisions of Article 31 of the Constitution of the People's Republic of China, the People's Republic of China will establish a Macau Special Administrative Region of the People's Republic of China upon resuming sovereignty over Macau.

(2) The Macau Special Administrative Region will be directly under the authority of the Central People's Government of the People's Republic of China and will enjoy a high degree of autonomy, except in foreign and defence affairs, which are the responsibilities of the Central People's Government. The Macau Special Administrative Region will be vested with executive, legislative and independent judicial powers, including a Supreme Court.

(3) Both the Government and the legislature of the Macau Special Administrative Region will consist of local inhabitants.

(4) The current social and economic systems in Macau will remain unchanged, as will the life-style. The laws currently in force in Macau will remain basically unchanged....

(7) Using the name of "Macau, China", the Macau Special Administrative Region may maintain and develop its own economic and cultural relations and sign relevant agreements with states, regions and relevant international organisations....

(8) The Macau Special Administrative Region will remain a free port and a separate customs territory in order to develop its economic activities. There will be free flow of capital. The Macau Pataca, as the legal tender of the Macau Special Administrative Region, will remain in circulation as a freely convertible currency.

(12) The afore-mentioned basic policies and the clarifications contained in Annex I to this Joint



Declaration shall be stipulated in a Basic Law of the Macau Special Administrative Region of the People's Republic of China by the National People's Congress of the People's Republic of China, and shall remain unchanged for fifty years.

3. The Government of the People's Republic of China and the Government of the Republic of Portugal declare that, during the transition period lasting from the date of enforcement of this Joint Declaration and 19th December 1999, the Government of the Republic of Portugal will be responsible for the administration of Macau....

4. The Government of the Portuguese Republic and the Government of the People's Republic of China declare that, in order to ensure the effective implementation of this Joint Declaration and the smooth transfer of government in 1999, a Sino-Portuguese Joint Liaison Group will be set up when this Joint Declaration is enforced and that it will be established and will function in accordance with the provisions of Annex II to this Joint Declaration.

## ANNEX II

### ARRANGEMENTS FOR THE TRANSITIONAL PERIOD

(...)

#### I - SINO-PORTUGUESE JOINT LIAISON GROUP

1. The Joint Liaison Group shall be an organ for liaison, consultation and exchange of information between the two Governments. It shall not interfere in the administration of Macau, nor shall it have any supervisory role over that administration.

2. The functions of the Joint Liaison Group shall be :

b) to exchange information and conduct consultations on matters relating to the transfer of government of Macau in 1999;

c) to conduct consultations on both Government actions necessary to maintain and develop economic, cultural and other relations between the Macau Special Administrative Region and other states or regions;

d) to exchange information and conduct consultations on other subjects as may be agreed by the two sides.

## THE BASIC LAW OF THE MACAU SPECIAL ADMINISTRATIVE REGION

### CHAPTER I General Principles

#### Article 1

The Macau Special Administrative Region is an integral part of the People's Republic of China.

#### Article 2

The National People's Congress authorizes the Macau Special Administrative Region to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of this Law.

#### Article 5

The socialist system and policies shall not be applied in the Macau Special Administrative Region, and the previous capitalist system and way of life shall remain unchanged for fifty years.

#### Article 8

The laws previously in force in Macau, that is, decree-laws, administrative orders and other legislation shall be maintained, except for those that are inconsistent with this Law or have been amended through legal procedures by the legislature or other competent bodies in the Macau Special Administrative Region.

#### Article 11

In accordance with Article 31 of the Constitution of the People's Republic of China, the systems and policies practised in the Macau Special Administrative Region, including the social and economic systems, the system for safeguarding the fundamental rights and freedoms of its residents, the executive, legislative and judicial systems and the relevant policies, shall be based on the provisions of this Law.

### CHAPTER II

Relationship between the Central Authorities and the Macau Special Administrative Region

#### Article 12

The Macau Special Administrative Region shall be a local administrative region of the People's Republic of China, which shall enjoy a high degree of autonomy and come directly under the Central People's Government.

#### Article 13

The Central People's Government shall be responsible for the foreign affairs relating to the Macau Special Administrative Region.

The Ministry of Foreign Affairs of the People's Republic of China shall establish an office in Macau to deal with foreign affairs.

The Central People's Government shall authorize the Macau Special Administrative Region to deal with relevant external affairs on its own in accordance with this law.

Article 17

The Macau Special Administrative Region shall be vested with legislative power...

Article 18

The laws of the Macau Special Administrative Region shall be this Law, the laws previously in force in Macau as stipulated in Article 8 of this Law, and the laws enacted by the legislature of the Region...

Article 20

The Macau Special Administrative Region may enjoy other powers granted to it by the National People's Congress, the Standing Committee of the National People's Congress or the Central People's Government.

Article 22

Departments of the Central People's Government as well as provinces, autonomous regions, and municipalities directly under the Central Government shall not interfere in the affairs which the Macau Special Administrative Region administers on its own in accordance with this Law...

CHAPTER V

Economy

Article 106

The Macau Special Administrative Region shall practise an independent taxation system.

The Macau Special Administrative Region shall, taking the low tax policy previously pursued in Macau as reference, enact laws on its own concerning types of taxes, tax rates, tax reductions and exemptions and other matters of taxation...

Article 107

The monetary and financial systems of the Macau Special Administrative Region shall be prescribed by law.

The Government of the Macau Special Administrative Region shall, on its own, formulate monetary and financial policies, safeguard the free operation of financial business and financial markets, and regulate and supervise them in accordance with law.

Article 109

No foreign exchange control policies shall be applied in the Macau Special Administrative Region. The Macau pataca shall be freely convertible...

Article 110

The Macau Special Administrative Region shall maintain the status of a free port and shall not impose any tariff unless otherwise prescribed by law.

Article 111

The Macau Special Administrative Region shall pursue the policy of free trade and safeguard the free movement of goods, intangible assets and capital.

Article 112

The Macau Special Administrative Region shall be a separate customs territory. The Macau Special Administrative Region may, using the name "Macau, China" participate in relevant international organisations and international trade agreements, including preferential trade arrangements, such as the General Agreement on Tariffs and Trade and arrangements regarding international trade in textiles...

Article 117

When duly authorised by the Central Government of the People's Republic of China, the Government of the Special Administrative Region of Macau may define its own systems for managing civil aviation.

CHAPTER VII

External Affairs

Article 136

The Macau Special Administrative Region may, using the name "Macau, China", maintain and develop relations on its own, negotiate and conclude agreements with other states, regions or international organisations concerned in the appropriate fields, namely the economy, trade, finance, maritime transport, communications, tourism, culture, science, technology and sport.

Article 137

Representatives of the Macau Special Administrative Region may participate, as members of delegations of the Government of the People's Republic of China, in international organisations and conferences in appropriate fields limited to states and affecting the Macau Special Administrative Region, or may attend in such other capacity as may be permitted by the People's Republic of China or the above-mentioned international organisation or conference concerned, and may express their views, using the name "Macau, China".

The Macau Special Administrative Region may, using the name "Macau, China", participate in international organisations and conferences not limited to states.

The Central People's Government shall take the necessary steps to ensure that the Macau Special Administrative Region shall continue to retain its status in an appropriate capacity in those international organisations of which the People's Republic of China is a member and in which Macau participates in one capacity or another.

The Central People's Government shall, where necessary, facilitate the continued participation of the Macau Special Administrative Region in an appropriate capacity in those international organisations in which Macau is a participant in one capacity or another, but of which the People's Republic of China is not a member.

**Article 138**

The application in the Macau Special Administrative Region of international agreements to which the People's Republic of China has adhered, shall be decided by the Central People's Government depending on the circumstances and needs of the Macau Special Administrative Region on a report from the Government of the Macau Special Administrative Region .

International agreements to which the People's Republic of China has not adhered but which have been adopted in Macau, may continue to be applied. The Central People's Government shall authorise or assist, where necessary, the Government of the Macau Special Administrative Region in making appropriate arrangements for other relevant international agreements to be applied in the Macau Special Administrative Region.

**CHAPTER IX**

**Supplementary Provisions**

**Article 145**

...

Contracts signed by the Government of Macau whose duration exceeds December 19 1999, shall continue to be valid, except for those which are publicly declared by a representative of the Central People's Government to contravene the provisions of the "Arrangements for the Transition Period" in the Joint Declaration and which must be re-examined by the Government of the Macau Special Administrative Region.