RCD

COLLABORATION

IN AIR

TRANSPORT

ALAM

Name: MAHMUD ALAM

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Summary -

The Regional Cooperation for Development (RCD), a tripartite economic alliance between Iran, Pakistan and Turkey, has as a goal the formation of a strong and a competitive joint international airline in the region.

Apart from being a political goal, the formation of such an airline is an economic necessity in the era of advanced technology aircraft such as the jumbo jets and the SSTs. Experts point out that, considering the many problems of the airline industry, the only way for the smaller airlines to acquire and operate these bigger, faster and expansive aircraft is on a joint basis. In the industry, accordingly, a trend towards increased collaboration and consolidation is evident with the emphasis being on the maximisation of the economies of scale.

Already, the industry has a number of multi-national airlines and consortia. This study examines their various legal and other aspects. It also examines the legal frameworks suggested for some proposed joint airlines. In addition, some of the legal problems arising out of multi-national airline collaboration are studied.

Finally, the study proposes a joint RCD airline to operate large-capacity subsonic jets and SSTs. A legal framework including a draft treaty and articles of incorporation is also provided for the proposed airline.

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PAKISTAN - IRAN - TURKEY

(RCD) COLLABORATION IN AIR TRANSPORT:

FORMATION OF A JOINT INTERNATIONAL AIRLINE AND

ITS LEGAL ASPECTS

By

Mahmud Alam

A Thesis submitted to the Faculty of
Graduate Studies and Research in partial fulfilment
of the requirements for the degree of
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Montreal. December, 1970.

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DEDICATION

With Affection To

Pakistan International Airlines Corporation

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INTRODUCTION

A recent, and comparatively lesser known in this part of the world, regional political organisation is the tripartite arrangement between Iran, Pakistan and Turkey under the name and style of the Regional Cooperation for Development (RCD). The primary aim of this alliance is to further closer economic, technical and cultural cooperation and to promote the economic advancement and welfare of the people of this region.

One of the principal economic objectives of the Regional Cooperation for Development is to improve the air transport services within the region and the eventual establishment of a strong and competitive international airline among the three countries. In spite of the many efforts in this direction, the goal of a joint airline remains elusive.

Iran, Pakistan and Turkey have small national airlines engaged also in international operations. The international airline industry, which is already beset with many problems, is now confronted with the introduction of advanced

technology aircraft such as the large-capacity subsonic jets and the supersonic transports. The only way for the small airlines to operate these bigger, faster and much more expensive aircraft is to have joint operations and pooling of resources. Such a tendency is becoming evident in many parts of the world, as is shown by the emergence of many cooperative ventures. Considering the economic realities of air transport industry, it is felt that the creation of a joint airline in the RCD region has become an economic necessity.

Obviously, the formation of a multi-national airline involves a number of legal problems, satisfactory answers to which must be provided by the legal structure of such an airline. The main purpose of this study, therefore, is to propose a suitable legal structure for a joint RCD airline after giving due consideration to the legal aspects of other multi-national airlines.

This study proceeds with the formation of the RCD alliance and examines the scope and areas of economic cooperation under this arrangement in Chapter I.

Chapter II deals with the state of air transport in the RCD states with a view to assess its role in the era

of large-capacity subsonic jets and supersonic transports. The history, operations, legal structures and plans of the three national airlines of RCD countries are explained in depth.

Chapter III is devoted to the study of the factors stimulating increased cooperation and consolidation in international airline industry and the RCD region. It reflects the growing impact of advancing aircraft technology on the airline industry and highlights the various economic pressures working within the industry for increased cooperation and consolidation. It also evaluates the factors favourable for the formation of a joint airline in the RCD region.

Chapter IV studies in detail the legal structures, the organizational arrangements and other characteristics of the past, present and proposed multi-national airlines and consortia.

Chapter V is concerned with certain legal problems arising out of multi-national airlines' constitution and operations, and explains how they have been resolved. The problems discussed are international legal personality,

nationality and registration of aircraft and bilateral air transport agreements.

Finally, Chapter VI contains a proposal for a joint RCD airline and provides a legal framework for such an airline including a draft treaty for this purpose.

CHAPTER I

RCD ALLIANCE AND REGIONAL CO-OPERATION

1. Historical Introduction.

In recent years, there has been a growing awareness of the vital need for devising international and regional mechanisms with a view to ensuring better coordination of economic and social policies. It is felt that economic problems can be better resolved and immediate and speedy results obtained by organising co-operation at a regional level.[1]

The rapidly changing pattern of economic and social life, spread of technological innovations to the hitherto agricultural societies, and the revolutionary improvements in transport and communication have been universally recognised as powerful forces in contributing to the growth of regional economic groups. Usually, the original impetus for the formation of such groups comes from geographical proximity and deep-rooted historial, political and cultural ties. The old concept of the self-sufficient national state has given place to new theories under which the economic realities of life make it imperative to pool resources in order to achieve the

benefits accruing from the economies of scale, larger markets and greater bargaining power in promoting exports.[2]

The Regional Co-operation for Development (RCD) is a tripartite arrangement between Iran, Pakistan and Turkey aiming at closer economic, technical and cultural co-operation and promoting economic advancement and welfare of over 160 million people of this region. The three nations of Iran, Pakistan and Turkey are neighbours and enjoy ancient historical ties. They have a common cultural background and a common outlook for the future. They are more or less at the same stage of economic development. These were the factors which facilitated their association into a regional economic group to consider the development of specific plans and projects aimed at strengthening their national development efforts through active and closer collaboration. The decision to form this economic group was taken on July 21, 1964, by the Heads of State of Iran, Pakistan and Turkey who had gathered in Istanbul for a Summit Meeting.[3]

The genesis of this regional Muslim alliance may be traced in the Muslim demand for a separate homeland in the Indo-Pakistan subcontinent,[4] where the Indian Muslims would be able to lead their lives in accordance with Islamic ideology. This demand resulted in the creation of Pakistan[5] on

14th August, 1947. Although born in triumph, Pakistan was born to adversity.[6] Born under inauspicious circumstances, Pakistan was economically and militarily weak.[7] From its very inception, "Pakistan had to preserve itself."[8] Pakistan faced a single, overpowering problem: survival.[9] To ensure her survival, "she needed friends and allies who could render material aid and come to her succour in case of aggression."[10]

After the Commonwealth Prime Ministers' Conference in 1949, Pakistan started a search for friends and allies outside the British Commonwealth. As explained by Liaqat Ali Khan,[11] Pakistan had three fundamental interests, namely, the integrity of Pakistan, Islamic culture and the need for economic development.[12] The majority of the people of Pakistan are Muslims, and as such they had strong religious, ethnic and cultural ties with the people of the Middle East.[13] Realising that "historically, geographically, culturally, and now even politically, Pakistan in inseparable from the Muslim world,"[14] her foreign policy from the very beginning "has reflected a desire for close and friendly relations with other Moslem countries."[15] In its search for friends, Pakistan has, therefore, "sought to befriend every Muslim nation."[16] As a result of this policy, on 18th February, 1950, a Treaty of Friendship between Pakistan and Iran was signed in

Teheran.[17] Pakistan also signed a Treaty of Friendship with Iraq on 26th February, 1950, and with Syria on 29th August, 1950.[18] In 1951, Pakistan signed similar Treaties of Friendship with Turkey, Egypt and Saudi Arabia; in 1952, with Yemen and in 1953, with Lebanon. These Treaties of Friendship were followed up by Cultural Agreements with Turkey, Egypt, Syria and Iran. Another important aspect of this policy of getting closer to the Middle East was the exchange of military goodwill missions. In 1951, a goodwill mission of the Pakistan Army went to Iran and a Turkish military mission arrived in Pakistan and visited various military institutions.[19]

Despite its consistent efforts, Pakistan could not, for various reasons, evoke an enthusiastic response from many Muslim countries. The only real alliance with the Middle Eastern countries that Pakistan was able to achieve was the Baghdad Pact which associated it with Turkey, Iran and Iraq.[20]

By the years 1954 and 1955, simultaneous internal[21] and external[22] threats created grave security problems for Pakistan. The problems of defence and economic rehabilitation forced Pakistan to seek foreign aid and she simultaneously approached the United Kingdom and the U.S.A., the two nations who were most interested[23] in extending the girdle of defence

along the southern borders of the U.S.S.R. Under the Anglo-American influence, therefore, and as a stepping-stone to the formation of a collective security alliance in the Middle East, Pakistan and Turkey concluded an Agreement for Friendly Co-operation on 2nd April, 1954.[24] This aroused considerable interest in Iraq, which opened negotiations with Turkey and other Arab countries.[25] In January 1955, Iraq and Turkey announced that an agreement of co-operation for the security and stability of the Middle East was useful and necessary, and invited other interested countries to join it.[26] After extensive diplomatic consultations throughout the Middle East, the "Pact of Mutual Co-operation between Iraq and Turkey" was signed in Baghdad on February 24, 1955.[27] A significant article of the Pact declared it open for accession by other states "actively concerned with the security and peace of this region..." In response, the United Kingdom became a signatory on 5th April, 1955.[28] Of the other countries[29] invited to join the Turco-Iraqi Pact, which came to be known as the Baghdad Pact, Pakistan[30] and Iran[31] responded. Pakistan deposited its instrument of accession on 23rd September, 1955, and Iran's formal membership became effective on 3rd November, 1955.[32]

From its inception, the Baghdad Pact came under violent diplomatic attacks from the Soviet Union,[33] India,[34]

Egypt[35] and some other countries.[36] The Soviet Union reacted when, in 1955, Pakistan joined the Baghdad Pact. Up to that time, the Soviet Union had maintained a neutral stand on the Kashmir dispute. But now the Soviet Union charged that, by joining the Baghdad Pact, Pakistan had become a member of "an aggressive western alliance," and it responded by radically altering its stand on Kashmir. Thenceforth, the Soviet Union began to subscribe to India's claim that Kashmir was an "integral part" of India.[37] Later, they similarly upheld Afghanistan's claim for the separation of Pathan territory from West Pakistan.[38]

From the beginning, the Baghdad Pact was beset with many handicaps. Against the strong reaction of President Nasser, the United States decided to participate in the Pact only as an observer.[39] The British, French and Israeli aggression against Egypt in October, 1956, aroused the indignation of the Muslim members of the Pact and also exposed them to heavy political pressure.[40] Another jolt to the Pact was the military coup in Iraq on 14th July, 1958. Thereafter, Iraq stopped taking part in Baghdad Pact activities and on 24th March, 1959, it formally announced its withdrawal from the Pact. Consequently, the Pact's headquarters were moved from Baghdad to Ankara and, on 19th August, 1959, the Pact was renamed as the Central Treaty Organization (CENTO).[41]

CENTO was an alliance between unequal parties.[42] Although the regional members of CENTO were being subjected to all the pressures of the cold war, yet their interests were assigned a subordinate or secondary position by the big powers. For insurance of their security, they were paying very heavily in various forms.[43] Further, the economic aspects of this co-operation were very limited and subordinated to the military aspects.[44] In a decade of CENTO collaboration, the United States committed barely 35 million dollars for economic co-ordination. Some progress was undoubtedly made, but the tempo of development remained very slow and incompatible with the growing needs of the region.[45] Accordingly, the regional members were dissatisfied.

Their dissatisfaction was, however, still greater in the political field and became even more acute when the distinction in the American eyes between an ally and a neutral became increasingly blurred. The regional allies also felt "that, in a variety of ways, they were increasingly being taken for granted" by the United States.[46] Of these, Pakistan discovered that her membership of the CENTO and friendship with the U.S. was not helping solve the Kashmir problem. Indeed, if anything, it had made solution of the Kashmir problem more difficult and had hardened India's anti-Pakistan position.[47] The American and British non-committal attitude

to the Kashmir question created such displeasure among Pakistanis that, during the 1962 Summer Session of the Parliament, many MPs demanded that the Government to denounce the CENTO which had caused Pakistan to be on bad terms with the Communist countries without giving her the support due as an ally.[48]

In the fall of 1962, however, Pakistan received a new cause of disillusionment with American foreign policy when, following the India-China border clash, the United States proceeded to rush arms to India on a scale which, to Pakistan, seemed totally unjustified by the requirements of the situation.[49] Arms aid flowed into India continuously on a very substantial scale, not only from the United States, but also in almost equal measure from Britain.[50] When the military help being given by the Western members of CENTO to India became known, the great majority of Pakistanis clamoured for the immediate withdrawal of Pakistan from CENTO and SEATO[51] and the re-orientation of her policy.[52] On 15th April, 1963, Pakistan's Foreign Minister Bhutto stated that if India should receive massive military assistance from the "Western powers" without a solution to the Kashmir dispute, it would mark a turning point for Pakistan and the "abandonment of our friends and allies."[53] As military aid began to flow into India, Bhutto said that Pakistan's foreign policy was being "reshaped."[54]

The Iranians were similarly dissatisfied with CENTO. Although Iran continued its formal relations with CENTO, these relations cooled off particularly under the Sharif-Emami Government. A wave of anti-CENTO sentiments surged through Iran at a time when the CENTO Ministerial Council was meeting in Ankara for its ninth session (April 27/28, 1961). Students in Shiraz staged demonstrations which successfully prevented the holding of the CENTO medical seminar in their university. Elder statesmen such as Seyed Zia'oddin Tabstaba'i, openly spoke against CENTO membership, and it appeared to some observers that Iran would leave the Pact.[55]

But CENTO was not all a negative story. An indirect benefit was the association and friendship developed amongst the governments and peoples of Iran, Turkey and Pakistan.[56] This generated mutual confidence and goodwill.[57] This growing friendship and the realization that the CENTO was a liability rather than an asset, compelled the regional members to think afresh in terms of a new regional combination. The Shahinshah of Iran at a Press conference in Washington, D.C., on 3rd July, 1958, raised the idea of a federation between Iran and Pakistan.[58] Prime Minister Firoz Khan Noon of Pakistan went even farther in a statement on 26th August, 1958. He wanted the idea of federation to be talked and thought about. Pakistan, he said, would be willing for an economic union,

removal of the customs barrier and of the passport system and close co-operation in matters of defence. He wished to become closer in whatever fields possible.[59]

At the same time, there was a growing awareness in Iran and Pakistan that Afghanistan, which shares a common religious and cultural heritage and frontiers with Iran and Pakistan, should be involved in any new regional grouping. On 28th September, 1958, the Shahinshah of Iran described the question of a "federation between Iran, Pakistan and Afghanistan as extremely important," and said that in Iran, "it would be received with joy."[60]

In November, 1959, President Ayub of Pakistan paid a nine-day state visit to Iran. Reflecting a strong desire for closer ties between the two countries, the slogan chosen for the occasion was "Strength lies in Unity."[61]

In October, 1962, President Gursel of Turkey proposed a confederation of Turkey, Iran and Pakistan. On 12th June, 1963, President Ayub wanted "all-round collaboration and co-operation between Iran, Turkey, Afghanistan and Pakistan."[62] On 29th June, 1963, Afghanistan, however, announced its disinterestedness in such a move and its determination to follow "a policy of non-alignment and neutrality."[63] Considering the Afghan attitude, in August, 1963, the Shahinshah of Iran described a union between Iran, Pakistan and Afghanistan as

"desirable and natural, but at the moment difficult."[64] In 1964, a political thinker[65] also proposed that Turkey, Pakistan, Afghanistan and Iran should confederate into what may be called "Turpaghan" (Tur-Pa-Gh-An).

The idea of a confederation of the four non-Arab Muslim countries of Afghanistan, Iran, Turkey and Pakistan was vigorously pursued by President Ayub. After Afghanistan's disinterestedness, however, it seemed that, to begin with, he was pressing on with the confederal idea with the remaining three countries.[66] Actually, he "came to realize the disadvantages and dangers inherent in any political or military alliance of a regional character."[67] He further came to realize that the way to political cohesion lies through efforts at economic co-operation. It was also apparent that the political underpinning required for the economic joint effort existed in the form of good neighbourly bilateral relations between Turkey, Iran and Pakistan. Accordingly, President Ayub "worked out the concept of RCD on two assumptions."[68] The first was that, irrespective of size, each member should have an equal say in any regional alliance. The second assumption was that, as far as possible, politics and military affairs should be excluded. He further believed that if an alliance was restricted, at least in the initial stages, to collaboration in the economic and cultural fields and in the

field of development, it could establish a firm base of understanding on which it may be possible to raise a lasting structure.[69] According to President Ayub, when this idea was put to the leaders of Iran and Turkey, they received it graciously because "their own circumstances had led them to believe that a regional understanding was a necessity." It was realized that small countries living in isolation had no place in the world today: they had to collaborate with one another to command respect and to offer a strong and viable front.[70] The desirability of maximising the multilateral economic cooperation in the fields of economic planning, transport and communications and culture was also felt.

The process for the establishment of the RCD was set into motion by the arrival of President Ayub in Ankara, Turkey, on 3rd July, 1964. The same evening the Foreign Ministers[71] of Pakistan, Iran and Turkey began discussions on what was officially referred to as "political, economic and cultural relations between the three countries." The talks, in which technical experts from the three countries also took part, were stated to be "parallel to but outside CENTO."[72] The three Foreign Ministers, in a joint statement issued on the 5th July, 1964, announced that Turkey, Iran and Pakistan had decided to increase economic, technical and cultural cooperation between themselves "outside the framework of the

Central Treaty Organization."[73] The tripartite statement emphasized the "common cultural heritage," an obvious reference to the fact that the peoples of the three countries are Muslim, and declared that the three countries had decided to collaborate on projects "in the sphere of communications, agriculture, industry, mineral resources, education, health, and regional development."[74]

A second Ministerial Pre-Summit Meeting was convened at Ankara on July 18-19, 1964, to prepare grounds for giving the co-operation among the three like-minded nations an institutional shape.[75] This was followed by a Summit Meeting of the Heads of States of Iran, Pakistan and Turkey on 20th and 21st of July, 1964, in Istanbul, Turkey. The Heads of States had before them the Report of the Ministerial Pre-Summit Meeting. After a detailed exchange of views, they observed:

> "The emergence of regional economic groupings enjoying a community of interest is an outstanding feature of our time for accelerating the pace of economic growth. Efforts directed towards regional economic collaboration have gained international acceptance and the present move to promote collaborations amongst the countries of the region is directed towards the same aim, viz the strengthening of their development efforts through active and sustained collaboration on a regional basis.
>
> This is particularly true in the case of Iran, Pakistan and Turkey, since a desire and basis for such a close collaboration and co-operation exists amongst them, and will

> continue to remain valid in view of the cultural and historic ties of friendship amongst the peoples of the three countries, and also because increasing regional economic co-operation has become a necessity.
>
> Economic and cultural collaboration amongst them is therefore most desirable and should be raised to the highest possible level."[76]

2. Regional Co-operation for Development Declaration of July 21, 1964.

After the conclusion of these tripartite Summit talks[77] in Istanbul, a joint communiqué providing for the establishment of the Regional Co-operation for Development was issued on 21st July, 1964.[78] The communiqué is as follows:

> "The Heads of States of Iran, Pakistan and Turkey, His Imperial Majesty Mohammad Raza Shah Pehlvi, Shahinshah of Iran, His Excellency Field Marshal Mohammad Ayub Khan, President of Pakistan and His Excellency Cemal Gursel, President of the Republic of Turkey met on 20th and 21st of July, 1964, in Istanbul.
>
> The Heads of States reaffirmed their belief that regional co-operation is an essential factor in accelerating the pace of national development and in contributing to peace and stability.
>
> They expressed their conviction that the strong cultural and historical ties which bind the peoples of their countries and have already provided them with a solid basis for collaboration should be strengthened further and developed for the common benefit of the peoples of the entire region.

To this end, the Heads of States resolved that appropriate ways and means should be adopted to enlarge and develop further co-operation in their existing relations in all fields.

They unanimously expressed the belief that this new collaboration should be carried out in a spirit of regional co-operation notwithstanding their activities as members of other organizations of a regional nature.[79]

The three countries would be pleased to consider the participation of other countries of the region in this co-operation.[80]

Having reviewed the practical steps taken by the Foreign Ministers in the field of co-operation among the three countries, during their meeting on 3rd and 4th of July, 1964, in Ankara, the Heads of States expressed their full appreciation for the progress already achieved in this respect. They endorsed the recommendations made by the Ministerial Pre-Summit meeting of the three countries held in Ankara on July 18 and 19, 1964, on subjects of common and regional interest.

The Heads of States noted with approval the creation of a Ministerial Council composed of the Foreign Ministers with the participation of other Ministers of their respective governments in order to take and implement appropriate decisions on matters of common interest.

They noted with satisfaction the decision of the three Heads of Governments to establish a Regional Planning Committee composed of the Heads of the three Plan Organizations, dealing with work relating to regional collaboration and harmonization of development plans. To this end, they have agreed to establish Secretarial arrangements to serve the Regional Planning Committee and the Ministerial Council.

They agreed in principle:

1. To a Free or Freer movement of goods through all practical means such as the conclusion of trade agreements.

2. To establish closer collaboration amongst existing Chambers of Commerce and eventually a joint Chamber of Commerce.

3. To the formulation and implementation of joint purpose projects.

4. To reduce the postal rates between the three countries to the level of internal rates.

5. To improve the air transport services within the region and the eventual establishment of a strong and competitive international air line among the three countries.

6. To investigate the possibilities of securing close co-operation in the field of shipping including the establishment of a joint maritime line or "conference" arrangements.

7. To undertake necessary studies for construction and improvement of rail and road links.

8. To sign at an early date an agreement with a view to promoting tourism.

9. To abolish visa formalities among the three countries for travel purposes.

10. To provide technical assistance to each other in the form of experts and training facilities.

Furthermore, the Heads of States have directed to explore all the possibilities for expanding co-operation in the cultural field among the countries of the region. Cultural relations should be particularly oriented towards creating mass consciousness of the common cultural heritage, disseminating information about the history, civilization and culture of the peoples of the region,

> inter-alia through the establishment of Chairs in Universities, the exchange of students, the grant of scholarships, the establishment of cultural centres and the joint sponsoring of an Institute for initiating studies and research on their common cultural heritage.
>
> The activities planned within the present scheme of collaboration shall be carried out under the name of "Regional Co-operation for Development."
>
> The Heads of States expressed the hope that the spirit of perfect harmony which prevailed throughout the deliberations of the Istambul Conference would ensure the attainment of the objectives formulated at this Conference.
>
> They are confident that the combined efforts of their peoples to this end will open new vistas of hope and opportunity for them and thus contribute to world peace and to the prosperity of the whole region.

3. The Structure of the RCD.

To initiate, formulate and promote various plans among the member countries, it was necessary that regular points of contact between the representatives of the member governments should be available. Accordingly, a hierarchy consisting of three sets of organs was devised to undertake the task of planning and decision-making within the RCD organization.[81]

a) Council of Ministers.

The Regional Council of Ministers, consisting of one minister designated by each member country, is the highest

decision-making body of the RCD. This is at the apex of this hierarchy and provides a point of contact between the member governments at the highest level.

The Council considers and decides on measures for regional co-operation among the three member countries. It holds its sessions in June and December each year among member countries by rotation. The host country's minister presides over its sessions.[82]

b) Regional Planning Council.

The Regional Planning Council, composed of the heads of Plan Organizations of the member countries, is the other permanent body which forms the second tier of this organization.

The Planning Council is entrusted with the task of studying the development plans and production potentials of the three member countries. It makes recommendations on joint purpose projects and long-term purchase agreements and makes proposals regarding the harmonisation of the national development plans in the wider interest of accelerated regional development.[83]

c) Permanent Committees.

The third tier is formed of permanent committees, each of which consists of representatives of the member coun-

tries, and thus provides the basic channel of contact between the Member Governments in a particular sphere of co-operation, such as Trade, Communications, and the like. The number of committees has been reduced from 16 to 7 after recent re-organisation.

These committees are as follows:

1. Committee on Industry: This Committee deals with Joint Purpose Enterprises in the industrial fields, and all allied matters pertaining to it.

2. Committee on Petroleum and Petro-Chemicals: This Committee deals with matters relating to Petroleum and Petro-Chemicals industries.

3. Committee on Trade: This Committee deals with matters relating to promotion of Trade and removal of barriers to intra-regional trade, RCD Chamber of Commerce and Industry, Tourism, Banking and Insurance and RCD Insurance Centre.

4. Committee on Transport and Communications: This Committee deals with Air Transportation, RCD Shipping Services, Roads, Railways, and Post and Telecommunications.

5. Committee on Technical Co-operation and Public Administration: This Committee deals with Technical Assistance Programme, Public Administration, Health, Family Planning and Agriculture, and Water Resources Development.

6. Committee on Social Affairs: This Committee deals with Cultural Co-operation, RCD Cultural Institute, Information Media and Women's Co-operation.

7. Co-ordination Committee: This Committee deals with the co-ordination of RCD activity as a whole. It deals with organisational matters, including those relating to Budget and Administration, and such other matters as are not dealt with by the other committees.[84]

d) The Secretariat.

In accordance with the Istambul communiqué,[85] the RCD Secretariat was established in Teheran, Iran, in April 1965. The RCD Council of Ministers decided that the Secretariat should remain in Teheran for the first three years. Later, in its Seventh Session, held at Islamabad, Pakistan, (August 1967), the Council of Ministers decided that the Secretariat should continue in Teheran up to the end of February 1971, after which the matter could be reviewed.

The Secretariat is headed by a Secretary-General,[86] who is appointed by rotation[87] by Member Governments for a period of three years. He is responsible for co-ordinating the work and activities of all the organs of the RCD, and for taking follow-up action to ensure the implementation of the decisions approved by the Ministerial Council.[88]

e) Process of Decision-Making in RCD.

The permanent RCD committees constitute the basic thinking cells of the RCD in various fields of its activity. The proposals adopted by the Committees are submitted to the Regional Planning Council, whose views and recommendations thereon, in turn, go before the Council of Ministers for final approval. Once approved by the Council, the proposals and recommendations are transformed into definitive decisions capable of implementation.[89]

4. The Areas of RCD Collaboration.

The RCD was set up with a view to increasing, through co-operation, the efficiency of the efforts deployed by the member countries in fields like economy, trade, culture, transportation and communications. In six years of its existence, a relatively short period in the life of an international organization, the RCD has not only defined the scope of its work, taken organisational shape and established certain basic infrastructural facilities and institutional arrangements, but has also emerged from the stage of basic planning and preparatory work and has, in many areas, entered the phase of implementation. A basis has been laid and the activities have been expanded to cover a large area of co-operation in socio-economic and cultural fields. As at present, the

RCD countries are collaborating in the following areas:

a) Joint Purpose Enterprises.

Joint purpose enterprises constitute the major field of RCD activity. RCD provides a market of some 180 million people. The gross national product of the RCD countries is estimated at about $30 billion and this is growing at a rate of 8% to 9% per annum. The number of people and the size of GNP indicate that it is possible to establish any worthwhile industry on an RCD basis. Under joint purpose enterprises, large and sophisticated industries are being developed which could only be economic if they were based on the larger regional market as against the national markets.[90]

The scope of the RCD joint purpose enterprises had been deliberately kept flexible so as to obtain the largest measure of co-operation in this sphere. At the very first session of the RCD Council of Ministers in Teheran in September, 1964, it was decided that under the aegis of RCD, joint purpose enterprises can be undertaken in various forms such as joint ownership, either in the public and/or private sectors, ownership by one country or more for making supplies to the other, establishing production facilities in one country for which raw material is produced in the other, and long-term purchase agreements based on productive facilities in any

of the countries.[91] This definition has been repeated in Article 1 (3) of the "Agreement amongst Iran, Pakistan and Turkey for Promotion and Operation of Joint Purpose Enterprises", signed in Teheran on November 6, 1967.[92]

The economies of the RCD countries have many common features.[93] Accordingly, a wide range of industrial projects (about 55) have been approved or approved in principle for development on a joint purpose enterprise basis.[94] Of these, fourteen projects were scheduled to go into production in 1969.[95] Eight other projects were expected to go into production by the end of 1970, or shortly thereafter.[96]

Twenty-six studies on other contemplated joint purpose enterprises[97] would be completed by 1970 and most of these industries would also be on ground by 1973-74.[98] An important study, being carried out with the assistance of United Nations Industrial Development Organization (UNIDO), will examine the feasibility of establishing RCD Heavy Engineering and Electrical Corporations.[99]

b) Petroleum and Petro-Chemicals.

Measures are being taken for exploration, drilling, exploitation, refining, transportation and distribution for petroleum and natural gas in the region.[100] Within the framework of RCD collaboration, an oil refinery project is being

planned for Izmir, Turkey.[101] This refinery is expected to utilise Sassan crude oil produced by Iran.[102] The question of constructing a pipeline to carry oil from Iranian fields to a Mediterranean port in Turkey is also under study.[103] Discussions are under way in Teheran for setting up a joint exploration and exploitation company on RCD basis in accordance with the existing Iranian laws.[104] Furthermore, RCD countries are opening filling stations in the border areas.[105]

Co-operation in the field of petro-chemicals includes exchange of Methanol, Polystyrene, Urea-formaldehyde, Phenol-formaldehyde and Glycerine on a joint purpose enterprise basis.[106]

c) Trade.

Trade being an important aspect of economic co-operation, a number of measures have been taken up by the RCD Governments for the promotion of intra-regional trade. A significant step in this direction was the conclusion, at Ankara on 25th April, 1967, of an Agreement concerning (the establishment of) RCD Union for Multilateral Payments Arrangements.[107] This was followed by the signing of the RCD Trade Agreement on 3rd September, 1968.[108] The RCD Governments have also prepared a list of items in which the expansion of intra-regional trade is possible. Similarly, a list of

common exportable goods has been prepared for evolving a common export policy.[109]

Another noteworthy development is the establishment of the RCD Chamber of Commerce and Industry with its headquarters in Teheran. This chamber, which has as its members, the national Chambers of Commerce and Industry of Iran, Pakistan and Turkey, was formally inaugurated on 28th August, 1965.[110]

Following a decision of the RCD Commerce and Economy Ministers taken in Teheran in September, 1968, a study on liberalisation and expansion of intra-regional trade has been completed by the United Nations Conference on Trade and Development (UNCTAD).[111]

In spite of the close relations amongst RCD countries, the intra-regional trade has been small.[112] The Member Governments are now increasing it. In this context, Pakistan has agreed to purchase from Turkey railway coaches and rolling stock worth US $9 million.[113] Pakistan has also agreed for the annual purchase of 2,000 tons of copper from Turkey.[114] During the year 1968-69,[115] Iran purchased sheep and mutton amounting to over US $6.5 million from Turkey. Arrangement has also been reached for exporting meat of the value of about US $4.5 million from Turkey to Iran during the year 1969-70.[116]

d) Banking and Insurance.

Co-operation in Banking has been initiated by the preparation of an RCD Manual on Banking by the experts of the three Central Banks.[117] The RCD countries are also examining the feasibility of establishing an RCD Commercial Bank and a Joint Development Bank.[118]

The field of insurance and reinsurance being essentially multi-national in character and especially suitable for regional collaboration, a number of measures have been implemented within the RCD collaboration.[119] The first of these measures was taken in July, 1965, by establishing an RCD Insurance Centre in Pakistan with the objective to serve as a focal point for study measures of co-operation.[120] The Centre published an RCD Manual on Insurance in 1967.[121] Another measure was the creation of RCD Reinsurance Pools for Accident, Marine, Fire, Aviation and Engineering insurance.[122] Active consideration is also being given to the establishment of a regional reinsurance company.[123]

e) Tourism.

In the field of tourism, member governments have taken measures with a view to promoting tourist traffic in the region and increasing the flow of tourists from other countries. A tripartite agreement on tourism was signed at

Teheran in October, 1964, and consequently visas have been abolished for the nationals of the member countries since 1964. Special concession and facilities for encouraging youth tourism within the region, as also joint measures for providing international tourism including package tours, are under the active consideration of the member governments.[124]

f) Shipping.

In pursuance of an RCD decision to establish Conference Arrangements among the shipping lines of the regional countries, the RCD countries signed an agreement on 15th July, 1965, for establishing the RCD Shipping Services, which, in its present shape, has been described as "a consortium of national shipping companies of the RCD countries, acting as a single party, applying uniform common tariffs and operating under a common flag."[125] The Secretariat of the RCD Shipping Services was established with headquarters in Istanbul in February, 1966.[126] The RCD Shipping Services started operation on the intra-regional routes from May, 1966, and from U.S.ports to Turkey and Pakistan in August, 1966.[127]

With a view to boost the ship-building industry in the region, the RCD Regional Planning Council has decided at its Ninth Session that Iran and Pakistan should supply information to Turkey about their programme of acquisition of ships and the broad specification required by them to enable Turkey

to offer competitive credit and other facilities for ship-building in the Turkish Shipyard.[128] Further, in pursuance of a decision of the RCD Heads of States Summit Meeting held in Karachi in December, 1968, a working group consisting of the experts from RCD countries has been constituted in 1969 to examine the feasibility of establishing a joint shipping company.[129]

g) Roads.

After the formation of the RCD alliance, the three governments agreed to give priority to the expeditious completion of an RCD Highway linking Ankara-Teheran-Karachi. The total length of this highway is about 5267 km/3292 miles.[130] The construction of this highway is making good progress. Under a decision of the RCD Council of Ministers, the engineers of the three countries travelled on the highway in September, 1969, in order to identify the details of the work which remains to be done.[131] The RCD Regional Planning Council has recommended a uniform system of road signs and signals used in the RCD region, and has agreed in principle on the need for adopting the international system as approved in the Vienna Convention of October, 1968.

h) Railways.

The RCD governments have agreed to establish railway links connecting the three countries of the region. Plans

have accordingly been worked out to expedite the construction of missing links and work for extending the railway system is in progress. In this context, the Iran-Turkey rail link is expected to become operative in the second half of 1970. Of the Iran-Pakistan rail link, Kashan-Yezd-Kerman sector would be operative by 1970 and the first portion of the Kerman-Zahedan sector would be surveyed by Iran.[132]

i) Post and Telecommunications.

The RCD countries are taking steps for improving post and telecommunications services in the region. Some of these steps, inter-alia, include reduction of the surface postal rates on letter mail of all categories to the internal level with effect from December, 1964. From the same time, telegraph rates in the region have been reduced to the internal rates applied in Iran and, rates for telephone calls have also been reduced. Certain category of mail from Pakistan to Turkey, which used to be routed through UAR, is moving through Iran since December, 1964.[133] Member countries are opening post offices in the border areas[134] and are also preparing themselves for the use of satellite communication facilities.[135] Measures have been taken to improve the expeditious delivery of mail within the region and member countries are pooling their experiences for planning and phasing the mechanization of postal services.[136]

j) Technical Co-operation and Public Administration.

The RCD collaboration in technical assistance is based on the principles of self-help and reliance on internal resources. This programme was jointly launched under an RCD Agreement in 1965 and since then is under implementation. Under this programme, the member countries exchange students, trainees and experts, organise useful courses of instructions and seminars and publish papers read at the seminars. The fields of activity are education, vocational training, banking, insurance, industries, agriculture, mines, health and family planning, rural affairs, public administration, and the like. From 1965 to 1968, 1353 students and trainees were exchanged and 105 experts were made available in the annual technical assistance programmes. In 1969, 22 experts and 318 students and trainees were exchanged. A number of scholarships and fellowships have also been awarded to facilitate and promote such exchange. A large number of seminars on subjects of mutual interest, such as common cultural heritage, Islamic architecture, financing of development programmes, insurance, common problems of economic growth, manpower management, research in practical problems in public administration, status of women, family planning, agricultural census, water resources development, role of the administrator, control and eradication of quarantineable diseases and role of private

sector in the industrial development, have been held under this programme. In addition, three joint courses on public administration were held in 1967, 1968 and 1969 respectively.[137]

k) Health and Family Planning.

Collaboration in this field has been initiated by a regular exchange of reports on quarantineable diseases. It is expected that, subject to availability, information on communicable diseases would also be exchanged. The establishment of an RCD Medical Association is also being considered.[138]

Since the economic development of the RCD countries depends largely on their ability to keep their growing population to a reasonable level, they are making sustained efforts in family planning. In this area, they are collaborating by exchange of views, data and experiences through seminars, exchange of experts and printed material.[139]

l) Agriculture and Water Resources.

In view of the primarily agrarian economies, the RCD countries have decided to collaborate in the field of agriculture and water resources development. Their goal, of course, is self-sufficiency in food. Collaboration in this field, although modest to begin with, includes exchange of expertise, training facilities and information. To further

it, the RCD Secretary-General has circulated a detailed report among the member countries.[140]

m) Cultural Co-operation.

Realising that co-operation in the field of education, science and culture is necessary to develop consciousness of the common cultural heritage and to promote social, economic and political development, the RCD countries have oriented their activities in the field of cultural co-operation towards promoting consciousness of the common cultural heritage and disseminating information about history, culture and civilization of the people of the region. For this purpose, they have set up the RCD Regional Cultural Institute at Teheran in June, 1966, and branches of the Institute have since been established at Istanbul, Lahore and Dacca. The Institute, besides publishing a quarterly journal, is engaged in a comprehensive programme of publications.[141] It has completed eleven publication projects, and another four are under print.[142]

Activities under the RCD Annual Cultural Exchange Programme include exchange of professors, writers, artists, holding of art and cultural exhibitions, sports tournaments, arranging visits of students, boy scouts and girl guides, establishment of the chairs in the universities and the grant-

ing of scholarships.[143] A significant development in cultural co-operation is the final approval of the RCD Ministerial Council to the establishment of the RCD College of Economics and Political Science at Islamabad, Pakistan, to be set up on the pattern of the London School of Economics and Political Science.[144]

n) Women's Co-operation.

Women's organizations in the RCD countries are exchanging goodwill delegations and these visits are helpful in bringing together the women of the region. They are also arranging seminars on the problems facing the women of these countries. The recommendations of these RCD seminars are being transmitted to member governments for appropriate action.[145]

o) Information Media.

Cooperation between radio, press, TV and other information media of the RCD countries is progressing. The three radio organizations are engaged in the exchange of personnel and programmes on material of cultural interest. The three national news agencies have been collaborating in the dissemination of information concerning the RCD region. Exchange of visits of newspapermen and journalists is taking place. Three seminars of journalists have also been held under the aegis of RCD. A number of exhibitions of books, photographs

and stamps have been held to project the image of the RCD countries.[146]

p) Air Transportation.

Last, but not the least, the RCD countries are co-operating in the field of air transportation. This is an area which had shown great promise of co-operation in the beginning and, where, despite unsatisfactory progress made so far, sincere efforts are being made to enlarge the area of fruitful collaboration including the eventual establishment of a strong and competitive joint airline to operate wide-body jets and SSTs.

In pursuance of the Istanbul Summit Conference, 1964's decision to "improve the transport services within the region", Iran Air and PIA started their services to Istanbul and beyond in the second half of 1966.[147] This was followed in the end of 1967 by the conclusion of a General Sales Agency Agreement under which the three national airlines of RCD countries appointed each other as their General Sales Agents.[148] Further, in July, 1969, Iran Air and PIA signed an agreement for pooling the traffic on Karachi-Teheran sector.[149]

The Istanbul Summit Conference's other directive for "the eventual establishment of a strong and competitive inter-

national airline among the three countries" is yet to be implemented. The airline authorities of the RCD countries have considered this objective at length and, so far, have only agreed in principle for a joint regional venture "to operate large sub-sonic and super-sonic aircraft on international routes."[150] For this purpose, they have "agreed to progress the appointment of reputable international Aviation Consultants to study in detail the technical, economic and marketing feasibility of a joint airline in addition to the three national airlines."[151] The three airlines have also agreed to exchange information on a regular basis relating to international traffic data, future plans, establishment of new facilities, training facilities, purchase of new equipment, and exchange of personnel and the use of training facilities on a mutual basis.[152] This agreement has been approved by the RCD Council of Ministers,[153] and recently the RCD Heads of States have "recalled the directives for the establishment of RCD joint airlines" and stressed that "the possibility of operating sub-sonic and super-sonic aircraft on a joint basis be explored expeditiously."[154]

The goal of a joint airline remains one of the principal and perhaps the most far-reaching objective of the

RCD collaboration. A detailed discussion on the attempts in this direction appears in a subsequent chapter.

Having considered the evolution, organization and the scope of RCD co-operation, this study will now endeavour to examine the existing state of air transport in this region.

CHAPTER I

FOOTNOTES

1. For a discussion on the economic aspects of regionalism, see Walter Krause, International Economics, (Boston: Houghton Mifflin Company; 1965), pp. 617-631.
See also Charles P. Kindleberger, Economic Development, (ed ed., McGraw-Hill; 1965), pp. 345-360.
For a discussion on the political aspects of regionalism, see Mohammad Ahsan Chaudhri, Pakistan and the Regional Pacts (Karachi: East Publications; 1958), pp. 1-21.

2. Regional Cooperation for Development Among Iran, Pakistan and Turkey (Teheran, July, 1968). A booklet published by the Information Department, RCD Secretariat, Teheran, p. 2.

3. Ibid., p. 1.

4. The demand for Pakistan was formally raised by the Muslims of Indo-Pakistan subcontinent on 23rd March, 1940, when the All-India Muslim League (foremost Muslim political party in the subcontinent) passed the Pakistan Resolution at its Lahore session. In his presidential address, Mr. Mohammad Ali Jinnah (the founder and the first Governor-General of Pakistan 14-8-1947 - 11-9-1948) said, "Musulmans are a nation according to any definition of a nation and they must have their homeland, their territory and their State." See Jamil-ud-Din Ahmad, Speeches and Writings of Mr. Jinnah, (Lahore, Shaikh Muhammad Ashraf, 1952), p. 179.
The Pakistan Resolution demanded that "geographically contagious units be demarcated into regions which should be so constituted with such territorial re-adjustments as may be necessary that the areas in which the Muslims are numerically in majority, as in the North-Western and Eastern Zones of India, should be grouped to contitute independent States in which the Constituent units

shall be autonomous and sovereign." For complete text of the Pakistan Resolution, see Aslam Siddiqi, Pakistan Seeks Security, (Longmans, Green and Co., Pakistan), pp. 177-178.

5. Now officially called the Islamic Republic of Pakistan.

6. The other parties concerned (Hindus and Sikhs) had frowned at the idea of a separate country, and so when it materialised with their unwilling acquiescence, there was a strong backlash. There was unfair demarcation of boundaries and the creation of the tragic Jammu and Kashmir problem, an inequitable distribution of assets, and an unparalleled scale of communal convulsion followed by the biggest movement of population known to the history. The hostility of the Hindu rulers against the idea of Pakistan escalated to the state level, and has since then proved incurable. The country itself came, inevitably, in divided halves, separated from each other by 1,000 miles of hostile Indian territory. The population of the country was vast, but its material resources were very limited. See Altaf Gauhar in his introduction to Twenty Years of Pakistan 1947-67, (Karachi: Pakistan Publications, 1967), p. vi.

7. Pakistan's two wings had no industry of significance, they had poor transportation, little electric power, and few administrators and technicians. What little economic strength existed was largely sapped by collisions with India and the demands of the refugees.
In 1947, Pakistan's economy depended upon four crops - cotton, wheat, rice and jute. The population movements in the wheat and cotton producing Punjah caused a sharp drop in production and the vital irrigation systems were broken in two. Cotton, the major export product of West Pakistan lost its Indian market. In East Pakistan, the jute could not be moved by rail or shipped to the jute mills of Calcutta. A jute war between the two countries led to a complete economic break between East Pakistan and India.

Partition left Pakistan without any industrial wealth to fall back on as its agricultural base deteriorated. What few small factories existed in the Punjah were Hindu and Sikh operated and they began to deteriorate when the Hindus left. There was a banking system but

none to operate it and investment capital was scarce. See Richard V. Weekes, Pakistan: Birth and Growth of a Muslim Nation (Princeton, N. J.: D. Van Nostrand Company, Inc., 1964), pp. 93-94.

The problems of setting up an administrative machinery and looking after millions of refugees were great indeed. But greater far were the problems which the defence of its long frontiers posed. Its peculiar geography, lack of material assets and the unfriendly attitude of neighbours further aggravated them.

Facts of geography cannot be altered. They have to be accepted along with all the permanent problems they raise. Pakistan was divided into two parts, separated by over a thousand miles of Indian territory. West Pakistan had an area of 310,236 sq. miles and the area of East Pakistan was 54,501 sq. miles. And each part had its own peculiar defence problems. That made the overall problem of the security of Pakistan extremely intricate and difficult.
See Aslam Siddiqi, Pakistan Seeks Security, op. cit., p. 15.

In October, 1947, there was hardly a single formed unit in Pakistan.
See Lord Birdwood, A Continent Decides (London: Robert Hale, Ltd., 1953), p. 89.

All the ordnance factories and most of the arsenals lay in India. Pakistan was therefore extremely short of equipment and ammunition. Out of its share of 163,000 tons of military stores, Pakistan received only 30,000 tons, most of which lay in Pakistan territory.
See Aslam Siddiqi, Pakistan Seeks Security, op. cit., p. 55.

According to the then General Muhammad Ayub Khan "We were badly in need of ammunition, so much so that we could hardly allow our soldiers even five rounds for their general practice to keep their weapons in order." Quoted in Dawn, 30 January, 1957.

8. Aslam Siddiqi, Pakistan Seeks Security, op. cit., pp. 15-30.

9. From without, India seemed to be purposely exacerbating the economic plight of new Pakistan, while at the same time threatening Pakistan with its stronger army.

Afghanistan appeared to be grabbing at Pakistan's north-western frontier. The Soviet Union rushed to support the communists, who found fertile fields for subversion. Survival was a real concern to Pakistanis in 1947.
See Richard V. Weekes, Pakistan: Birth and Growth of a Muslim Nation, op. cit., p. 241.

10. Mohammad Ahsan Chaudhri, Pakistan and the Regional Pacts, op. cit., p. 42.

From the day Mohammad Ali Jinnah led Pakistanis independence, they have wanted and needed friends, particularly friends who could help them. Such friends were hard to find in 1947.
See Richard V. Weekes, Pakistan: Birth and Growth of a Muslim Nation, op. cit., p. 241.

11. First Prime Minister of Pakistan, 14-8-1947 - 16-10-1951.

12. Liagat Ali Khan, Pakistan, the Heart of Asia, (Cambridge: Harvard University Press, 1951), p. 11.

13. Mohammad Ahsan Chaudhri, Pakistan and the Regional Pacts, op. cit., p. 88; and Twenty Years of Pakistan 1947-67, op. cit., p. 680.

14. A Tayyeb, Pakistan: A Political Geography, (London: Oxford University Press, 1966), p. 226.

15. Donald N. Wilber, Pakistan: Its People, Its Society, Its Culture (New Haven: HRAF Press, 1964), p. 313. According to Wilber.

This desire has found expression in several treaties of friendship and in the encouragement of various non-governmental international Islamic organizations devoted to cultural, intellectual or economic matters. It has supported the Arabs on the Palestine question and has not yet recognized Israel; encouraged independence movements in Tunisia, Algeria, Morocco, and Indonesia, and condemned "imperialism" in international disputes affecting the interests of Muslim nations.

See also Aslam Siddiqi, Pakistan Seeks Security, op.cit., pp. 87-94;
A. Tayyeb, Pakistan: A Political Geography, op. cit., pp. 226-228;

Kazi S. Ahmad, A Geography of Pakistan, (Pakistan Branch Oxford University Press, 1964), p. 177;
Richard V. Weekes, Pakistan: Birth and Growth of a Muslim Nation, op. cit., pp. 249-252;
Twenty Years of Pakistan 1947-67, op. cit., pp. 680-690;
Zulfikar Ali Bhutto, The Quest for Peace, Selections from Speeches and Writings 1963-65, (The Pakistan Institute of International Affairs, Karachi, 1966), pp. 76-106;
Ahmad Ali Khan, "Pakistan and the World - Twenty Years of External Relations," Pakistan Quarterly, XV (Summer and Autumn, 1967, 1-2), 52; and
HRAF Area Handbook for Pakistan (New Haven: HRAF), pp. 740-741.

16. Even the country's constitution states that "the bonds of unity amongst Muslim countries should be preserved and strengthened." According to Weekes, to many Pakistanis, the friendship with the Muslim world seemed as a means to realise the old dream of Pan-Islamic unity. Since religion was responsible for the creation of Pakistan and contributed greatly to its success in remaining independent and united, the prospects of friendship with the Muslim nations raised the hopes of many Pakistanis for a rejuvenation of Muslim brotherhood.
See Richard V. Weekes, Pakistan: Birth and Growth of a Muslim Nation, op. cit., p. 251.

17. At the signing of this treaty, the then Iranian foreign minister almost prophetically observed that the treaty, which obligated the parties "to establish in their respective countries peace and permanent friendly relations between Pakistan and Iran and between their respective citizens," would prove to be "the forerunner of far closer ties." Quoted in Dawn, 20 February, 1950.

18. These treaties are almost identical in content. They are motivated by "the desire of strengthening and perpetuating the bonds of brotherhood." The countries promise to accord each other "most favoured nation treatment," agree to negotiate agreements on several subjects including cultural relations and "to settle disputes peacefully in a spirit of brotherliness." Affection and brotherliness permeate all these agreements which comes

out clearly if one compares them with the treaties of friendship Pakistan signed with the non-Muslim countries. See Aslam Siddiqi, Pakistan Seeks Security, op. cit., pp. 90-91.

19. Ibid., p. 91.

20. A. Tayyeb, Pakistan: A Political Geography, op. cit., p. 228.

21. The economic boom which the country had enjoyed during the Korean war had ended. Crop yields had declined, owing to the successive failure of the rains in the preceding years and the diversion by India of some canal waters. Economic discontent grew among the public and was parallelled by political discontent, which resulted in frequent changes in provincial governments and the dismissal of the central government.

22. The Kashmir issue was undecided and the prospects of a war over it with India were high. The Afghan government's campaign for Pakhtoonistan was at its peak and threatened war on the western frontier.

23. As early as June 1953, U.S. Secretary of State, Mr. John Foster Dulles, had urged the Middle East countries to combine in a collective security system. See Department of State Bulletin, 16 June, 1953, p. 835.

24. The agreement, inter alia, provides for "joint study of requirements in production of arms and ammunition and exchange of information for the purpose of drawing benefits jointly from technical experience." The scope of the agreement was extended on 19th August, 1954, to include within meaning of co-operation the cases of "supply of arms and ammunition, as well as their production." See
CENTO: Central Treaty Organization (Ankara): A booklet published by the Public Relations Division, Central Treaty Organization, Ankara, Turkey, p. 3.
See also Aslam Siddiqi, A Path for Pakistan, (Karachi: Pakistan Publishing House, 1964), p. 204;
Aslam Siddiqi, Pakistan Seeks Security, op. cit., pp. 103, 121;
Mohammad Ahsan Chaudhri, Pakistan and the Regional Pacts, op. cit., p. 96; and

A. Tayyeb, Pakistan: A Political Geography, op. cit., p. 221.
For complete text of the Agreement for Friendly Co-operation Between Pakistan and Turkey, see Aslam Siddiqi, Pakistan Seeks Security, op. cit., pp. 178-181, and, Mohammad Ahsan Chaudhri, Pakistan and the Regional Pacts, op. cit., pp. 123-131.

25. Nuri-es-Said, the then Iraqi Prime Minister, considered that the Agreement had created a political situation to which Iraq should be attentive. Accordingly, in October, 1954, he visited Turkey and openly said that his country's welfare was linked with Turkey and Iran and she might join the Turco-Pakistan Pact. See
The Pakistan Times, October 19, 1954;
Aslam Siddiqi, A Path for Pakistan, op. cit., p. 204;
Aslam Siddiqi, Pakistan Seeks Security, op. cit., p. 122;
and Mohammad Ahsan Chaudhri, Pakistan and the Regional Pacts, op. cit., p. 100.

26. Ibid.

27. See CENTO: Central Treaty Organization, Ankara, Turkey, op. cit., p. 4;
Aslam Siddiqi, A Path for Pakistan, op. cit., p. 204.
Aslam Siddiqi, Pakistan Seeks Security, op. cit., p. 123; and
Mohammad Ahsan Chaudhri, Pakistan and the Regional Pacts, op. cit., p. 100.
This Pact replaced the Agreement for Friendly Co-operation between Pakistan and Turkey as the basic instrument of the collective security arrangements in the Middle East. The parties agreed to co-operate for their security and defence.
For complete text of the Pact of Mutual Co-operation between Iraq and Turkey, see
CENTO: Central Treaty Organization, Ankara, Turkey, op. cit., pp. 45-46;
Aslam Siddiqi, A Path for Pakistan, op. cit., pp. 233-236;
Aslam Siddiqi, Pakistan Seeks Security, op. cit., pp. 185-188; and
Mohammad Ahsan Chaudhri, Pakistan and the Regional Pacts, op. cit., pp. 140-144.

28. See CENTO: Central Treaty Organization, Ankara, Turkey, op. cit., p. 4;

Aslam Siddiqi, A Path for Pakistan, op. cit., p. 204; Aslam Siddiqi, Pakistan Seeks Security, op. cit., p. 123; and Mohammad Ahsan Chaudhri, Pakistan and the Regional Pacts, op. cit., p. 100.

29. The Baghdad Pact was sponsored by the United States and originally she was willing to come into the Pact as a full member. The strong reaction of President Nasser, however, made her change her mind and she decided to participate only as an observer. See Mohammad Ayub Khan, Friends Not Masters: A Political Autobiography, (Oxford University Press, 1967), p. 154.

30. In July, 1955, Pakistan Prime Minister Mohammad Ali announced that Pakistan would join the Pact. See Aslam Siddiqi, Pakistan Seeks Security, op. cit., pp. 123-124.

A strong indication to this effect had earlier been given by President Celal Bayar of Turkey who had observed that destiny had ordained that Pakistan and Turkey who were united in their faith and feelings should work hand in hand. See Dawn, 20 February, 1955.

31. In October, 1955, Iranian Prime Minister Husayn Ala announced that Iran would accede to the Baghdad Pact. See Aslam Siddiqi, Pakistan Seeks Security, op. cit., p. 124.

32. See CENTO: Central Treaty Organization, Ankara, Turkey, op. cit., p. 4; A. Tayyeb, Pakistan: A Political Geography, op. cit., p. 221; Aslam Siddiqi, A Path for Pakistan, op. cit., p. 204; and Aslam Siddiqi, Pakistan Seeks Security, op. cit., p. 124.

33. The Soviet Union sent notes of protest to Iran, Turkey and Pakistan. These notes were, however, rejected. But the Soviet criticism has continued unabated. See Aslam Siddiqi, Pakistan Seeks Security, op. cit., p. 4; and CENTO: Central Treaty Organization, Ankara, Turkey, op. cit., p. 5.

34. Pakistan came in for bitter criticism from India for having joined collective security alliances. India charged that by so doing, "Pakistan had brought the cold war to the sub-continent."
Mohammad Ayub Khan, Pakistan Perspective: A Collection of Important Articles and Excerpts from Major Addresses, (Washington, D.C.: Embassy of Pakistan, p. 18.
From the article "The Pakistan-American Alliance," that first appeared in Foreign Affairs, January 1964.

Mr. Nehru, Indian Prime Minister, speaking in the Indian Parliament, 14 March, 1959. India opposed the Pact as a devotee of the policy of neutrality and she feared that by enjoying the support of its allies, Pakistan would become, militarily and economically, stronger.

See
Aslam Siddiqi, Pakistan Seeks Security, op. cit., pp. 128-129;
A Tayyeb, Pakistan: A Political Geography, op. cit., pp. 222-225; and
Mohammad Ayub Khan, Friends Not Masters: A Political Autobiography, op. cit., pp. 130-132.

35. The Egyptian reaction was most violent. As soon as Turkey and Iraq announced their intention to enter into an Agreement of Mutual Cooperation, the Etyptian Government issued a statement severally criticising Iraq for violating its obligations under the Arab League Collective Security Pact and convened a conference of the Prime Ministers of the Arab States to consider the situation. This conference, which was not attended by Iraq, announced that no Arab country would join this Agreement or any other political or military pact without the approval of the Arab League. In retaliation, Egypt then signed a ten-year Defence Pact with Syria, Saudi Arabie and Yemen.

According to President Nasser, "the Baghdad Pact represents foreign domination in the region." His opposition to the Pact has gone on in many forms including development of close and friendly relations with India vis-à-vis Pakistan.

See Aslam Siddiqi, Pakistan Seeks Security, op. cit., pp. 129-130; and
Mohammad Ayub Khan, Friends Not Masters: A Political Autobiography, op. cit., pp. 154-156.

36. There was token criticism to the Pact in Ceylon, Burma and Indonesia.

37. Mohammad Ayub Khan, Friends Not Masters: A Political Autobiography, op. cit., p. 132; and,
Mohammad Ayub Khan, Pakistan Perspective, op. cit., p. 20.

Pakistan joined the Baghdad Pact in November, 1955. In the following month, Messrs. Khrushchev and Bulganin visited India and Afghanistan. During their visit, they declared their acceptance of Kashmir as integrally Indian territory. See
Civil and Military Gazette, Lahore, 12 December, 1955.

38. A. Tayyeb, Pakistan: A Political Geography, op. cit., p. 222.

39. Mohammad Ayub Khan, Friends Not Masters: A Political Autobiography, op. cit., p. 154.

40. Mohammad Ahsan Chaudhri, Pakistan and the Regional Pacts, op. cit., pp. 105-106.
Aslam Siddiqi, Pakistan Seeks Security, op. cit., p. 133.

41. See CENTO: Central Treaty Organization, Ankara, Turkey, op. cit., p. 5;
Aslam Siddiqi, Pakistan Seeks Security, op. cit., pp. 133-134;
Aslam Siddiqi, A Path for Pakistan, op. cit., p. 205; and
L.F. Rushbrook Williams, The State of Pakistan, (London: Faber and Faber, 1962), p. 119.

42. Notwithstanding the United States's participation only as an observer, the CENTO had actually been sponsored by the United States and apparently fully enjoyed her goodwill and support. On 5th March, 1959, the United States had signed Bilateral Agreements of Co-operation with Pakistan, Iran and Turkey, obviously with a view to strengthen CENTO.

43. Aslam Siddiqi, A Path for Pakistan, op. cit., p. 205.

44. Jan Tinbergen, Shaping the World Economy, (New York: The Twentieth Century Fund, 1962), (Appendix III "Economic Development and Co-operation in Southeast Asia" by Hans Linnemann), p. 241.

45. A. T. Chaudhri, "RCD: A Forward-Looking Alliance," Pakistan Quarterly, XII (1964, 4), 13-14.

46. Mohammad Ayub Khan, Friends Not Masters: A Political Autobiography, op. cit., p. 132;
Mohammad Ayub Khan, Pakistan Perspective, op. cit., p. 21.

47. Richard V. Weekes, Pakistan: Birth and Growth of a Muslim Nation, op. cit., p. 259.

48. General Hassan Arfa, Under Five Shahs,(London: John Murray, 1964), p. 435.

49. Mohammad Ayub Khan, Friends Not Masters: A Political Autobiography, op. cit., p. 133;
Mohammad Ayub Khan, Pakistan Perspective, op. cit., p. 23.

50. Ibid.

51. South East Asia Treaty Organization existing under a treaty signed at Manila on 8th September, 1954, between the United States, the United Kingdom, France, Australia, New Zealand, Pakistan, Thailand and the Philippines. For complete text of the Treaty, see Aslam Siddiqi, Pakistan Seeks Security, op. cit., pp. 191-194, and, Mohammad Ahsan Chaudhri, Pakistan and the Regional Pacts, op. cit., pp. 132-139.

52. General Hassan Arfa, Under Five Shahs, op. cit., p. 435.

53. Richard V. Weekes, Pakistan: Birth and Growth of a Muslim Nation, op. cit., pp. 253-260.

54. Ibid.

55. Iran Almanac and Book of Facts, 1962, 2nd Ed., p. 134. Turkey was also unhappy because she was not receiving the backing from the U.S. and Britain over Cyprus. As an ally, she felt being let down.
See The Times, 21 July, 1964, p. 11.

56. Mohammad Ayub Khan, Friends Not Masters: A Political Autobiography, op. cit., p. 156. See also
Mohammad Ayub Khan, Pakistan Perspective, op. cit., p. 104.

57. Ibid.

58. He said: "A federation between Pakistan and Iran would not affect at all Iran's Baghdad Pact membership or Pakistan's membership to the Pact. Only the future can tell whether such a federation could come about. But the two countries are of the same religion and to some extent they have a common language." Quoted in Dawn, 4 July, 1958.

59. Aslam Siddiqi, Pakistan Seeks Security, op. cit.,p. 33.

60. Aslam Siddiqi, A Path for Pakistan, op cit., p. 206.

On his return from a visit to Turkey and Iran, President Ayub referred, in a statement on 20th November, 1959, to the "fondly cherished hopes and dreams of a larger concept of the unity of the Millat" and said, "God has now given it to us to witness this great ideal come close to realization." He added: "All of us - Iran, Turkey and Pakistan - did feel that if our brotherly country of Afghanistan could also sit with us around the same table, the security belt of the world in general and of the Muslim peoples in particular would have been enormously strengthened and widened. For us in Pakistan, it would be a very happy day indeed when our brotherly ties with Afghanistan become closer and stronger . . . We are always ready to give our Afghan brothers all the help and assistance which our means permit." - Reported in Dawn, 21 November, 1959.

61. Aslam Siddiqi, Pakistan Seeks Security, op. cit., p. 33.

62. Aslam Siddiqi, A Path for Pakistan, op. cit., p. 206.

63. Ibid.

64. Pakistan Times, 16 August 1963.

65. Aslam Siddiqi, A Path for Pakistan, op. cit., pp.196-197.

66. Z.A. Suleri, Politicians and Ayub, (Lahore: Lion Art Press), pp. 157-159.

67. Mohammad Ayub Khan, Friends Not Masters: A Political Autobiography, op. cit., p. 156.

68. Ibid.

In another writing - Pakistan Perspective, op. cit., p. 103 - President Ayub, however, takes a contrary view and observes, "The idea . . . is by no means a new concept. I do not claim its authorship either." When one considers the evidence against this cis-claimer, it seems that it was, perhaps, an exercise in political modesty. In his - Friends Not Masters: A Political Autobiography, p. 157 - President Ayub claims to have "put the RCD idea to His Imperial Majesty the Shahinshah of Iran and to President Gursel and Prime Minister Inonu of Turkey." This contention is supported by Zulfikar Ali Bhutto, who, in his - The Quest for Peace, Selections from Speeches and Writings 1963-65, op. cit., p. 97 - refers to "the initiative taken in this (RCD) matter by the President of Pakistan."

Mr. Z.A. Suleri, a prominent journalist of Pakistan in his book - Politicians and Ayub, op. cit., pp. 157-159 - credits President Ayub for bringing about the RCD. Even The Times, 6 July, 1964, acknowledged that the President of Pakistan was "the moving spirit of the new initiative (RCD)."

69. Ibid., pp. 156-157.

70. Ibid., p. 157.

71. Bhutto, Aram and Erkin, respectively.

72. The announcement of the tripartite talks aroused interest in the diplomatic circles in Ankara, as they gave the impression that the three "regional" members of CENTO wanted to get together without the presence of Britain, or of the United States. There was unofficial talk of the possibility of some new link-up between the three countries outside CENTO and that an approach was contemplated by the three powers to Afghanistan, which was visited by President Ayub on his way to Turkey. See The Times, 4 July, 1964.

73. Many political observers considered that the reference to collaboration "outside the framework of CENTO" could also be intended to facilitate relations with Afghanistan,

whose neutralism had hitherto prevented any collaboration with members of a western defence pact.

74. The Times, 6 July, 1964.

75. Regional Co-operation for Development Among Iran, Pakistan and Turkey, op. cit., p. 2.

76. Ibid., pp. 3-4.

77. These talks were held in "The Dolwa Baghche," an ancient palace in Istambul, where, in the past, the Sultans of Turkey used to reside. It was in the same palace that Kamal Ataturk, the founder of modern Turkish Republic, spent the last days of his life as an ailing person. This information was made available to the writer during his visit to Istambul in early 1970.

78. The New York Times, 22 July, 1964; and
The Times, 22 July, 1964.

The Times, on 21st July, 1964, also editorially commented on the establishment of RCD. The editorial, "Three Friends In Turkey," while recognizing that the three countries had "much in common" welcomed the "consolidation of local ties among like-minded nations."

79. During the Istambul Summit Meetings, there were rumours that the new regional arrangement had proved a "death blow" for CENTO. (See The Times, 22 July, 1964, op.cit.)

This phrase was incorporated in the communiqué to deny this rumour and to affirm that the new alliance was not intended to compromise its members other multilateral obligations, such as Turkey's membership of the NATO and association with European Common Market.

80. This phrase was obviously incorporated to keep the door open for Afghanistan.

81. Regional Co-operation for Development Among Iran, Pakistan and Turkey, op. cit., p. 6.

82. Ibid., pp. 6-7.

83. Ibid., p. 7.

84. Iran Almanac and Book of Facts, 1969, 8th ed., p. 187.

85. Joint Statement by the Heads of States of Iran, Pakistan and Turkey, issued on 21st July, 1964, which announced the creation of RCD.

86. Mr. Fuad Rouhani, an Iranian administrator and scholar was the first Secretary-General of RCD. His successor, who is currently in office, is Mr. M.H. Zubairi, a career civil servant from Pakistan.

87. In alphabetical order.

88. Regional Co-operation for Development Among Iran, Pakistan and Turkey, op. cit., pp. 8-10.

89. Ibid., p. 10.

90. Qamar ul Islam, "Financing of RCD Joint Purpose Enterprises," Regional Co-operation for Development: Fourth Anniversary Publication, (Teheran: Information Department, RCD Secretariat, July 21, 1968), p. 38.

91. RCD Countil of Ministers Joint Communiqué, RCD Secretariat, Doc. MC/1/64.

92. For complete text of this Agreement, see Iran Almanac and Book of Facts, 1968, 7th ed., pp. 758-760.

93. All the three countries have adopted a policy of encouraging private enterprise, specially in the industrial field. While in all the three countries, the total planned investment in private sector is less than 50% (Iran 45%, Pakistan 42% and Turkey 47.5%), the shares of the private entrepreneurs in industry is much larger, being 58% in Iran, 72% in Pakistan and 67% in Turkey.

    Investments have been groing rapidly in the three countries. In Iran and Turkey, total fixed investments in the current Plan period are about double of those in the previous Plan period, while in Pakistan, the increase was about 80%. The total planned investments in the current Plans are given below:

Iran US $ 10.7 billion

Pakistan US $ 10.9 billion

Turkey US $ 12.4 billion

There is a notable similarity in the investment pattern in the three countries showing that in certain respects, all countries have reached almost the same stage of economic development, e.g., industry and transport have been allocated about the same percentage of total investments (Iran 41.9%, Pakistan 44.1% and Turkey 42.2%). Agricultural sector is still the most important single sector, but its share in GNP varies in the three countries (21.6% of GNP in Iran, 45.5% in Pakistan and 30.3% in Turkey). Manufacturing industries contribute about the same percentage to the GNP of the three countries (12.8% of GNP in Iran excluding oil, 11.4% in Pakistan, 14.4% in Turkey). The pattern of manufacture is also similar with emphasis on food, beverages, tobacco, textiles and consumer goods, which taken together account for over 50% of total industrial output.

Industries in the three countries have more or less the same characteristics and problems - high degree of protection therefore an assured home market. The imports of machinery and transport equipment still form the highest percentage of imports in the region; such imports in 1963-64 accounted for Pakistan 34.6%, in Turkey 40% and in Iran 33.1% of their total imports.

A study of the Plans of the RCD countries reveals that Iran, Pakistan and Turkey are aiming at self-sufficiency in food, agriculture and light consumer goods on the one hand, and in intermediate and capital goods industries on the other. All the three countries have become or are becoming self-sufficient in wheat and have entered or are likely to enter the export market soon. See *

"Common Features of the Economics of the RCD Countries," Regional Co-operation for Development, Fifth Anniversary Publication, (Teheran: July, 1969), p. 30.

See also "The Third World: Seeds of Revolution," Time, July 13, 1970.

94. These are:
Located in Iran: (1) Aluminium; (2) RCD Carbon Black;

(3) Dumpers Plant; (4) Seamless Steel Pipes and Tubes; (5) Sodium Tripolyphosphate; (6) Napthol Dyes; (7) (8) Polyisoprene Rubber; (9) Carbon Rods and Carbon Products; (10) Rotating Electrical Machinery (Diesel generators up to 1000 KW and electric motors up to 250 HP); (11) Glycerine; (12) Diesel Engines for use in Marine-craft, tractors, earth moving equipment and light and heavy trucks and buses.

Located in Pakistan: (13) Bank Note Paper; (14) Kraft Paper; (15) Ball Bearing; (16) Textile Machinery Manufacture; (17) PAS Sodium; (18) Reactive Dyes; (19) Optical Bleaches; (20) Ultramarine Blue; (21) Toxaphene; (22) Dipteren; (23) Jute Manufacture; (24) Crawler Type Earth Moving Equipment; (25) Shock Absorbers; (26) Machine Tools (Capstan and Turret Lathes); (27) Gear Boxes and Differential system; (28) Aluminium Sheets, etc.; (29) Polyester Fibre; (30) Polyscrylonitrite Fibre; (31) Polybutadiene Rubber; (32) Methanol; (33) Urea Formaldehyde; (34) Glycerine; (35) Manufacture of Resistors, Capacitors, Semi-Conductors and TV picture tubes, RF Mobile Radio Equipment, Sound Equipment excluding Movie Equipment and Testing and Measuring Equipment; (36) Diesel Engines for use in Marine-craft, Tractors, Earth Moving Equipment and Light and Heavy Trucks and Buses; (37) Static Electrical Equipment (Transformers, High Tension Circuit Breakers and Power Capacitors).

Located in Turkey: (38) Locomotives; (39) Kraft Paper Pulp; (40) Organic Pigment Dyes; (41) Basic and Chrome Dyes; (42) Borax and Boric Acid; (43) Manufacture of Machinery for Tea Industry; (44) Rubber Tyred Earth Moving Equipment; (45) Tungsten Carbide Tips and Tools; (46) Centrifugal and Special Filters for Chemical Industry; (47) Locomotive Diesel Engine Project; (48) Izmir Oil Refinery Project; (49) Polystyrene Project; (50) Filament for Electric Lamps; (51) Manufacture of Resistors, Capacitors, Semi-Conductors and TV Picture Tubes, RF Transformers, IF Transformers, Audio Transformers, Speakers, Mobile Radio Equipment and Testing and Measuring Equipment; (52) Diesel Engines for use in Marine-craft, Tractors, Earth moving Equipment and Light and Heavy Trucks and buses.

In addition, RCD Advisory and Design Centre would be located in one of the Member countries with branches in the other two.

95. Gear Boxes and Differential System, Machine Tools (Turret and Capstan Lathes), Ultramarine Blue, Urea Formaldehyde, Methanol, Bank Note and Security Paper, and Glycerine in Pakistan, Glycerine located in Iran, and Machinery for Tea Industry, Tungsten Carbide Tips and Tools, Borax and Boric Acid, Locomotive Diesel Engines, Locomotives and Polystyrene located in Turkey.

96. Ball Bearings, Jute Manufactures, and Shock Absorbers located in Pakistan, Aluminium located in Iran, and Izmir Oil Refinery in Turkey, and the three projects relating to Diesel Engines required for use in Marine-craft, Tractors, Earth-moving Equipment and Light and Heavy Trucks and Buses project located in each of the three countries.

97. Such as Turbo-Generators, Sub-building, Aromatic and petrochemical equipment.

98. RCD Council of Ministers Joint Communiqué, RCD Secretariat Doc. MC/X/69, para. 12.

99. The RCD Council of Ministers at its Eighth Session in April, 1968, recommended that the Member Governments give consideration to the establishment of RCD Heavy Engineering and Electrical Corporation(s). At the Ninth Session of the RCD Council of Ministers, it was decided that the RCD Secretariat should approach the United Nations Industrial Development Organization (UNIDO) for obtaining the services of a Consultant for preparing a detailed report in this regard. The Ministerial Council at its Tenth Session in June, 1969, has finalised the Terms of Reference for the study to be carried out by UNIDO.

See "Developments in the Fields of Trade and Industrial Co-operation," Regional Co-operation for Development, Fifth Anniversary Publication, (Teheran, July, 1969), op. cit., note 93, pp. 31-39.

100. Regional Co-operation for Development Among Iran, Pakistan and Turkey (Teheran, July, 1969): A booklet published by the Information Department, RCD Secretariat, Teheran, p. 9.

101. Information supplied by the RCD Secretariat to the writer during his visit to RCD Secretariat in January, 1970.

102. Ibid. Iran has agreed to supply on an average 1.5 million metric tons per year of Sassan crude oil to the proposed Izmir Refinery.

103. RCD Council of Ministers, Joint Communiqué, RCD Secretaryat Doc. MC/X/69., op. cit., note 28, para. 14.

104. Information supplied by the RCD Secretariat to the writer, op. cit., note 101.

105. Ibid. Iran has completed the construction of a filling station at Bazargon, and the filling station at Serow would be constructed in the near future. More filling stations are planned at Mirjaveh, Safid Abeh and near Zahidan.

On Pakistan side, filling stations are operating at Mastung, Kalat, Nushki, Dalbandin and Nokkundi and work has commenced on the filling station at Khuzdar.

106. Ibid. The following commodities have so far been exchanged:

(i) Methanol - 900 tons per annum from Pakistan to Iran.

(ii) Urea Formaldehyde - 900 tons per annum from Pakistan to Iran.

(iii) Glycerine - 1,250 tons per annum each from Iran and Pakistan to Turkey.

(iv) Polystyrene - 3,000 tons from Turkey to Iran.

107. For complete text of this Agreement, see Iran Almanac and Book of Facts, 1968, op. cit., note 92, p. 757.

Payments under this Agreement, which reflects "the desire of Member Governments to remove barriers to trade and thereby provide for a continually increasing expansion of intra-regional trade," are confined to trade only. Invisible payments, border trade and

war materials are excluded from the purview of the Agreement. The credit limit of US $ 2 million can be revised by mutual consent.

108. For text of this Agreement, see Iran Almanac and Book of Facts, 1969, op. cit., note 84.

109. Regional Co-operation for Development Among Iran, Pakistan and Turkey, op. cit., note 2, p. 19.

110. Latif E. Jamal, "Achievements of R.C.D.," Regional Co-operation for Development: Fourth Anniversary Publication, op. cit., note 90, p. 84.

For a detailed account of the objectives and activities of the RCD Chamber of Commerce and Industry, see Karimdad Forman Farmaian "The Role and the Activities of the RCD Chamber and the Private Sector in the Expansion of the RCD Member Countries," Regional Co-operation for Development: Fourth Anniversary Publication, op. cit., note 90, pp. 112-117.

111. Information supplied to the writer by the RCD Secretariat. See also RCD Council of Ministers, Joint Communitué, RCD Secretariat Doc. MC/XI/69, para. 18.

112. The writer was informed by the RCD Secretariat that intra-regional trade so far was only about one per cent of the trade of the member countries.

113. RCD Council of Ministers, Joint Communiqué, RCD Secretariat Doc. MC/X/69, op. cit., note 98, para. 18.

To facilitate this purchase, the Government of Turkey had afforded a credit of U.S. $ 9 million to Pakistan (Information supplied to the writer by the RCD Secretariat).

114. Ibid.

115. Regional Co-operation for Development Among Iran, Pakistan and Turkey (Teheran, July, 1969), op. cit., note 100, pp. 9-10.

116. RCD Council of Ministers, Joint Communiqué, RCD Secretariat Doc. MC/X/69, op. cit., note 98, para. 18.

117. Ibid, para 26.

118. In this connection, the two working papers submitted by Pakistan and the RCD Chamber of Commerce and Industry are being examined by the experts of the three countries. (Information supplied to the writer by the RCD Secretariat).

119. For a detailed account of these measures, see F.A. Khawja, "Collaboration in the Field of Insurance Under the RCD," Regional Co-operation for Development: Fourth Anniversary Publication, op. cit., note 90, pp. 122-126.

120. Regional Co-operation for Development Among Iran, Pakistan and Turkey, op. cit., note 2, p. 20.

121. Ibid.

122. Accident, Marine and Fire pools were established during 1966 in Iran, Pakistan and Turkey, respectively. These pools have been functioning actively since 1st January, 1967. Aviation and Engineering pools were established in 1968 in Pakistan and Iran, respectively.

The main function of the pools is to provide additional underwriting capacity within the region on the combined strength of the three markets. This helps the three countries to retain more insurance business to their own account so that a portion of the reinsurances, at present being placed outside the region, may be retained within the region with consequent savings of foreign exchange of all the three countries. The pools have been started on a modest scale, but in due course, the saving, and even earning of foreign exchange through these pools will reach substantial proportions.

Each pool is being managed by the reinsurance corporation of the country in which it is located - Bimeh Iran in Iran, Milli Reasurans in Turkey and Pakistan Insurance Corporation in Pakistan. (Information obtained by the writer from Pakistan Insurance Corporation, Karachi).

123. Information supplied to the writer by RCD Secretariat.

124. Regional Co-operation for Development Among Iran, Pakistan and Turkey (Teheran, July, 1969), op. cit., note 100, p. 10.

For prospects of tourism in RCD region with special reference to tourism in Turkey and RCD collaboration, see Tunay Akoglu, "Development of Tourism," Regional Co-operation for Development: Fourth Anniversary Publication, op. cit., note 90, pp. 95-111.

125. S. Ibne Ali, "R.C.D. Shipping Services," Regional Co-operation for Development: Fourth Anniversary Publication, op. cit., note 90, p. 118.

126. Regional Co-operation for Development Among Iran, Pakistan and Turkey, op. cit., note 2, p. 21.

127. Ibid., pp. 21-22. The intra-regional service provided the first direct sea link between Turkey and Pakistan.

128. Information supplied to the writer by the RCD Secretariat.

129. Ibid. The experts started their study in Istambul in August, 1969.

130. Ibid., p. 23. The Turkish, Iranian and Pakistani portions are 1257, 2700 and 1310 km. respectively. The highway links Ankara with Karachi via Cerikli, Sivas, Askale, Erzurum (in Turkey), Bazargan, Tabriz, Teheran, Esfahan, Kerman, Zahidan (in Iran), Mirjaveh, Nushki, Ghetta and Kalat (in Pakistan).

131. RCD Council of Ministers, Joint Communiqué, RCD Secretariat Doc. MC/X/69, op. cit., note 98, para. 29.

Information supplied to the writer by the RCD Secretariat.

132. RCD Council of Ministers, Joint Commhniqué, RCD Secretariat Doc. MC/X/69, op. cit., note 98, para.31.

133. Regional Co-operation for Development Among Iran, Pakistan and Turkey, op. cit., note 2, pp. 27-28.

134. Post and Telecommunications offices have opened by Pakistan at Ladgasht, Jiwani and Kohi-Taftan, Turkey at Bajirge and Kapikoy and Iran at Djalegh, Koohak, Rask, Ladiz and Mirjaveh. (Information supplied to the writer by the RCD Secretariat).

135. Iran's earth station for satellite communication facilities was completed in 1969. Pakistan's two earth stations near Karachi and Chittagong are scheduled for completion in 1970. Turkey is also constructing its earth station, provision for which was made in their 1969 budget. (Information supplied to the writer by the RCD Secretariat).

136. Ibid.

137. Regional Co-operation for Development Among Iran, Pakistan and Turkey, (Teheran, July, 1969), op. cit., note 100, pp. 11-13.

138. Information supplied to the writer by the RCD Secretariat.

139. Ibid. For a discussion on the problems and progress of family planning in RCD region, see, Enver Adil, "Family Planning and RCD," Regional Co-operation for Development: Fourth Anniversary Publication, op. cit., note 90, pp. 57-64.

140. Ibid.

141. Regional Co-operation for Development Among Iran, Pakistan and Turkey, op. cit., note 2, pp. 32-33.

Also see, Salim Neysari, "The Role and Function of the RCD Regional Cultural Institute," Regional Co-operation for Development: Fourth Anniversary Publication, op. cit., note 90, pp. 120-121.

142. RCD Council of Ministers, Joint Communiqué, RCD Secretariat Doc. MC/X/69, op. cit., note 98, para.40.

143. Regional Co-operation for Development Among Iran, Pakistan and Turkey, (Teheran, July, 1969), op. cit., note 100, pp. 14-15.

144. RCD Council of Ministers, Joint Communiqué, RCD Secretariat Doc. MC/X/69, op. cit., note 98, para. 46.

145. Information supplied to the writer by the RCD Secretariat.

146. Regional Co-operation for Development Among Iran, Pakistan and Turkey, (Teheran, July, 1969), op. cit., note 100, p. 16.

Regional Co-operation for Development Among Iran, Pakistan and Turkey, op. cit., note 2, pp. 34-36.

147. Regional Co-operation for Development Among Iran, Pakistan and Turkey, op. cit., note 2, p. 26.

148. RCD Council of Ministers, Joint Communiqué, RCD Secretariat Doc. MC/VIII/68, para. 27.

149. RCD Council of Ministers, Joint Communiqué, RCD Secretariat Doc. MC/XI/69, para. 30.

150. Joint Statement of the Heads of THY, Iran Air and PIA, RCD Secretariat Doc. AT/REP/69.

151. Ibid.

152. Ibid.

153. RCD Council of Ministers, Joint Communiqué, RCD Secretariat Doc. MC/X/69, op. cit., note 98, para. 32.

154. RCD Summit Conference - Izmir, Turkey, May 6-7, 1970, Joint Communiqué, Reported in Morning News, 11 May, 1970.

CHAPTER II

AIR TRANSPORT IN RCD COUNTRIES: EXISTING AIRLINES

Notwithstanding the fact that the RCD countries belong to the community of developing nations, air transport in this region is a reasonably well developed industry with a considerable past. Its early history dates back to the year 1925 when, in Iran, air services for the carriage of mail and passengers were started by the order of His Imperial Majesty the late Raza Shah, the Great.[1] In Pakistan, which at that time was a part of British India, air transport began on December 20, 1929, when the Indian State Air Service (I.S.A.S.) started operations from Karachi to Delhi, via Jodhpur.[2] Turkey was next where, in 1933, the Turkish airline, Delvet Hava Yollari (D.H.Y.) was established by the Ministry of Public Works.[3]

Presently, each RCD country has a state corporation[4] engaged in air transport and made responsible for providing air services on both domestic and international routes.[5] These national carriers, that is, Iran National Airlines Cor-

poration, Pakistan International Airlines Corporation and Turk Hava Yollari AO are equipped with modern jet aircraft and have extensive networks covering major points in Europe, Middle East and Asia. In the present chapter, an appraisal is made of their historical development, legal structures, organizational arrangements and operations with a view to assess their prospects in this decade and beyond.

Pakistan

1. Pakistan International Airlines Corporation.

a) Origin and Growth.

The history of Pakistan International Airlines starts with the formation in October, 1946, of Orient Airways on the initiative of Quaid-e-Azam Mohammad Ali Jinnah, founder of Pakistan. Before the creation of Pakistan as an independent state in 1947, Jinnah realised that the only rapid and convenient means of travel between the two wings of Pakistan would be by air. According to Professor Rushbrook Williams:

> ". . . he came to see that the development of radio communications, and of man's conquest of the air, had by 1947 proceeded sufficiently far for a seeming miracle to be achieved: the two wings of Pakistan could be linked by radio-telephone as easily as a man dials a neighbouring town: while modern air travel would make light of distance."[6]

He, therefore, put forward the idea of the formation of an airline to be owned and operated by Muslims before some leading Muslim businessmen.[7] In response to this idea, the Orient Airways Limited was incorporated on October 23, 1946, with its registered office at Calcutta.[8] Orient Airways was floated with a paid-up capital of Rupees 8.7 million, against a call of Rupees 10 million.[9] The company purchased four converted DC-3s in U.S.A. from TEMCO of Texas for $75,000.00 per aircraft.[10] Orient Airways started from scratch and after undergoing a lot of trouble from the established lines, which did not welcome a newcomer, obtained permission from the government to operate the Calcutta-Rangoon service as from June 10, 1947.[11] Scheduled operations on the route began on June 30, 1947.[12]

The emergence of Pakistan as an independent state on August 14, 1947, "brought with it new and pressing needs for improved communications and air transport in particular."[13] With the exception of a well-equipped airport at Karachi,[14] there was in 1947 little else by way of trained personnel, maintenance and repair services, well-developed ancillary airfields, or a commercial air fleet, and no airline was registered in Pakistan.[15] This situation seemed even more acute when viewed in the perspective of Pakistan's peculiar geographic circumstances.

The two wings of Pakistan, separated as they are from each other by over 1,100 miles, have made air transportation vital for the country's cultural and trade unification. The air link between East and West Pakistan, therefore, is a real social and economic requirement and each wing has its own special transport needs.[16]

East Pakistan being situated on the Ganges and Brahmaputra deltas, is a land of rivers and marshes and does not have a well-organized surface transport service.[17] Distances involved are small, but river, rail and road communications are slow and suffer disruption during perennial floods. Within West Pakistan, surface transport is more highly developed, but distances are great and travel is very time-consuming, which tends to retard the development of the national economy. Only air transport can overcome these deficiencies.[18]

These were the circumstances that obliged Pakistan, from her earliest beginning, to become "communications-conscious"[19] and "air-minded."[20] Accordingly, on September 18, 1947, the Government of Pakistan entrusted Orient Airways with the operation of air routes in East and West Pakistan and with the provision of an air service between East and West Pakistan, the first of what was to become a vital bridge between the two halves of the new country.[21] Meanwhile,

Orient became a registered Pakistani company with headquarters at Karachi to meet the desperate needs assigned to it.[22]

The official policy announced in December, 1947, left civil aviation for the time being to private enterprise, subject to public regulation through a licencing system and the allocation of routes. Licences were to be granted to only two carriers to prevent ruinous competition that had emerged in India after the end of the second world war.[23]

An Air Licencing Board was established, and it selected Orient Airways and Pak Air Ltd., the latter being an enterprise organized by 'Islamic Airways Ltd.,' with support from the U.S. firm of Trans-Ocean Air Lines.[24] Pak Air started regular operations in August, 1948, but was closed down in 1950 after two serious accidents.[25] However, the value of Pak Air's services had been demonstrated and the government set about to see that some of these services were reinstated and still others started. The demise of Pak Air actually helped demonstrate the need for PIA.[26] Meanwhile, Orient Airways continued to expand. From a route mileage of 685[27] at the birth of Pakistan, it was covering 4,960 miles by September, 1948, and by March, 1949, the route mileage had risen to 11,304.[28] During this period, it acquired (with government financial aid) three Convair CV-240s[29] and, by introducing them on the Karachi-Delhi-Calcutta-Dacca route

on May 1, 1949, became the first Asian operator of Convair-Liners.[30] In 1953, a hitherto non-scheduled operator, Messrs. Crescent Airways, was licenced for regular operations over short-haul routes in West Pakistan.[31]

The process of creating technical facilities and training the Pakistani staff involved Orient Airways in heavy expenditure and losses were incurred.[32] By 1949, the airline had consumed over Rupees 2.5 million out of its capital of Rupees 8.7 million.[33] No help from the government was forthcoming and the company even had to pay customs duty and sales tax on all imports, and for a number of years also paid duty on fuel uplifted for inter-wing flights.[34] While Orient Airways was fighting for its survival, the government granted cabotage traffic rights to BOAC on the Karachi-Dacca route, thereby aggravating its already declining traffic.[35] Orient was suffering badly for the lack of finances; most of its ground equipment was improvised and even its aircraft were getting obsolete.[36] Its need for new equipment became acute in 1952. Throughout much of the year, traffic declined steadily, primarily as a result of increased foreign competition on some of Orient's main regional routes, where it competed with several much better equipped international[37] and at least one or two regional airlines.[38]

Orient's traffic decline accelerated in 1953,[39] especially after the loss of one of its three Convairs in March. This forced the company to reduce operations between East and West Pakistan. Maintenance of the remaining schedule became increasingly difficult because of reduced aircraft availability. Some regional services had to be suspended later to bolster operations between Pakistan's two wings.[40]

By 1952, it was becoming apparent that private operators were not in a position to develop air traffic on a much wider scale.[41] It was therefore thought that "Government must . . . accept the position that they have to subsidize the . . . passenger traffic between West and East Pakistan."[42] As a first step, a provision was made in the Two-Year Plan for the purchase of planes capable of non-stop flights between the two wings, and a fleet of three Lockheed L-1049C Super Constellations at a cost of Rupees 25 million was ordered on 25th May, 1951, by Pakistan Government for Pakistan International Airlines which had been founded as a department under the Civil Aviation Directorate in the Ministry of Defence.[43] The Civil Aviation Directorate was entrusted with the task of organizing PIA to operate the aircraft and to train Pakistani personnel for their operation and maintenance. About the same time, the idea of merging

PIA and Orient Airways began to look like a union that would greatly benefit both. Orient Airways already was a going business with flight and ground crew, equipment, shops and headquarters staff. These could form a nucleus for the staff needed by PIA. For its part, PIA could be valuable to Orient, which badly needed more competitive aircraft. Pending full corporate merger, an interim joint operating agreement was concluded on October 1, 1953, which brought about official amalgamation of PIA and Orient Airways. This was a financial arrangement whereby Orient Airways was taken over by the Government, but it continued its operations under its own identity until March, 1955.[44]

The Super Constellations were delivered in February, March and April, 1954. At that time, the Ministry of Defence realised that the planning of Civil Aviation Directorate had failed to provide the necessary administrative structure or the technical personnel to run the airline. The Ministry, therefore, took over the management of the airline from Civil Aviation Directorate and asked the Chairman of Orient Airways to head PIA as its chairman. A Committee comprising a Deputy Secretary of the Ministry of Defence and the General Manager of Orient Airways was formed to set up an organization to conduct the operations of the new airline. Foreign pilots, engineers and even air-hostesses were recruited hurriedly to

launch the new venture.[45] "With great difficulty," PIA's first service, a nonstop Karachi-Dacca flight by aircraft AP-AFQ, was inaugurated on June 7, 1954.[46] It was decided to subsidize the traffic on this route in order to bring it within reach of middle-class travellers and the then "tourist" rates provided perhaps the cheapest air travel in the world.[47] To realize one of its original objectives, on February 1, 1955, PIA also started its service to London via Cairo with the fastest schedule so far between the two cities. The once weekly Super Constellation service was first flown by aircraft AP-AFQ.[48] Due to very light loads and opposition from many quarters, the flights to London were suspended after a few months. They were, however, resumed in 1956 and after many setbacks, "got on to a solid footing."[49]

Formal consolidation of PIA and Orient took place on March 11, 1955, when the Pakistan Government promulgated the Pakistan International Airlines Corporation Ordinance, 1955, and thereunder created an autonomous public corporation "to take over the undertakings of" Orient Airways and the Ministry of Defence doing business under the name of Pakistan International Airlines. The fleet comprised of three L-1049C Super Constellations, two Convair CV-240s and eleven DC-3s. From that date, PIA took over the former operations of Orient Airways and the Government took a majority holding in the

new corporation.[50]

The problems of a new country organizing an international airline from scratch were many. One of the most difficult was recruiting and training staff. An ambitious plan for the training of technical-executive personnel was launched in 1956 with the signing of an agreement with Pan American World Airways. This project which cost PIA $1.75 million was completed in 1963 and provided the airline some useful equipment and its personnel some valuable experience.[51]

In 1955, PIA operated on an unduplicated route mileage of 11,372, carrying 113,165 passengers and 3,100 tons of freight, an increase of nearly 50 per cent and 25 per cent respectively over 1954.[52] Progress from then on was steady. In the year 1957-58, PIA carried 208,000 passengers and 9,486 tons of freight.[53] To meet the requirements of additional traffic, two more Super Constellations of L-1049H series were acquired in 1958.[54] Throughout this period, however, operations were almost invariably run at a loss, which for the first three years was reimbursed by Government on the ground that "any venture of this kind would involve unavoidable losses in the initial stages."[55]

Towards the end of 1958, a Government Committee[56] reviewed the airline's operations and submitted certain recommendations for its reorganization.[57] Consequently,

the post of General Manager was upgraded to Managing Director and a new Managing Director with wide powers was appointed.[58] PIA substantially improved its position after acquiring a fleet of five Vickers Viscount 815s for regional and some domestic services. The first of these turbine-powered aircraft AP-AJC City of Karachi (Capt. M.A. Aziz) operated Karachi-Delhi-Karachi route on January 31, 1959.[59] Another highly significant move was to secure jet equipment for the very competitive London route. Through a unique agreement signed with Pan American on February 9, 1960, PIA secured the use of a Pan American Boeing 707-321 Intercontinental on a trip lease basis from March to October for a weekly round trip London-Karachi, and on full aircraft lease from October.[60] On March 7, 1960, PIA operated its first, and Asia's first, jet service between Karachi and London via Teheran, Beirut, Rome and Geneva with Pan American Boeing 707-321 having Pan American cockpit crew and PIA cabin crew.[61] The first all-Pakistani crew[62] operated this 707 on June 20, 1960, and on October 4, 1960, PIA began all-jet London service and a third frequency was added. The Boeing flew in PIA colours, but retained its United States registration N723PA.[63] At the end of the financial year 1959-60, PIA, for the first time, earned a profit of Rupees 6.37 million, which it has continued to do ever since.[64]

PIA's early success on the London route encouraged management to accelerate plans to acquire its own jets and extend service across the Atlantic to New York. Three Boeing 720Bs were ordered in the spring of 1961 at a cost of over $15 million. PIA received its 720s in the last half of 1962 and the 707 was returned to Pan American.[65]

PIA started New York service on May 5, 1961, with an initial once-weekly frequency that was increased later to two flights per week.[66] By mid-1963, the low load factors recorded on the route, and the fact that the Boeings were due to go back to the U.S. for 5,000 hours major overhauls, resulted in the suspension of this route in October, 1963.[67]

Another significant development in 1963 was the acquisition of three Sikorsky S-61N helicopters at a cost of $3,400,000.00, including spares, and establishing an extensive network of more than 20 towns in East Pakistan.[68] That "ambitious helicopter service" was then described as "the latest of a series of breakthroughs by Pakistan's small but surprisingly strong and aggressive airline,"[69] and was a bold step to provide vital communications link to a society that suffered for the want of organized surface transportation and lack of airports for operation by fixed-wing aircraft. This brave experiment, however, failed in the end in 1966 when operations were ceased after one helicopter was lost due to

a bird strike and a second perished in a training flight.[70] The uneconomic helicopter services were operated without subsidy by PIA as a contribution to national development and losses were covered by profits on other routes.[71]

In another significant and controversial development,[72] PIA became the first non-communist airline to operate into Peoples Republic of China, when on April 29, 1964, its Boeing 720B (AP-AMJ) aircraft with a crew of 16 and 113 passengers inaugurated service on Dacca-Canton-Shangai route.[73] It was proposed to extend this service to Tokyo, but this goal has not yet materialised due to persistent Japanese refusal.[74]

Closely following the China service came another PIA "first", when, on May 10, 1964, PIA operated a new and the then fastest route between Karachi and London via Moscow, and also became the first foreign airline to fly through Moscow.[75] With this service frequency to London was increased from four to five per week.[76]

Simultaneously, progress was also being achieved in the domestic operations by acquiring bigger and better equipment and by extending the network. On October 2, 1959, PIA ordered a fleet of Fokker F-27 Friendships to replace DC-3s,[77] and in January, 1964, it placed another order for four Hawker Siddeley Trident 1-E jets to replace Viscount 815s on

regional and domestic trunk routes.[78] Trident operations began in the year 1965-66, and the same year also saw extension of service to eight new towns in West Pakistan.[79] Earlier in the year 1964-65, to cater for the ever-increasing traffic, flights on the vital inter-wing routes Karachi-Dacca and Lahore-Dacca had been increased from 11 to 14 per week and from 7 to 10 per week, respectively.[80] An index of the airline's growth can be had from the fact that in the year 1968-69, flights between Karachi and Dacca, now operated by 707s and 720Bs, were increased from 18 to 20 per week.[81]

PIA's international network expanded considerably in the mid-sixties as well as the late sixties. Dhahran and Cairo were included in the network in May, 1965.[82] The year 1966 saw the biggest expansion in the airline's international network. After acquiring its first 707-340C aircraft on July 23 and a second aircraft on October 23,[83] PIA raised the frequency of Karachi-London service from 7 to 9 per week,[84] and from November 1, started services to Paris, Istanbul, Baghdad and Kuwait.[85] This was followed by a twice weekly service to Jeddah and Nairobi on November 2.[86] PIA also started Trident services to Bahrain, Doha, Dubai and Kuwait on November 10,[87] and, on April 1, 1967, inaugurated a run to Bangkok,[88] which was extended to Manila and Tokyo on November 1, 1969.[89] Since November, 1969, Damascus has also been

included in PIA's international network, and more recently, in April 1970, a service to Tirana, Albania was opened.[90] Previously, in the year 1968-69, frequency of flight to London was raised to 11 per week,[91] and Tridents were replaced by Boeings on Persian Gulf regional services.[92] Recently, all Trident operations have been taken over by Boeing 707s and 720Bs.[93]

b) Legal Frame-work.

The Pakistan Government accorded an independent legal personality to Pakistan International Airlines, a department under the Ministry of Defence, by promulgating on March 11, 1955, The Pakistan International Airlines Corporation Ordinance, 1955.[94] Subsequently, this was repealed[95] and replaced by The Pakistan International Airlines Corporation Act, 1956, which became operative on April 18, 1956.[96] The objective of this Act was "to provide for the establishment of a Corporation to facilitate acquisition of the air-transport undertaking of the Orient Airways Limited, and to make further and better provision for the operation and development of air-transport services and purposes connected therewith."[97] The Corporation was a "body corporate by the name of the Pakistan International Airlines Corporation, having perpetual succession and a common seal with power . . . to acquire and hold pro-

perty both movable and immovable."[98] It could also sue and be sued by the said name.[99]

The function assigned to the Corporation was "to take over the undertaking of the Orient Airways Limited . . . and all such undertakings of the Central Government as were undertaken for the purposes of the Corporation and, . . . to provide and further develop safe, efficient, economical and properly co-ordinated air-transport services, internal as well as international; and . . . to secure that air-transport services are developed to the greatest possible advantage in the interests of the country."[100] The specified powers of the Corporation are:

a) to operate any air-transport service or any flight by aircraft for a commercial or other purpose, and to carry out all forms of aerial work;

b) to provide for the instruction and training in matters connected with aircraft or flight by aircraft of persons employed or desirous of being employed either by the Corporation or by any other person;

c) with the previous approval of the Central Government, to promote any organisation outside Pakistan for the purpose of engaging in any activity of a kind which the Corporation has power to carry on;

d) to acquire, hold or dispose of any property, whether movable or immovable, or any air-transport undertaking;

e) to repair, overhaul, reconstruct assembly or recondition aircraft, vehicles or other

machines and parts, accessories and instruments thereof or therefor and also to manufacture such parts, accessories and instruments, whether the aircraft, vehicles or other machines are owned by the Corporation or by any other person;

f) to acquire, own, run, manage, or participate in the running or management of, any hotel or business connected therewith;

g) to do all things incidental to or connected with any of the matters mentioned hereinabove.[101]

In discharging its functions, the Corporation is obliged to "have careful regard to business principles."[102] The Corporation is further bound by the directives of Central Government on matters of policy, if any.[103]

The general direction and the administration of the Corporation and its affairs vests in the Board of Directors,[104] consisting of nine directors including the Chairman and the Managing Director.[105] Of these, seven directors including the Chairman and the Managing Director, who must be different persons,[106] are appointed by the Central Government and two are elected by the shareholders other than the Central Government.[107] The directors, other than the Managing Director, normally hold office for three years.[108] The Board may meet at Karachi at the Head Office of the Corporation or at any other place desired by the Chairman once a month if practicable.[109]

As the governing body of PIA, the Board has great powers, including, inter alia, the power to manage the business of the Corporation;[110] to make regulations for all matters for which provision is necessary or expedient; to purchase, sell or otherwise dispose of, deal with or abandon on behalf of the Corporation any property;[111] to appoint, remove and suspend any employee and to direct and control them and fix their salaries;[112] to enter into any arrangement with any company, firm or person for any joint working or combination or any restriction upon competition or for any pooling of business or profits;[113] to commence, and carry on or defend, abandon or compromise any legal proceedings or to settle or refer any claims or demands to arbitration and to accept compositions from or give time to any debtor;[114] to give receipts, releases and discharges on behalf of the Corporation;[115] to determine who shall be entitled to sign on the Corporation's behalf bills, notes, receipts, acceptances, endorsements, cheques, releases, contracts and documents, to invest and deal with any of the monies of the Corporation not immediately required for the purpose of its business;[116] to make service rules and regulations pertaining to its employment;[117] to enter into negotiations and contracts, rescind and vary contracts and to do acts, deeds and things in the

name and on behalf of the Corporation;[118] to open and operate bank accounts;[119] to delegate all or any of its powers;[120] to appoint any person or persons to be the Attorney or Attorneys of the Corporation;[121] and to open offices of the Corporation within Pakistan and abroad.[122]

The Corporation's head office is required to be in Karachi.[123] It is empowered to open an account in the National Bank of Pakistan or in any scheduled bank in Pakistan or, with the prior approval of the Central Government, in any other bank in Pakistan. The Corporation may also open an account outside Pakistan in any scheduled bank, or with the prior approval of the Central Government in any bank.[124] The Corporation is further empowered to invest its funds in any securities of the Central or Provincial Government.[125] Obviously, with the objective of facilitating financing of its aircraft purchases, the Corporation has been bestowed with the powers to borrow in Pakistani currency or in foreign currency. This power, however, is again subject to the previous sanction of the Central Government.[126]

The accounts of the Corporation are audited by not less than two auditors appointed by the Central Government,[127] and a statement of accounts audited by the auditors and a report by the Directors thereon is furnished to the Central

Government by the Corporation within seven months of the close of every financial year.[128] A general meeting of the shareholders is held at the head office of the Corporation annually within six months from the date on which the annual accounts of the Corporation are closed; and a general meeting may also be convened by the Board at any other time.[129]

The authorised share capital of the Corporation in the first instance was Rupees 50 million.[130] The subscribed capital of the Corporation in the first instance was allotted and subscribed to as follows:

a) shares of the value of Rupees 27.5 million or of the value of the assets resulting from the investments made by the Government for the purposes of the Corporation, whichever was less, were allotted to the Central Government;

b) shares of the value of Rupees 5 million were offered to the public for subscriptions; any shares so offered and not subscribed were subscribed by the Central Government;

c) shares of the value of Rupees 10 million or of the value of the net assets of Orient Airways Limited, whichever was less, were allotted to the shareholders of Orient Airways in consideration of the acquisition of the undertaking of the said company as fully paid-up shares.[131]

Subject to the previous sanction of the Central Government, the Corporation has the power to increase its capital.[132] Making use of this provision, it increased its capital in 1960 to Rupees 90 million,[133] and then again in

1967 to Rupees 120 million.[134] As of now, the authorised share capital of the Corporation consists of the following number of shares:

a) 1,12,50,000 fully paid up shares of Rs. 10 each, called Ordinary 'A' shares;

b) 15,00,000 fully paid up shares of Rs. 5 each, called 'B' shares.[135]

The issued share capital of the Corporation now is Rupees 11,24,52,895 and the Central Government presently owns about 92% of this capital.[136] It is pertinent to mention here that though PIA is a unique autonomous public corporation with a certain degree of private enterprise involved in it, the Central Government has ensured its own supremacy in the affairs of the Corporation by providing that, at any time, it shall not hold shares of the value less than 51 per cent of the value of the shares issued by the Corporation.[137]

The Corporation cannot be wound up save by order of the Central Government, and no provision of law relating to the winding up of companies or corporations is normally applicable to the Corporation.[138] For the purposes of the Pakistan Income Tax Act, 1922, however, the Corporation is deemed to be a company within the meaning of that Act, and is liable to income tax and super tax accordingly on its income, profits and gains.[139]

The Corporation is authorised to appoint such officers, advisers and employees as it considers necessary for the performance of its functions.[140] Its day-to-day management is, however, entrusted to the Managing Director, who holds the office at the pleasure of the Central Government.[141] The Managing Director has been delegated wide powers by the Board,[142] and in discharge of his duties is assisted by three Deputy Managing Directors; one each for Marketing and Operations and the third for East Pakistan. The next level of administrators are eleven directors who head the departments of Commercial, Customer Services, Engineering, Flight Operations, Finance, Administration, Planning, Works and Airport Facilitation, Special Projects, Stores, and Inspection. The directors are followed by general managers and managers who supervise other officers and employees.[143] The Deputy Managing Directors and the departmental heads known as directors are the salaried employees of the Corporation and although they exercise a number of powers in their right, they are not the members of the Board of Directors.[144]

c) Fleet and Operations.

The demand for air transport is characterised by steadily increasing shift from surface to air transport.

The success of any airline is primarily determined by the comfort and convenience which is provided to its clientele. PIA has constantly striven to meet these objectives by steadily modernising its equipment and standardising its aircraft. Even on the domestic routes, where it enjoys monopoly, it has been operating some of the best available aircraft. Since 1967-68, PIA's fleet has all jet engined aircraft.[145] The need for greater capacity on domestic trunk routes, and a desire for standardisation has led to the recent sale of PIA's four Hawker Siddeley Trident IEs to the Peoples Republic of China.[146] To replace them, PIA has purchased three new Boeing 707-320Cs and is also leasing two more 707s, which, when delivered by this year's end, will raise the strength of its 707 fleet to nine aircraft.[147] The airline also has three Boeing 720Bs[148] and ten Fokker F-27 Friendships.[149] As of now, PIA's entire operating fleet consists of only Boeings 707/720 and Friendships.[150]

PIA's current international operations extend from Tokyo to London, and excluding Karachi and Dacca, it flies to 27 cities in the continents of Asia, Africa and Europe.[151] In East Pakistan, it operates to 9 cities, and in West Pakistan, it serves 19 cities.[152] Its unduplicated route kilometres on June 30, 1969, stood at 72,753.[153] In 1968-69, PIA recorded a total of 58,991 revenue hours flown.[154] An

idea of PIA's operations can be had from the fact that in year 1968, its aircraft made 42,932 departures,[155] flew 60,160 hours[156] and carried 1,163,897 revenue passengers.[157] The magnitude of its traffic can be appreciated by observing that in 1968-69, its available tonne kilometres and revenue tonne kilometres were 355,937,000 and 203,490,000, respectively.[158] In the same period, its revenue passenger kilometres were 1,550,548,000.[159]

With an operating fleet of 20-21 aircraft, PIA flies eleven times a week to Middle East and Europe, with all flights terminating in London; twice a week, to both Shanghai and Tokyo, obviously through different routes; four times a week, to Gulf and Arabia, and with varying frequency to other regional points such as Kabul, Kethmandu and Rangoon.[160] The major domestic operations include 18 flights a week between Karachi and Dacca, and 12 flights a week between Dacca and Lahore, seven of which continue on to Rawalpindi. A number of daily flights are also operated between all major cities of East Pakistan, as well as West Pakistan, including the night coach between Karachi and Rawalpindi via Lahore.[161]

d) Performance and Plans.

Ever since the commencement of its operations in June, 1954, PIA has maintained a steady progress in its

growth and expansion. The growth in network and traffic has been accompanied by fleet modernisation and development of maintenance and overhaul facilities; and recently, it has completed its eleventh successive year of profitable operation.

In evaluating its performance, the major problems faced by it in the beginning and the Government's assistance in certain areas deserve consideration. To begin with, the major problem facing the Corporation was the lack of experienced staff and ancillary facilities.[162] On its services to London, loads were very light and competition with older and better established carriers was very severe. Accordingly, the official attitude towards the new airline was realistic.[163] The Pakistan Government agreed to reimburse losses in the first three years of operations.[164] Exemption was also granted from the payment of tax on fuel and customs duty and sales tax on the purchase of its aircraft and spares.[165] Further, the low-cost inter-wing operations were subsidized by the Government in the national interest.[166] After the 1965 war with India, the subsidy on the inter-wing operations has been suspended and the exemption from the payment of tax on fuel has been withdrawn.[167] Effective July 1, 1970, the restriction for Pakistan nationals to fly PIA has also been removed.[168] However, despite this gradual withdrawal of

Government patronage over the last five years, PIA has been able to sustain its profitability and economic viability.

Starting mainly as a domestic carrier, within six years of its formation in 1954, it became a jet-equipped carrier operating through Asia, Middle East, Europe and North America. Today, it flies from Tokyo in the Far East to London in Europe. Commercially, it has consistently improved upon its performance and maintained a healthy growth rate. During the last seven years, growth of traffic on the two inter-wing routes, on West Pakistan domestic routes and on East Pakistan domestic routes has been 13.0%, 16.7% and 14.4% per year, respectively.[169] Exact figures for the growth rate on international routes are not available; but an idea of the growth can be had from the fact that whereas in the year 1961-62 PIA carried 101,000 passengers on its international network, in the year 1967-68 it flew 153,186 passengers on its international services.[170] On its total system, during its first year 1954-55, PIA, in collaboration with Orient Airways carried 70,461 passengers.[171] By 1959-60, the number of passengers had risen to 240,000;[172] in 1963, it stood at 607,538,[173] and in 1967-68, the airline for the first time recorded over a million passengers on its network.[174] In 1969-70, 1.4 million passengers utilised PIA's services.[175]

36.9 million kilograms of cargo and excess baggage was also carried in the same year.[176]

The growth in capacity is evident from the fact that the capacity ton miles rose from 15.3 million in 1955-56[177] to 198.3 million in 1967-68.[178] In 1968-69, capacity rose by 9.75% and the available tonne-kilometres were recorded at 355.9 millions.[179]

With the exception of the year 1968,69 when PIA had a passenger load factor of 59.6%, its passenger load factor since 1959-60 has always been more than 60 per cent.[180] Its revenue load factor, during the last ten years, has varied from the lowest of 53.4% in 1964-65, to a highest of 67.0% in 1965-66. The revenue load factor for the year 1968-69, however, was 57.2%.[181] This compares favourably with the industry average of 48.5% recorded by IATA members and 48.2% achieved by world's scheduled airlines in 1968.[182]

Financially, the airline's performance is as good as its showing in the commercial field. Its operating revenue has jumped from Rupees 21.66 million in 1955-56[183] to 424.93 millions in 1968-69.[184] Figures for 1969-70, released recently, show a significant increase of Rs. 65.1 million in revenues; from Rs. 424.9 million in 1968-69 to Rs. 490.0 million in 1969-70. Accordingly, the Corporation

has recommended the payment of a record divident of 12.5 per cent to its shareholders for the year 1969.70.[185]

Similarly, the operating expenses have risen from Rupees 31.81 million in 1955-56[186] to Rupees 383.85 million in 1968-69.[187] After registering losses amounting to Rupees 30.05 million over a four-year period extending from the year 1955-56 to 1959,[188] PIA's operating profits over the next ten years, from 1959-60 to 1968-69, have totalled Rupees 291.53 million.[189] The operating profits for the years 1964-65, 1965-66, 1966-67, 1967-68 and 1968-69 were Rupees 49.22, 44.09, 51.92, 36.98 and 41.08 millions, respectively;[190] which again compares favourably with an operating profit of 3.9% achieved by the world's scheduled airlines in 1968.[191] As of June 30, 1969, the Corporation's total assets were worth Rupees 586.03 million and its total liabilities amounted to Rupees 427.98; its capital reserve and general reserve being Rupees 19.41 and 22.50 millions, respectively.[192] Reflecting the sound financial state of the airline, its shares valued at Rs. 10 and 5 are being quoted on the Karachi Stock Exchange with a new value of Rs. 13.49 and Rs. 12.65, respectively.[193] Last year, the shareholders of the Corporation received a dividend at the rate of 10 per cent of the face value of their shares.[194]

No airline can expect to become or remain profitable unless its sales team is fully backed by operational reliability and fleet serviceability. In PIA, the need for self-sufficiency in maintenance and overhaul and development of operational facilities including support equipment, shops and hangars has been underscored from the beginning. Although when PIA started operating in 1954, "the general aeronautical engineering standards . . . in Pakistan" were "equal to the standards maintained by domestic operators in other parts of the world," and "the majority of senior engineering posts" were "filled by Pakistani engineers,"[195] the dearth of qualified local talent obliged the management to recruit foreign pilots and engineers to fly and service the Super Constellations.[196] Great emphasis was, therefore, given to the training of operational personnel and development of technical facilities. Progress was so rapid that by June, 1960, Pakistani pilots were flying 707 jets.[197] Prior to that, all other aircraft including the Super Constellations and the Viscounts were being flown by local pilots and maintained and overhauled by local engineers and mechanics.[198] When the Boeing arrived in the early 1960's, Pan American handled line maintenance on the leased 707 and later, for a short time, on the 720Bs at PIA's Karachi base.[199] Major overhauls were

done at New York and engine overhaul work was done by American Airlines at Tulsa.[200] To handle such jet work in Karachi, expansion of PIA's engineering facilities was planned, and progressed. Development was so quick that in 1964, the airline started overhauling its Sikorsky helicopter rotor gear CT58 jet engines and Boeing 720B P and W JT3D-1 fan jet engines.[201] Indicentally, the CT58 engine overhaul facility was the only facility of its kind outside of the manufacturer's facility.[202] In the same year, 400 engineers and mechanics were trained in 35 separate courses in PIA's training school, and after achieving self-sufficiency in technical personnel, the airline was able to second 23 specialist engineers and senior mechanics to Saudi Arabian Airlines on the request of the Saudi Arabian Government.[203] Engineering performance became so high that PIA achieved "on time" departure regularity of nearly 98% during 1964, and also earned Rupees 1.89 million by performing aviation engineering work for airlines in neighbouring countries, government agencies and small aircraft owners.[204] Development of manpower and facilities maintained its upward trend, and 1966 saw the commissioning of a new engine overhaul shop covering fully air-conditioned first floor area of 75,000 sq. ft. and capable of overhauling all existing jet/piston engines with development potential for overhauling of next generation engines of over 40,000 lb.

thrust;[205] a jet hangar was completed in 1967,[206] and in 1968, besides completing remaining facility for overhaul and testing of aircraft penumatic equipment, major base check inspections, including complete overhaul and major modifications, on Boeing aircraft were undertaken for the first time in PIA facilities.[207] Thus, at the end of 1968, the airline was completely self-sufficient in the maintenance and overhaul of all types of aircraft in its operation, their power plants and other equipment on board,[208] and was also earning about Rupees 3 million a year, nearly half of it in foreign exchange, by providing engineering services and facilities to other operators and organisations.[209]

The upward trend in engineering performance is reflected by a fairly high fleet utilisation. Figures for the past five years are as follows:[210]

(Hours per day)

Aircraft	1964-65	1965-66	1966-67	1967-68	1968-69
Boeing 707/720	10.30	11.30	9.87	9.37	9.15
Trident IE		5.14	6.71	7.21	6.62
Fokker F-27	8.13	5.73	6.60	6.52	6.78

Similarly, engineering "on time" regularity during the past five years has been in very high gear, varying between 96 and 99%.[211]

The modern PIA engineering base in Karachi, one of the finest engineering facilities in this part of the world, is certified by the A.R.B. and F.A.A.; enjoys an international reputation for high-quality work, and, as such, its services are in demand by other carriers and operators.[212]

The efficiency of any airline is directly related to its ability to import technical instruction to its staff. Elaborate training facilities for PIA staff include ground training schools at Karachi and Dacca, engineering bases at Karachi and Dacca, simulator section at Karachi with a 707 flight simulator, Pakistan Air Force Aeronautical Engineering College, aero clubs and the Pakistan Management Institute.[213] The well-developed ground training school at Karachi airport has about fifty qualified instructors and facilities for training in all aspects of the airline's operations. The school offers basic and refresher courses for pilots, ground engineers, flight operations officers, flight engineers, traffic and sales staff, cabin crews and supervisory personnel. Every year, the school organises nearly 300 different courses for nearly 3,000 trainees from PIA and other international airlines as well. A number of trainees from Jordan, Nepal, Kuwait and Iran, including pilots, air-hostesses and engineers have received training at the PIA school.[214] Three batches of

Air Ceylon engineers have also been trained by PIA.[215] Technicians from Nigeria, Burma, Indonesia, Malaysia, Lebanon, Saudi Arabia and the People's Republic of China are among others trained at PIA facilities.[216]

An important aspect of PIA's technical know-how is its technical assistance programme under which personnel and other services are provided to friendly airlines. In accordance with this policy, PIA has provided the services of eight ground engineers, eight pilots, and ten pilots to Sudan Airways,[217] All-Nippon Airways[218] and Royal Air Maroc, respectively.[219] Further, PIA is providing technical assistance to the Jordonian national airlines Alia on a no-profit basis in the areas of maintenance, flight operations and air and ground handling. Under this programme, PIA pilots, engineers and other staff would enable Alia to run its 707 jets. As a first step, four PIA instructors are already conducting a commercial pilot's licence and instrument rating course for Alia personnel in Amman.[220] A 12-man PIA team is also training Chinese pilots, engineers and technicians in flying, maintaining and scheduling their Trident IEs.[221] Moreover, the maintenance, overhaul and inspection of Air Ceylon's Trident IE is being carried out by PIA at Karachi.[222]

At the end of 1968, a total of 12,663 employees were serving PIA in the following capacities:

Pilots/Co-Pilots	Other Flight	Cabin Attendants
259	85	317
Maint./Overhaul	**Traffic and Sales**	**All Other**
2,588	2,466	6,984

By June 30, 1969, the number of personnel had risen to 12,720.[223]

In a competitive industry like aviation, planning is a continuous process and in the long run determines the actual performance of an airline. With the advent of wide-body jets, PIA is evaluating various types to determine which aircraft would be most suitable for its operations.[224] Although all major types including Boeing 747 are being considered, the likely choice is going to be made between the intercontinental versions of Douglas DC-10 or Lockheed L-1011 TriStar, and an order for two of these trijets may be made soon.[225] The development of SST is also under constant study and PIA stands already committed for the 89th and 91st delivery positions for the Boeing 2707 SST.[226] Plans to replace Fokker F-27 Friendships with F-28 Fellowship jets on the domestic feeder routes have, however, been indefinitely delayed as the jet equipment offered no substantial improvements in cutting flight time on short-haul routes.[227] Acquisition of more F-27s is, however, likely.[228]

During the next five years, PIA plans to further expand its operations by extending Karachi-London service to New York; by adding some more destinations in Europe, Middle East, East Africa and the Far East.[229] Likely new destinations in Europe and the Middle East are Amsterdam, Athens, Belgrade, Prague, Sofia and Vienna.[230] Of these, the service to Amsterdam, originating from Dacca and operating via Islamabad, Teheran and Ankara (the RCD capitals) is commencing on November 20, 1970.[231] Subject to delivery, services on London route are expected to be operated by wide-body jets during the year 1973/74.[232]

In spite of the airline industry speculation that PIA might never return to the North Atlantic, the resumption of services to New York remains a declared PIA goal, dictated solely by economic considerations and not prestige.[233] Notwithstanding the postponement of a 1968 resumption plan,[234] PIA now expects a trans-atlantic operation from April, 1974 with wide-body jets.[235] It also foresees "arrangements with some other carrier to operate this route jointly."[236]

In the Far East, the planned expansion is an extension of the Dacca-Canton-Shangai route to Tokyo in July, 1973,[237] and the introduction of a new route Dacca-Rangoon-Bankok-Singapore-Djakarta in July, 1972.[238] Flights to Nairobi which were suspended in 1968-69 are now expected

to be resumed in November, 1971, and this route would be extended to Dares Salam in April, 1978.[239] Another important plan is the proposed all-cargo services between Karachi and London and on inter-wing routes.[240] In West Pakistan, besides increase of capacity, services are planned to the cities of Khuzdar, Rahimyar Khan, Sahiwal, Saidu Shareef and Turbat during the course of the next five years.[241]

To overcome the critical transport problems of East Pakistan, especially over routes formerly served by helicopters and to operate new services into West Pakistan, PIA is planning to introduce STOL services in the beginning of 1971. A fleet of six de Havilland Twin Otters has been chosen for these operations. Limited STOL service will start in East Pakistan from January 1, 1971, and in West Pakistan, from February 1, 1971.[242]

Subject to the normalization of relations with India, services are also expected to be resumed to Bombay, Delhi and Calcutta in the near future.[243] Among the long-term plans of the airline is a feasibility study of extending its Far Eastern operations beyond Tokyo to the West Coast of the United States.[244]

Equally important planning is being done by the Engineering Department of PIA which is developing technical

potential at shop level for handling the introduction of wide-body and supersonic transports in the airline's fleet in the near future and further developing the existing facilities to maintain and overhaul the coming generation of jetliners. Planning in this field includes expansion of the component overhaul shop, the engine overhaul shop, apron and run-up area to provide additional space for wide-body aircraft,and a twin hangar measuring 250' x 500' with shops behind the hangars measuring 125' x 500' to service the wide-body jets and SSTs. These facilities are expected to be available by 1975.[245]

Iran

2. Iran National Airlines Corporation.

a) Origin and Growth.

The foundations of civil aviation in Iran were laid by a Royal decree issued in 1925 which allowed the German manufacturer Junkers Flugzeugwerke to promote an airline under the name of Junkers Luftverkher Persian to carry mail and passengers.[246] In 1933, however, this franchise was cancelled and the operations taken over by Iranians.[247] With assistance of the Imperial Airways, the Ministry of Posts

and Telegraphs of Iran organized a new airline called the Iranian State Airlines, which began scheduled services on March 15, 1938 on a route Teheran-Kermanshah-Baghdad.[248]

The real history of Iran National Airlines Corporation dates from December, 1944, when Iranian Airways, a private company, was organized and commenced limited operations on May 31, 1945. The first regularly scheduled service was inaugurated a year later linking Teheran and Meshed, and was followed in July with a route to Abadan. Initially, the company experienced considerable competition on the Teheran-Meshed route from a Russian operated service which was later withdrawn.[249]

Pursuant to a preliminary agreement reached in December, 1945, Trans-World Airline acquired 10% of Iranian's stock on October 25, 1946. At the same time, a five-year management contract was signed, although this was cancelled a short time later.[250]

Throughout 1946, routes were expanded to other cities in Iran and by the end of the year, international service had been inaugurated to Baghdad, Beirut and Cairo. In April, 1947, Iranian began regular service from Teheran to Paris via Baghdad, Beirut, Athens and Rome. Subsequently, the route to Cairo was suspended, while the Baghdad, Beirut and European services were changed to a non-scheduled basis.[251]

In 1949, Iranian absorbed Eagle Airlines, which started domestic operations the previous year. Eagle's network covered 1,429 unduplicated route miles, and its flight equipment consisted of one DH Dove.[252]

In the meanwhile, Iranian became the first Middle East airline to extend its operations eastward to Karachi and Bombay. Operations on the highly competitive Karachi-Bombay sector were suspended in 1954, and were not resumed until 1958 when the company had available more competitive equipment. However, traffic trends were still not encouraging even with Convair 240s, so operations were terminated again in 1959. Service to Karachi, however, continued.[253]

Elsewhere, the company was more successful in establishing new routes. In 1955, non-stop services to Beirut and Baghdad were started with the newly acquired DC-4s; DC-3 service to Kabul and Kandahar was started; and Damascus was added to the Beirut service next year, increasing the company's network to the unduplicated total of 5,150 miles.[254]

Iranian's next major route expansion came in 1958 when DC-4 cargo service with limited passenger accommodation was launched between Iran and West Germany via Milan and Zurich. On this route, competition among air carriers for both passengers and freight, however, was fierce. At least

six competitors were flying the same basic route. Whatever advantage Iranair might have had on the route was dissipated as one by one its competitors switched to faster piston engine equipment and then to jets. Introduction of the latter was particularly serious, and the financial difficulties coupled with lack of competitive equipment forced the company to suspend service on this route.[255] To a lesser degree, the same situation faced Iranair on its regional routes, where its Viscounts acquired early in 1959 through the help of a government loan were competing with Comets, 707s and DC-8s.[256]

Earlier, Iranair had cancelled a technical assistance agreement concluded in 1954 with Trans-Ocean Airlines that left it with a debt of $1.8 million in principal and interest to Foreign Air Transport Development Agency of U.S.A. on account of a loan of $2.5 million.[257]

Iranair's situation was not helped by the establishment of a second Iranian airline, Persian Air Services, another private enterprise company, in 1954. PAS started with weekly all-cargo flights between Teheran and Geneva, with Auro Yorks flown under charter by Trans Mediterranean Airways, and later began several regional routes that were directly competitive with Iranair. PAS next expanded its European route to London and added first a second and then a third weekly frequency.

In 1960, after leasing a DC-7 convertible aircraft (retired from Atlantic service) from Sabena, it began cargo-passenger flights on June 20. Six months later, the DC-7 was replaced with a Boeing 707 jet, also leased from Sabena.[258]

Even with Sabena's financial assistance, PAS sustained substantial losses and early in 1962 suspended operations. KLM took over for a short time after Sabena pulled out and operated a Lockheed Electra under charter to PAS, but this also was unprofitable. In the meantime, negotiations were held with Iranair looking toward a merger.[259] The Iranian Government also was pushing for consolidation as a means of insuring continuation of the country's own air services. In this context, as far back as 1958, a Royal order had been issued for Iranian Airways and PAS to integrate into one airline called United Airlines; and later a law governing the establishment of a single airline was approved by the two Houses of Parliament, providing that the three Viscounts purchased by the Government be leased to United Airlines and eventually be sold to the airline on long term installments and the rental paid be also included in the cost.[260] Should the two carriers have been unable to reach agreement, the Government was prepared to form a new airline and take over both. Understandably, Iranair, being in a relatively less serious position than PAS, was not too anxious to merge

with a company about to cease operations anyway.[261]

This situation finally was resolved when on November 2, 1961, Iranair and PAS merged to form United Iranian Airlines.[262] Even this did not offer a satisfactory solution to Iran's air transport problems as the new company, lacking both in finances and competitive jet equipment, was neither able to meet the country's own air transport requirements nor the competition of its more established and better equipped competitors on international routes. Under such adverse circumstances, another Royal order was issued to the Supreme Council of Civil Aviation, headed by the Commander-In-Chief of the Iranian Air Force, to study the possibilities of developing an efficient national carrier, creating necessary technical support facilities and training of personnel. The Council recommended the establishment of a state corporation to organise and engage in air transportation within and outside the country. Accordingly, on February 24, 1962, a Royal Charter created the Iran National Airlines Corporation to meet these objectives. Twenty-four days later, the Corporation was formally registered.[263]

In April 1963, the Corporation took over the management of Iranian Airways, the only operating airline at that time, and complete merger was completed in October of that year.[264]

One of the first steps the new Corporation took was to seek expert airline management assistance from Pan American World Airways. The initial contract signed in late 1963 provided for the services of four experts to begin in February, 1964. This was expanded to 15 men in June, 1965, following the grant to the Iranian Government of a low-interest 20-year development loan by the U.S. Agency for International Development for $1.5 million, repayable in dollars. Of that amount, $325,000 was spent on training,primarily pilot training in the U.S., and the rest paid for Pan American services under a three-year contract signed February, 1965.[265]

Another significant development in April, 1965, was the decision to acquire jet equipment. On April 3, 1965, Iran National Airlines announced the purchase of two Boeing 727-100 trijets and the lease of a third.[266] Within three months of this announcement, Iran National Airline began its jet operation, when in July, 1965, its leased Bowing 727 with 84 passengers on board took off from Teheran for destinations in Europe.[267] The significance of this occasion was further enhanced by the fact that it was also the first European service of the new carrier; so far, its international services having been restricted to regional points such as Bombay, Beirut, Baghdad, Karachi and Kabul.[268]

Rapid expansion of international network followed; services to London, Istanbul and Paris were inaugurated on July 1,[269] July 2[270] and August 2, 1966[271] respectively. Frequency on the European route was raised to five flights a week in 1967[272] and a daily service was provided in 1968.[273] By the end of 1969, it had gone up to eight flights a week and the airline was serving ten points in Europe, including Moscow.[274]

The expansion in the network necessitated an increase in its fleet, and the Corporation responded by ordering two more 727s in 1967,[275] which were delivered and began operating in 1968.[276] Traffic was steadily building up and it became evident that the company needed a bigger aircraft. This led to the signing of an agreement on November 27, 1968, for the purchase of two Boeing 707-320C aircraft.[277] These were delivered in January and March, 1970 and are being used on the international services.[278]

c) Legal Frame-work.

The legal charter of Iran National Airlines Corporation is The Act Establishing Iran National Airlines Corporation and Civil Aviation Operation and the Articles of Association framed under Article 8 of the said Act. The Bill Establishing Iran National Airlines Corporation was introduced in the

Parliament on December 11, 1963 and was passed by the House of Representatives on July 5, 1966.[279] the Senate had earlier passed it on June 13, 1966.[280] The Royal assent was accorded on July 16, 1966 which made the Act legally enforceable.[281] Subsequently, by virtue of the provisions of Article 8 of the Act, the joint committees of Roads and Communication and Finance of the two houses of Parliament framed the Corporation's Articles of Association which were published on May 27, 1968.[282]

The Act established a state corporation named Iran National Airlines Corporation for the purpose of the "carriage of passengers, cargo and mail inside and outside the country, and to perform all commercial aviation operations."[283] The Corporation was recognized as "the legal successor of Iranian Airways," and it acquired all the undertakings of the latter, including belongings, possessions, credits, debts, powers, privileges, obligations and all operating rights inside and outside the country.[284]

The legal name of the Corporation is described as "Sherkat Sahami Hawapeyma'i Melli Iran (Iran National Airlines Corporation)" and it is also given the abbreviated name of "HOMA".[285] The assigned objective of the Corporation is "to engage in air transportation of passengers, cargo and mail

inside and outside the country, and to perform all commercial and air transport operations and to operate commercial air transportation inside and outside the country, such as:

a) purchase, sale, lease, and charter of aircraft, aircraft engines and other component parts and spare parts and equipment; as well as any other ground or air equipment relating to aviation;

b) create the establishments necessary for the manufacture, repair and maintenance and inspection of aircraft, engines, equipment and parts of aircraft; parts and equipment and other accessories and auxiliary equipment used in aviation;

c) train staff in all fields of aviation, whether flight or technical operation, or administration;

d) grant the status of general agent, or agent, or ticket sale agency to persons or firms inside or outside the country;

e) engage in aircraft, passenger and cargo handling;

f) establish private means of communication and telecommunication;

g) invest or join in partnership in other Iranian or foreign companies or establishments engaged directly or indirectly in commercial aviation; receive or grant operational assistance, technical or administrative help in matters concerning aviation;

h) receive and grant loans from Iranian or foreign establishments with regard to relevant laws and regulations."[286]

The Corporation is granted exclusively the right to operate air services for the carriage of passengers and cargo by aircraft with an all up weight of 11,885 kgs. and above, and is also nominated as the sole Iranian air carrier for exploiting traffic rights exchanged in various bilateral agreements between Iran and other countries.[287] It is also granted the carriage of all passengers and cargo except mail that is paid for by the Government.[288] The Act further confers on the Corporation the sole right to provide technical handling to foreign operators in Iran and also to acquire their General Sales Agencies. The Corporation is, however, authorised to delegate this right to appropriate organisations or persons provided that it maintains for itself a supervisory role in any such arrangements.[289]

The Corporation enjoys financial and organizational autonomy, and in discharging its functions and managing its affairs, is bound to be governed by sound commercial principles.[290] As a further measure of independence, the Corporation is exempted from the applicability of laws and regulations of the governmental organizations relating to trade, employment and finance.[291] The Government, however, has reserved for itself rule-making authority under the Act.[292] For handling its business, the Corporation is empowered to

employ foreign specialists and advisers. In recruitment of employees, however, where the Iranian nationals with comparable qualifications are available, the Corporation is required to give them preference.[293]

The executive organs of the Corporation consist of the General Assembly, the Board of Directors and the auditors.[294]

The General Assembly is composed of Ministers of Finance and Roads and Communication, and a third minister to be nominated by the Council of Ministers.[295] The ordinary session of the General Assembly is held at least once a year, not later than the Iranian month of Shahrivar.[296] In addition, the General Assembly may meet in extraordinary sessions at the request of the Government, the Chairman of the Board of Directors, the Managing Director or the Auditors.[297] During its ordinary session, the General Assembly has the power to decide the Corporation's policy;[298] to approve investment or partnership;[299] to examine and express opinion on the annual operational report;[300] to approve the balance sheet, the profit and loss account, reserves and deposits, after hearing the auditors' report;[301] to elect the Chairman of the Board, the Managing Director and the Auditors;[302] to fix the salary, allowance and bonus of the Managing Director, members of the Board of Directors, and the fee and

bonus for auditors, as well as the attendance fee of those members of the Board of Directors who do not receive a salary from the Corporation;[303] to approve the budget;[304] to decide on dividends and reserves for bad debts;[305] and to decide on subjects placed on the agenda by the Chairman of the Board or the Managing Director, or subjects which the General Assembly considers necessary.[306] In its extra-ordinary session, the General Assembly is empowered to increase or reduce the capital or to amend the Articles of Association of the Corporation.[307] The members of the Board of Directors, the Managing Director and the Auditors are required to attend the General Assembly meetings without having a right of vote.[308]

The Board of Directors of the Corporation is composed of five members selected by the General Assembly. One such member, on being nominated by the Assembly and confirmed by the Cabinet, may be appointed as the Managing Director by a Royal decree. The members of the Board of Directors and the Managing Director are appointed for a four-year term, and are eligible for reappointment. The Assembly also nominates two alternate members, who may be asked by the Board to discharge the duties of a member in case of his death, resignation or absence exceeding three months. Such a member

discharges the duties of a full member, and another person is selected as the alternate member for the remaining term.[309]

At their first meeting, the members of the Board of Directors elect a Chairman of the Board from amongst themselves. The Managing Director is eligible for this election.[310] The Board of Directors meets at least twice a month,[311] and its decisions may be arrived at by simple majority. However, when the Board meets with only three members attending, a unanimity is required.[312] As the immediate governing body of the Corporation, the many duties of the Board consist of:

a) dealing with the annual budget, and submitting the same to the General Assembly;

b) approving general plans for the Corporation within the framework of the decisions of the General Assembly;

c) approving basic decisions concerning special rates for all types of aviation matters;

d) proposing tariffs for air transportation to the competent bodies for their approval;

e) proposing regulations concerning the provisions of Article 8 of the Law establishing the Iran National Airlines Corporation;

f) approving internal regulations for the Corporation as proposed by the Managing Director;

g) debating and adopting decisions concerning proposals submitted by the Managing Director;

h) adopting decisions on the annual report of the Managing Director, and the operational

balance sheet of the Corporation, for subsequent transmittal to the General Assembly;

i) proposing an increase or decrease in the capital of the Corporation to the General Assembly; and

j) proposing changes or amendment of the Articles of Association to the General Assembly.[313]

The general administration of the Corporation's affairs vests in the Managing Director, who is the chief executive officer of the Corporation and has the exclusive right to sign on behalf of the Corporation.[314] His many powers include, inter alia, the power to carry out the decisions of the Board; to act as the fully authorized representative of the Corporation in all legal and non-legal bodies; to appoint attorneys on behalf of the Corporation and grant power of attorney; to refer disputes to arbitration and appoint arbiters; to reach settlement or provide for arbitration in contracts; to carry out transactions concerning movable and immovable property, whether final purchase of title, mortgage, return, lend or lease; to carry out all types of banking and commercial transactions within the country or abroad; and to conclude the necessary agreements.[315] Further, the Managing Director enjoys the power to delegate all or any of his powers including the power to sign on behalf of the Corporation to any

member of the Board, his deputy, assistant or any member of the Corporation's staff. In his absence, however, financial agreements, cheques and contracts are required to be signed by at least two persons who have been delegated the right to sign by the Managing Director.[316]

In running the Corporation, the Managing Director is assisted by a Senior Deputy Managing Director and six Deputy Managing Directors, who head the departments of Commercial, Financial, Medical and Social Security, Services and Supply, and Technical. At par in organizational hierarchy with these departmental heads is the head of Passenger Services department who is designated only as a director. Next in the administrative structure are six directors who head the departments of Management Services, Planning and Projects, Legal, Public Relations, General Services, and Personnel Administration. They are followed by managers of three grades, superintendents and supervisors who constitute the lower level of administrative machinery at the head office.[317]

The head office of the Corporation is in Teheran, but the Corporation may, subject to the approval of the Council of Ministers, transfer its head office to another locality in case of need. It is also authorised to establish agencies or branches in other localities at home or abroad.[318]

The capital of the Corporation which was Rials 500 million,[319] in the first instance, has been raised to Rials 1,000 million, and is now divided into 1,000 shares of one million Rial each. Thirty-four per cent of the capital has been paid up, all subscribed by the Government whose shares are registered and non-transferable.[320]

The Corporation has two Auditors appointed for a one-year term by the General Assembly on the recommendation of the Ministers of Finance and Roads and Communication.[321] The auditors are authorised to supply chartered accountants for assisting them in examining the balance sheet and the profit and loss account of each fiscal year, which must be placed at their disposal by the Board of Directors at least forty days before the meeting of the General Assembly.[322]

The Corporation enjoys governmental patronage in the form of certain important financial concessions, such as the exemption from the payment of income tax, any other kind of tax or duties, registration fee relating to aircraft and other equipment,[323] customs duty and duty on the import of luxury goods.[324] It is also provided with a blanket import authorisation for acquiring aircraft, spares, equipment, fuel, vehicles and certain other things.[325] Moreover, it has been given a franchise to buy any kind of fuel from the Iranian

National Oil Company at the domestic rates prevailing before December 17, 1957, and where such rates are neither available nor applicable, to buy fuel at fair rates.[326]

c) Fleet and Operations.

Iran National Airlines Corporation started as a small domestic and regional carrier without any turbo-jet equipment; in October 1963, it had a fleet of four Viscounts, three DC-6s of various types and seven DC-3s.[327] In a few years, it has vigorously expanded an international network, and matched its traffic growth by acquiring modern jet aircraft and retiring some of its aging aircraft. The present operating fleet is composed of two Boeing 707-320Cs, four Boeing 727-100s, three Douglas DC-6s and three DC-3s.[328] Recently, the Corporation has ordered a fleet of three Boeing 737-200 twinjet transports for delivery in 1971. These will be the advanced 737s with improved short-field performance, and will replace DC-6s and DC-3s on the domestic routes.[329] The carrier is already operating 727s on domestic trunk and regional routes. The 707s and the 727s fly on the medium-to-long-haul Asian and European routes.[330]

Currently, Iran National Airlines Corporation's operations extend from Bombay to London, and, including Teheran, it flies to sixteen cities in Asia and Europe; ten

of them in Europe alone[331] - a remarkable achievement, because of the fact that the European services are barely five years old.[332] From Teheran, there are now ten flights a week to London, the airline's European terminal.[333] Other international and regional services include twice weekly service to Baghdad, Bombay, Kabul, Karachi and Kuwait. A twice weekly service is also operated to Dubai and Doha. In addition, the company provides extensive operations on its domestic network which, including Teheran, consists of 17 cities.[334]

The present length of Iran National Airlines' scheduled route network is 60,795 km.[335] In 1968, its aircraft made a total of 17,347 departures, flew 26,423 hours and carried 535,518 revenue passengers on its scheduled services. In the same year, its available tonne-kilometres and tonne-kilometres performed were 108,016,000 and 59,575,000 respectively, giving a weight load factor of 51.7 per cent.[336]

d) Performance and Plans.

The most striking characteristic of Iran National Airline's performance so far has been its remarkable growth in traffic and its ability to expand its operations, a difficult task indeed for any new carrier. Passengers carried rose from 142,373 in the 12 months ended March 20, 1962,[337]

to 535,518 in the year 1968,[338] and to 600,000 in 1969.[339] The following figures provide a comprehensive idea of the carrier's traffic growth:[340]

Year ending March 20	1341/ 1963	1342/ 1964	1343/ 1965	1344/ 1966	1345/ 1967	1346/ 1968	1347/ 1969
Domestic	131,000	173,000	198,098	246,909	285,264	333,845	366,050
International	34,000	45,000	52,444	62,559	116,713	140,159	176,688
Total	165,000	218,000	250,542	309,468	401,977	474,004	542,738

Revenue passenger miles grew from 50.0 million in the 1962 period to 77.2 million in the 1964 period,[341] and rose to 489.4 million in 1968.[342] Similarly, capacity increased from 21.5 million available tonne-kilometres in 1963[343] to 108 million available tonne-kilometres in 1968;[344] and revenue tonne-kilometres performed jumped from 10.8 million in 1963[345] to 51.1 million in 1968.[346]

Iran National Airlines recorded a passenger load factor of 56.3% in 1968[347] and 57% in 1969.[348] Figures for its passenger load factor for the last five years are given below:[349]

Year ending March 20	1343/ 1965	1344/ 1966	1345/ 1967	1346/ 1968	1347/ 1969
	55%	50%	52%	57%	54%

Fleet utilization for the year 1968 for B-727, DC-6 and DC-3 was 8.6 and 4 jours a day, respectively,[350]

Although exact figures are not available, Iran National claims that its on-time performance is "consistently between 85% to 87%" within 15 minutes of scheduled arrival or departure time.[351]

Much cannot be said about the financial performance of Iran National Airlines, because its accounts are never made public. This situation is further compounded by the fact that the "Iran Air officials do not discuss the profitability of the operation, other than to say that it is operating at a profit without subsidy."[352] According to Watkins, the airlines' operating revenues had risen from $5,0 million in the year ending March 20, 1962, to $22.2 million in the year ending March 20, 1967.[353] Operating revenues for the year 1968, however, were $22.7 million.[354] A balance sheet provided to AID monitors for the year ending March 20, 1966, shows a profit of $900,000 on revenues of $16.0 million, but Watkins believes that "the completeness of the accounting is uncertain."[355] The belief among Pan American advisers is that the jet operation is making some profit, while the domestic operation is probably operating at a loss, due in part to the low levels of fares charged in efforts to develop traffic and for other reasons.[356] The balance sheet submitted to AID for the 1966 period indicated that the net of $900,000 was a result of

losses of $1.1 million in scheduled operations being offset by a $2 million profit on "Haj" or Muslim pilgrimage charters to Mecca from Iran.[357]

Some light on Iranian carrier's financial condition was thrown by Iranian Prime Minister Hoveyda who observed that Iran National Airlines was self-sufficient and received no Government assistance.[358] Considering the huge indirect assistance from the Government in the form of exemption from various types of taxes and duties, an overall marginal profitability for the airline seems a reasonable presumption. This presumption is, however, rebuttable by the argument that a profitable organisation does not have to keep its accounts classified. It may be pertinent to mention here that there is no legal sanction for the accounts of Iran National Airlines being placed even before the Iranian Parliament.

Much information or data about Iran National Airline's technical performance is not available. The airline's engineering base at Teheran is in the process of development. The company is self-sufficient in the line maintenance of its entire fleet, but the engine and airframe overhaul facilities are limited to piston-engined aircraft. The overhaul work on jet fleet is carried out at Lufthansa's Hamburg facilities.[359] The recent additions to the engineering facilities have been a radio and communications shop,[360] and a jet hangar for Boeing aircraft.[361]

One of the major problems of Iran National Airline in the beginning was lack of suitably trained staff; because competent Iranian nationals were not available, the company had to rely on foreign pilots and technicians. To redress this situation, an intensive staff training programme was launched with Pan American's assistance.[362] Over the years while the number of employees has gone up from 728 in 1963[363] to 2,942 in 1970,[364] the number of foreign pilots and technicians has actually gone down as more and more qualified Iranians are becoming available.[365] Of the present 2,942 employees, the total number of foreign employees, including those working for the company in foreign countries, is 352. The airline has 97 pilots, out of whom only 14 pilots are foreign. There are 63 flight engineers, out of which 33 are foreign. All the 148 cabin crew members, 21 ground engineers and 301 aircraft mechanics are Iranian nationals. All other employees are also Iranians.[366]

Personnel training get considerable attention from Iran National Airline's management, and the airline is progressing rapidly towards the all-Irani employees goal. The foremost training facilities with the airline is a training centre operating in its head office. This centre has 7 instructors and conducts courses in technical as well as non-technical subjects. Presently, the pilots and flight engi-

before 1973[371] and there is a fair possibility of close collaboration with PIA on this route.[372]

Turkey

3. Turk Hava Yollari AO.

a) Origin and Growth.

The origin of Turkish Airlines' incorporation goes back to May 20, 1933, when the Turkish Government promulgated a special law to create the first airline in the Middle East (with local enterprise and initiative) under the name of Devlet Hava Yollari (State Airline Management) and as a unit of the Ministry of National Defence.[373] In 1935, the airline was transferred to the Ministry of Constructions, and in 1938 to the Ministry of Communications.[374]

Service was inaugurated in 1933 with DH-89 aircraft between Ankara, the capital, and Istanbul.[375] No new routes were added for six years, and in May 1939, services linking Ankara with Adana and Izmir were opened. In 1943, service was extended from the capital through central Turkey to Kayseri, Eluzig and Von. The fleet then consisted primarily of DH Dominies and Junkers JU-52s.[376]

During the next three years, Turkish Airlines added eleven new cities to its domestic network, bringing the number

of points served to 18.[377]

Up until 1946, services were confined to the five summer months, June through October, owing to the lack of adequate weather and communications facilities, resulting in added costs and continuing subsidies. With the aid of a special government appropriation of a total of TU. L 20,000,000 (US $15,500,000), Turkish Airlines tackled the problem by launching a programme to instal radio facilities on its main routes. By the end of 1946, winter services were in operation over the Ankara-Istanbul, Ankara-Adana and Istanbul-Izmir routes.[378]

The company's postwar equipment programme included the purchase of 21 DC-3s, and its route expansion emphasized intensive development of domestic services.[379] International services began in 1949 when routes were opened to Nicosia, Beirut and Athens, followed by service to Cairo in the next year.[380]

An important development for the company was its reorganization as a statutory public corporation operating on commercial principles. The airline was incorporated on February 20, 1956 and was renamed, Turk Hava Yollari A.O. In 1957, BOAC acquired a 6 1/2% minority interest in THY by subscribing for capital stock with a stated value amounting to TU L 3,920,000 (UK £ 500,000). It also loaned the company the sum of TU L 11,750,000 (UK £ 1,500,000) to finance the

purchase of a fleet of fine turboprop Viscounts. During the period 1955-1957, THY also received assistance from the U.S. International Co-operation Administration. Upward of TU £ 2,500,000 (US $900,000) was expended under the programme which was administered by Pan American.[381]

The policy of concentrating on domestic services was modified somewhat in 1960, when THY opened a route to Frankfurt via Athens and Rome. A second European route was established two years later, in 1962, to London through Vienna and Frankfurt. However, it was discontinued a short time later since it was too unprofitable because of jet competition. Even the service to Frankfurt was unprofitable. As a matter of fact, the international expansion aggravated THY's already poor financial condition. While losses of TU £ 3,692,000 and TU L 3,233,000 were sustained in 1957 and 1968, respectively, when operation was confined to domestic and regional sectors, deficits mounted sharply after the Frankfurt service was inaugurated. For the three year period, 1960-62, they averaged about TU £ 20,000,000.[382]

In 1960, THY ordered a fleet of ten turboprop F-27s, which were delivered in 1960 and 1961. The F-27s were assigned to domestic trunk routes and also to certain flights to Nicosia and Athens. In the early 1960's, the THY management had expressed the need for medium range jets to meet competi-

tion, but the Turkish Government was not anxious to make available the necessary foreign exchange. It also preferred that for some time THY should concentrate on improving domestic services.[383]

In spite of the fact that the early 1960's was financially a very lean period for THY and that it faced an acute competitive disadvantage by not acquiring jet equipment, which invariably its every competitor possessed, it continued to expand its international operation. At the end of 1965, it was flying to Amsterdam, Athens, Beirut, Belgrade, Brussels, Frankfurt, Munich, Rome, Tehriz, Tel Aviv and Vienna.[384] With this kind of network and a slightly improving financial outlook,[385] it was inevitable that the company acquire jet aircraft. By now, the Government was also convinced that THY badly needed jets to cater to the increasing traffic,[386] and to meet the challenge of its competitors. A decision to equip THY with jet aircraft was finally made on April 16, 1966, and on February 2, 1967, the purchase of two medium-range Douglas DC-9-30 jet transports and the lease of a third DC-9, a series-10 version, was concluded.[387] The first of these jets, the leased DC-9-10, was delivered on August 7, 1967, and on September 1, 1967 inaugurated the first jet operation of THY by flying to Europe.[388] The DC-9-30s were delivered in 1968 and were put on international and domestic

trunk routes. The introduction of jets, though quite belated, did stimulate much growth in traffic[389] and, therefore, two additional DC-9-30 jets were ordered in 1968 for delivery in 1969.[390] With the increased jet capacity, frequency on the European route was increased, and the services to London was resumed in early 1970.[391]

b) Legal Frame-Work.

The reorganization of Devlet Hava Yollari, a government department engaged in air transport activities, into Turk Hava Yollari or Turkish Airlines, a statutory public corporation to operate domestic and international services, was effected by legislating the Statute concerning the Turkish Airlines Corporation, Act. No. 6623, passed by the Parliament on May 21, 1955, and made applicable on May 27, 1955. The reorganization was completed on February 20, 1956, and on the same day, the new Corporation started functioning.[392]

The objective of the Act No. 6623 was to create a company under the name of Turk Hava Yollari to do "any kind of air transport business" and to perform all or any "operations relating to air transport."[393] In order to achieve this objective, the company was empowered to create subsidiaries to handle its operations and also to join other companies in partnership, if necessary.[394]

The new company as the legal successor to the Denlet Hava Yollari, took over all the assets, liabilities and employees of the latter.[395] It is based in Istanbul, and besides the creation of subsidiaries, it is also authorised to create agencies and appoint representatives and agents in and outside Turkey.[396] In accordance with the objective assigned to it under Act No. 6623, the company's specified powers,[397] inter alia, include the power to carry passengers, cargo, mail and animals by air within and outside the country;[398] to sell tickets for itself and other companies;[399] to open offices and warehouses, and to operate them;[400] to establish shops, facilities and factories for repairing, overhauling and manufacturing aircraft, aero engines, spares and components;[401] to operate motor vehicles for the carriage of its passengers and cargo;[402] to establish and operate telecommunications facilities;[403] to buy, sell, lease or otherwise dispose of movable or immovable property;[404] to insure itself internally or with other companies in accordance with Act No. 7397;[405] and to perform all or any of its functions itself, through other companies or in partnership with other companies.[406]

The governing organs of THY consist of the General Assembly of the Shareholders, the Supervisors (Auditors), the Board of Directors and the Director General.[407]

The General Assembly of the Shareholders is the highest executive authority in the Turkish Airlines' legal structure. It is composed of all the shareholders of the company, and ordinarily is required to meet once every year within three months of the end of the financial year. It may also be convened in an extraordinary session, provided a shareholder having at least 10% of the capital shares of the company makes a request in writing. The Board of Directors and the Supervisors (Auditors) can also summon the Assembly in similar extraordinary sessions.[408] The Assembly elects its own President who conducts its meetings[409] where issues are decided by simple majority[410] and deliberations are guided by the Turkish Trade Law.[411] The Assembly is empowered to appoint the members of the Board of Directors and the Supervisors, and also to determine their salaries. The Assembly debates and decides on financial matters and other proposals submitted before it by the Board of Directors and the Supervisors. It also scrutinizes and approves the annual financial report of the company prepared by the Supervisors.[412] In doing so and even otherwise, it has the power to inspect the accounts of the company.[413] Another important power of the Assembly is to amend or modify the By-Laws of the company subject to the permission of the Ministry of Trade.[414]

The Supervisors (Auditors) are three in number and are appointed by the Assembly, which also has the power to remove them from office. Two Supervisors are appointed against the Government's holdings in the company, and the third Supervisor is a nominee of the private shareholders in the company. The Supervisors are also backed by three alternate Supervisors, who perform their functions in case of their absence or sickness. Their mode of appointment is similar. The Supervisors are appointed normally for one year and are eligible for re-appointment.[415] The qualifications prescribed for Supervisors demand that they should be honest, hardworking, well-educated and experienced men of integrity.[416] In exercising a control over the operations of the company, and in particular in monitoring its financial condition, the Supervisors, who have a fair division of duties and functions, enjoy wide powers including, inter alia, the power to visit all premises of the company and inspect its offices, accounts and books;[417] to prepare a report for submission to the Inter-Governmental Ministry;[418] to attend an Assembly or Board meeting without the right of vote;[419] and even to open an enquiry against the Board of Directors or any of its members.[420] Functionally, the Supervisors are assured of independence, because they are under

the control of the Prime Minister's Office and the Ministry of Finance.[421] At the end of every financial year, the Supervisors prepare and submit a comprehensive report to the General Assembly of the Shareholders.[422]

The general administration of the Turkish Airlines vests in the Board of Directors which may have a minimum of three or a maximum of five members. Its normal strength, however, is five members who are appointed by the Assembly of Shareholders.[423] Of the five Directors, the Government is entitled to nominate three when its share capital exceeds 50% of the company's capital, and two, when its share capital is less than 50% of the company's capital. Similarly, the private shareholders may nominate three Directors if the aggregate of their share capital exceeds 50% of the company's capital, and two, when their share capital is less than 50% of the company's capital. When the private shareholders have two Directors, and foreign nationals own more than 1/3 of the private share capital, one of the two non-government Directors will be a foreign national. However, when the private shareholders have three Directors, and foreign nationals control more than 1/3, but less than 2/3 of the capital belonging to private shareholders, one of the non-government Directors will be a foreign national; and when foreign nationals acquire

more than 2/3 of private share capital, they will have two out of the three private seats in the Board.[424]

The Directors are appointed for a three-year term and are eligible for appointment again.[425] Like the Supervisors, the Directors should be honest, hardworking, well-educated and experienced men of integrity,[426] and are further required to hold minimum shares in their names of the value of TU-₺ 5,000.[427] As the decision-making authority in the airline, the Board enjoys many powers. It is empowered to perform all those functions that are neither performed by the Assembly of Shareholders nor by the Director General. The functions to be performed by the Board are determined by the Assembly.[428] The duties assigned to the Board include, inter alia, the duty to hold the Assembly of the Shareholders;[429] to propose any change or amendment to the company's By-Laws;[430] to control and keep in order the company's accounts books;[431] to control the finances of the company, and to study and give decisions on the Supervisors' reports;[432] to prepare and submit the annual report of the company;[433] to prepare a statement of amortizement of the company's assets, and to propose the use of reserve fund to the Assembly;[434] to prepare a general commercial, financial and technical programme for the company every year, and also to modify it, whenever necessary;[435] and to perform all or

any of its functions in accordance with the Turkish Trade Law.[436]

The Board has a Chairman elected from its members, and a Vice-Chairman also, to act as Chairman in the former's absence.[437] The Board is required to meet at least once a month, and may have additional meetings anytime, provided that the Chairman or at least two Directors request for the same in writing.[438] The quorum for Board meetings is three members, and the Board decisions are taken by a simple majority.[439] In case a Board member abstains from more than two meetings consecutively without a reasonable cause, such member ceases to be a Director.[440]

The Director General is the chief executive officer of the company, and is appointed and removed from office by the Board, which also determines his salary.[441] Like the Supervisors (Auditors) and Directors, the Director General is required to be honest, hardworking, well-educated, experienced and a man of integrity.[442] In managing the company, he is endowed with numerous powers and functions, including, inter alia, the power to represent the company;[443] to apply and execute the decisions of the Assembly and the Board;[444] to execute the annual programme of the company;[445] to manage the financial affairs of the company;[446] to prepare regula-

tions for personnel and to submit them for the Board's approval;[447] to prepare the income and expense accounts for the actual financial year and to make a projection for the next financial year;[448] to determine the salaries of the staff and to obtain the Board's approval for salary scales;[449] to buy, sell, lease or otherwise dispose of any movable or immovable property of or for the company, with the approval of the Board;[450] to prepare regulations and to obtain the Board's approval for buying, selling, leasing or otherwise disposing of company property;[451] and to attend the Board meetings without the right to vote.[452] The Director General signs for and on behalf of the company, and is answerable and responsible for his signature in this capacity.[453] Such authority to sign may, however, be delegated to other persons also by the Board and in such an event, all delegates will be registered with the Government.[454]

The central administration at THY head office is divided into three main areas, that is, Commercial, Technical and Administration, each headed by an Assistant Director General, who is responsible to the Director General. In the Commercial field are departments of Domestic Sales, International Sales, Traffic, Ground Operations, Advertising, Public Relations and Training and Internal Relations, each headed by

a Manager responsible to the Assistant Director General (Commercial). The departments working under the Assistant Director General (Technical Operations) are Technical, Technical Control, Overhaul, Planning, Technical Supply, Senior Pilot, Operations, Operations Safety, Central Control and Social Services, each headed by a Manager. Similarly, the departments under the Assistant Director General (Administration) and headed by Managers are Personnel and Social, Supply, Health and Medical, Organization and Administration. In addition, there are certain departments, for example, Planning, Accounts, Legal and Inspection, each headed by a Manager, which are working directly under the Director General.[455]

The share capital of THY, in the first instance, was 60 million Turkish Lira,[456] and was subsequently raised to 90 million Turkish Lira on March 31, 1967, and to 200 million Turkish Lira on July 27, 1968, now divided into 2,000,000 shares of value of 100 Turkish Lira each.[457] The company is authorised to increase its capital through a decision made by the General Assembly of its shareholders.[458] The shares of the company may be purchased by nationals, foreigners, physical or legal persons. The purchase of the shares by foreigners, however, has to conform with the requirements laid

down in Turkish Act No. 6624.[459] As at present, the Turkish Government, BOAC and private shareholders own 91.5%, 6.5% and 2% of the company's capital, respectively.[460]

The company is empowered to borrow, and can even issue bonds with the guarantee of the Treasury, where the Minister of Finance determines the conditions of any such issue. Normally, the company cannot borrow a loan or loans exceeding the nominal capital of the company, but it may raise loans up to twice the amount of the company's capital after obtaining the approval of the Government.[461] The Government also has control over the accounts of the company and exercises the same through the Finance and Transport Ministries or the Prime Minister's Office.[462]

Perhaps the most far-reaching financial provisions in the company's legal framework are the Government's guarantee to reimburse the losses of the company from the budget of the Ministry of Transport, provided that the revenue fund of the company is exhausted first,[463] and the exemption from the levy of all kinds of taxes and duties, including the income tax and the import duties.[464] As a further measure of support, the company is authorised to instal, own and operate telecommunication facilities independent of the PTT department. When needed, it can also utilise the PTT facilities without even paying for them.[465]

The financial year of the company is the calendar year,[466] and its annual financial report is published in the Government Gazette at least 15 days before the annual meeting of the Shareholders' Assembly.[467]

The company has a reserve fund, contributions to which are made from the profits, if any. The reserve fund is divided into ordinary reserve fund and extraordinary reserve fund. Whenever profits permit, profits amounting to 10% of the company's capital are converted into reserve fund until the fund equals the paid up capital of the company. This is called the ordinary reserve fund. Similarly, profits amounting to 5% of the capital are converted into extraordinary reserve fund, until it reaches 50% of the paid up capital of the company. The reserve funds can be used in extraordinary situations in accordance with the By-Laws of the company.[468]

In case of profit, after making deductions for the reserve funds, profit amounting to 5% of the capital of the company is distributed among the Directors, according to the determination by the Assembly. The remaining profit goes to the Shareholders.[469]

The company may be wound up in accordance with the Turkish Trade Law,[470] and in situations where there are no provisions in the Turkish Airlines Act or the THY By-Laws, the general Law or the Turkish Trade Law applies.[471]

c) Fleet and Operations.

THY's operating fleet at present consists of four DC-9-30s, one DC-9-10, four Viscounts, eight F-27s.[472] Fleet modernisation, although taken up very late, is now receiving full attention of the management. To compete more effectively on the international routes and to increase jet operations on the domestic network, the company recently has purchased five Boeing 727-200s and four McDonnel Douglas DC-9-30s. The 727s are for international services and three will be delivered shortly and two, early in 1971. The DC-9s will be delivered this year and will join four already in service on domestic and short-haul international routes.[473]

The Turkish Airlines has an extensive domestic network linking twenty cities with various frequencies. All types of the present fleet including DC-9s are used on the domestic network.[474] It also has a fair European and a small Middle Eastern network. The points served in Europe are London (twice a week), Paris (four times a week), Zurich (four times a week), Rome (thrice a week), Frankfurt (six times a week), Brussels (four times a week), Amsterdam (thrice a week), Vienna (thrice a week), Munich (six times a week), and Athens (nine times a week). In the Middle East, there are four, three and two services a week to Beirut, Nicosia and Tel Aviv, respectively.[475]

The total length of Turkish Airlines scheduled route network is 21,580 kilometres.[476]

d) Performance and Plans.

In judging the Turkish Airlines' performance, an allowance has to be made for the fact that for a long time, this airline was required to be mainly a domestic operator. The decision to go international was taken in 1960, and jet equipment was not introduced till 1967. The absence of a dynamic civil aviation policy in Turkey till the early 1960s explains the lack of substantial development in the Turkish Airlines' performance, a company that entered the air transport business as early as 1933.

Commercially, THY's performance has had many fluctuations. During the early and late 1950's traffic continued to develop; the number of revenue passengers rose from 113,000 in 1950 to 393,000 in 1958.[477] Then followed a gradual decline in traffic, and the airline's revenue passengers decreased to 247,000 in 1962.[478] Since 1963, following increase in operations, there has been a steady rise in traffic, and in 1968, THY carried 781,288 revenue passengers on its entire network.[479] Growth in passenger traffic is evident from the following figures for the last five years:[480]

Year	1964	1965	1966	1967	1968
Domestic	298,932	347,804	411,359	441,658	636,211
International	37,565	61,822	73,909	86,087	145,077
Total	336,497	409,626	485,268	527,745	781,288

In 1968, THY aircraft made a total of 27,373 scheduled revenue departures[481] and flew a total of 37,200 hours.[482] In the same year, its available tonne-kilometres and tonne-kilometres performed were 74,533,101 and 44,403,431, respectively, giving it a load factor of 59%[483] During the last few years, while THY's capacity has grown faster than its traffic, its load factors have continued a downward trend, as is shown by the figures below:[484]

Year	1965	1966	1967	1968
Available tonne-kilometres	36,142,608	40,695,385	46,731,637	74,533,101
Available seat-kilometres	397,255,995	458,723,174	543,009,069	468,135,095
Loan factor	66%	67%	61%	59%

Because of the mainly short-to-medium haul operations, the fleet utilization of THY is not very high. It is, how-

ever, comparable to other small operators using similar equipment. Figures for the last few years are given below:[485]

Year	(Hours per day) 1964	1965	1966	1967	1968
DC-9-30					6.4
DC-9-10				6.2	7.0
Viscount	4.4	4.8	5.8	5.5	6.0
F-27	4.1	4.5	5.3	5.4	5.8
DC-7B				5.8	6.8
DC-7CF					3.9
DC-3	1.6	2.4	2.1		

From the figures above, an upward trend in fleet utilization is clearly noticeable.

Financially, THY's performance has been far from satisfactory. In spite of the generous government support, the airline has had a history of losses; the only profitable year in the company's recent history being 1966 when it made a profit of 2.04 million Turkish Lira.[486] In 1968, the company recorded a loss of TU £ 11.3 million, which was considerably more than the 1967 figures of TU £ 4.6 million. In the early and mid-1960s, the losses were even bigger.[487] With the acquisition of the jet equipment, however, the company's financial picture is likely to improve.

In technical matters, THY is self-sufficient in manpower, but as regards the technical facilities and capability, it is limited to the overhaul of F-27s and Viscounts.[488] Overhaul of DC-9 jet transports and their JT8D powerplants is done by KLM under an agreement concluded on August 16, 1967. Normal maintenance of the DC-9s is, however, done by the airline itself. Some of the DC-9 engines are also overhauled by Swissair.[489] The airline's maintenance and overhaul base is located at Yesilkoy airport, Istanbul, and its facilities are adequate for all kinds of work to be performed on F-27s, Viscounts and their engines.[490]

Training to cockpit and cabin crews, ground engineers and mechanics is provided locally by THY. This, however, is a recent improvement, because till 1968, training to THY staff in both technical and non-technical matters was provided by Sabena. The company recently opened its own training institute in Istanbul, where basic and advanced training in commercial subjects is being provided since January, 1969. At present, this institute has five instructors.[491]

As of February 3, 1970, THY had 2,330 employees, a considerable improvement from the 1948 figure of 156. All operational and engineering employees are Turkish. The airline has 160 pilots and copilots, and 100 cabin crew members. It also has 15 ground engineers and 461 mechanics of various

grades. There are 6 planning specialists, 107 executives and 71 employees abroad, besides 1402 employees working in various departments.[492]

Planning receives due attention at THY headquarters, but company officials are reluctant to make company's plans public. During a visit, however, the writer was given to understand that besides expansion of international network, modernisation of the engineering base will be undertaken to make it self-sufficient for THY's maintenance and overhaul requirements. Plans also include the development of various training facilities and other areas of airlines' operations, but the scope and the timings of these plans is not openly discussed.

CHAPTER II

FOOTNOTES

1. "Homa - The Iran Air," Flyer International, V (March, 1968), 155; in this part of the world, however, Iran was the first ever country to initiate independently a network of commercial air transport services.

2. R.E.G. Davies, A History of the World's Airlines, (London: Oxford University Press, 1964); p. 197. See also: M.M. Saleem, "An Insider's View of Civil Aviation's Growth," Flyer International, V (March, 1968), 39.

3. Roadcap and Associates, World Airline Record (5th ed., 1955), p. 86. See also R.E.G. Davies, op. cit., supra, note 2, p. 200.

4. The states of Iran, Pakistan and Turkey own Iran National Airlines Corporation, Pakistan International Airlines Corporation and Turk Hava Yollari AO to the extent of 100%, 91% and 97.5%, respectively. See Interavia, XXIV (October, 1969), 1653-1654.

5. Iran Air, PIA and THY are the exclusive national flag carriers on the international routes. On domestic routed also, they are exclusive carriers with the exception that in Iran, under section 5 (1) of The Act Establishing Iran National Airlines Corporation and Civil Aviation Operations, other companies may engage in domestic air transport provided that the all up weight of their aircraft does not exceed 11,885 kgs.

   For full text of The Act Establishing Iran National Airlines Corporation, see Collection of the Rules, Regulations and Laws of Civil Aviation, Imperial Government of Iran, pp. 111-117; see also sections 4 (1) and 1 of The Pakistan International Airlines Corporation Act, 1956, and Turk Hava Yollari A.O. Kanunu ve Esas Mukavelenamesi, respectively.

6. L.F. Rushbrook Williams, The State of Pakistan (London: Faber and Faber, 1962), p. 39.

7. Mirza Abol Hassan Ispahani, a distinguished member of the industrialist Ispahani family, a trusted friend of the Quaid-e-Azam and an ambassador and minister in various Pakistani Administrations, recalls that it was in Delhi in June, 1946, during a lunch with the Quaid-e-Azam at his residence, that the Quaid-e-Azam had put forward the idea of the formation of a new airline company, owned, financed and operated by Muslims. When Mr. Ispahani explained that "the starting of an airline was a big undertaking" and that "it would have to face much opposition from vested interests, particularly Hindus," the Quaid-e-Azam is reported to have replied that we should trust in God, have faith in our cause and go ahead. To prove that he backed his idea with financial participation, the Quaid-e-Azam offered to purchase shares in the company. At the instance of the Quaid-e-Azam, this idea was conveyed to Sir Adamjee Haji Dawood and Mirza Ahmad Ispahani, brother of Mirza Abol Hassan Ispahani.

   See M.A.H. Ispahani, Quaid-e-Azam Jinnah as I knew him (2d ed. rev., Karachi: Forward Publications Trust, 1967), p. 130.

   Mirza Abol Hassan Ispahani's brother Mirza Ahmad Ispahani, who was the first Chairman of both Orient Airways and PIA, however, gives a slightly different account of the birth of the idea of forming a Muslim airline. He asserts that it was during one of his visits to the Quaid-e-Azam that he (Mr. Ispahani) had mentioned that the airways were going to play a vital role in our national life and that the Quaid-e-Azam had agreed and offered encouragement to start the airline, thereby implicitly claiming that it was he who had put forward this idea to the Quaid-e-Azam. Mirza Ahmad Ispahani, however, concedes that but for the inspiration of the Quaid-e-Azam, Orient Airways would not have seen the light of the day.

   See Mirza Ahmad Ispahani, "Orient Airways Pioneering Role," Flyer International V (March, 1968), 35.

   Mirza Ahmad Ispahani's account is not only contrary to his brother, Mirza Abol Hassan Ispahani's account, but is also at variance with the account given by

Mr. M. M. Saleem, the first Chief Inspector/Engineer and later General Manager of Orient Airways and now Director Planning, PIA, who, in line with Mirza Abol Hassan Ispahani, records that "the Quaid-e-Azam mooted the idea that the Muslims should also form an airline of their own."
See M. M. Saleem, op. cit., supra, note 2, p. 39.

Another author shares the views of Mr. Saleem and Mirza Abol Hassan Ispahani and consequently it would be correct to assume that the idea of a Muslim airline was originally put forward by the Quaid-e-Azam.
See John Stroud, Annals of British and Commonwealth Air Transport (London: Putnam, 1962), pp. 492 and 539.

8. R. E. G. Davies, op. cit., supra, note 2, p. 396; see also John Stroud, op. cit., supra, note 7, pp. 492 and 539.

9. M. A. H. Ispahani, op. cit., supra, note 7, pp. 131-132, and Mirza Ahmad Ispahani, op. cit., supra, note 7, p. 39.
To back his idea with action, the Quaid-e-Azam purchased shares in the company worth Rupees 25,000.

10. Ibid; whereas according to M.A.H. Ispahani, four aircraft were purchased, according to his brother Mirza Abol Hassan Ispahani, to begin with, three aircraft were purchased.

11. Ibid.

12. R.E.G. Davies, op. cit., supra, note 2, p. 396 and, John Stroud, op. cit. supra, note 7, pp. 492 and 539. M. M. Saleem, however, observes that scheduled operations began on June 4, 1947. This observation does not seem to be correct, because according to M.A.H. Ispahani, the government permission to operate over the route became effective from June 10, 1947. In view of this evidence, the correct date of commencement of Orient Airways scheduled operations undoubtedly seems to June 30, 1947.
See M. M. Saleem, op. cit. supra, note 2, p. 39.

13. Roadcaps and Associates, World Airline Record (6th ed., 1965), p. 103.

14. One of the busiest in Asia and till the introduction of the jets in 1960 the gateway to Asia.

15. J. Russell Andrus and Azizali F. Mohammed, The Economy of Pakistan (Stanford: Stanford University Press, 1958), pp. 251-252; see also M. M. Saleem, op. cit. supra, note 2, p. 39.

16. Roadcaps and Associates, op. cit. supra, note 13, p. 103.

17. The construction of roads and railways is prohibitively expensive in East Pakistan. It has been estimated that a hundred miles of road or railway could require up to 75 bridges in its construction and include diversions of many miles out of its true direction to find suitable sites for bridges.
See Max Nibloe, "PIA - A Force in Pakistan's Economic Development," Interavia, XXI (August, 1966), 1184.

18. Roadcaps and Associates, op. cit. supra, note 13, p. 103; see also John Bently, "Pia Prostects Reviewed," Flight International, March 24, 1966, p. 471, and "Development of Civil Air Transport in Pakistan," Flyer International V (March, 1968), 69.

19. L.F. Rushbrook Williams, op. cit. supra, note 6, p. 39.

20. John Bentley, op. cit. supra, note 18, p. 471.

21. John Stroud, op. cit. supra, note 7, p. 539; J. Russell Andrus and Azizali F. Mohammed, op. cit. supra, note 15, p. 252; R.E.G. Davies, op. cit. supra, note 2, p. 396, and M. M. Saleem, op. cit. supra, note 2, p. 39.

The inter-wing service operated on the Karachi-Delhi-Calcutta-Dacca route by DC-3 aircraft completed the run in 11 1/2 hours. The first service on this route operated by aircraft AP-AAC or AP-AAH left Karachi for Dacca on October 1, 1947; see John Stroud, op. cit. supra, p. 540; see also Roadcap and Associates, op. cit. supra, note 13, p. 103.

22. Ibid. The decision to transfer the operating base and headquarters was taken by the Board of Orient Airways on December 14, 1947, and the first contingent arrived at Karachi on January 2, 1948.

23. J. Russell Andrus and Azizali F. Mohammed, op. cit. supra, note 15, p. 252.

24. Ibid.

25. Ibid; and M. M. Saleem, op. cit. supra, note 2, p. 39. The statement that Pak Air operations were closed in 1950 is, however, at variance with the statements of other writers on this issue. John Stroud maintains that the operations were suspended by order of the government in November or December, 1949; see John Stroud, op. cit. supra, note 7, p. 540. Another writer, S. U. Koreshi, also maintains that the operations ceased in 1949; see S.U. Koreshi, "PIA's Progress - A Story of Dedication," Flyer International, V (March, 1968, 51. For a description of Pak Air's routes, see Roadcap and Associates, op. cit. supra, note 13, p. 103. They state that it operated regional services primarily. Its routes extended west as far as Cairo and east to Singapore. Two routes to Delhi and several domestic services were also operated. S.U. Koreshi, op. cit. supra, p. 51, however, maintains that though Pak Air was granted permission to operate routes to U.K., Middle East and Ceylon but other than seasonal operation of flights between Karachi and Jeddah for the carriage of pilgrims, it never utilised the franchise and did not commence scheduled operations on international routes.

26. Roadcap and Associates, op. cit. supra, note 13, p. 103.

27. According to Roadcap and Associates, op. cit. supra, note 13, p. 103, the route mileage at the birth of Pakistan was 673 miles.

28. J. Russell Andrus and Azizali F. Mohammed, op. cit. supra, note 15, p. 252.

29. Ibid. This observation of Andrus and Mohammed about the purchase of Convair aircraft with government financial aid apparently seems to have little substance to back it. The authors seem to have based this observation on the provision of Rupees 6.5 million for the purchase of three Convair aircraft in the list of projects included in the Two Year Priority Plan of the Government of Pakistan announced in April, 1951 (p. 484). The evidence against this observation is quite convincing. Firstly, the

purchase of the Convair aircraft was negotiated in late 1946 by M.A. H. Ispahani, i.e., almost a year before the emergence of Pakistan; see M.A.H. Ispahani, op. cit. supra, note 7, p. 131.
Secondly, the aircraft were delivered and operated during the year 1949, whereas the government allocation was made in April, 1951; see J. Russell Andrus and Azizali F. Mohammed, op. cit. supra, note 15, p. 482.
Thirdly, another writer has stressed that the government's attitude towards Orient Airways was not sympathetic; so much so that the government even allowed BOAC to operate on Karachi-Dacca route. Under these circumstances, the government's financial aid for the purchase of Convair aircraft seems unlikely; see M. M. Saleem, op. cit. supra, note 2, p. 43.
According to Mirza Ahmad Ispahani, the Convairs were purchased at a cost of U.S. $3,00,000.00 per aircraft, which means that the fleet of three aircraft amounted to nearly Rupees 1 million, according to the then prevailing conversion rate. This price of Rupees 3 million is substantially lower than the amount of Rs. 6.5 million which was provided under the Two Years Priority Plan. Ispahani has also mentioned that the purchase of Convairs was the biggest risk that his company had ever taken. Had the government assistance been made available then, the purchase would not have been described as "the biggest risk"; see Mirza Ahmad Ispahani, op.cit. supra, note 7, p. 35. Apparently, the amount of Rupees 6.5 million was provided not for the purchase of Convairs, but for the purchase of planes capable of non-stop flights between the two wings and was utilised for the ultimate purchase of Super-Constellations.

30. First service by aircraft AP-AEF was commanded by Capt. Imison; see John Stroud, op. cit. supra, note 7, p. 541. See also R.E.G. Davies, op. cit. supra, note 2. p. 396. The Convair covered this route in 9 1/2 hours and remained in service on this route till 1954 when PIA started its operations with Super-Constellations; see M.M. Saleem, op. cit. supra, note 2, p. 41.

31. J. Russell Andrus and Azizali F. Mohammed, op. cit. supra, note 15, p. 252. This company had actually started operations in early 1952 with D.H.89As. First service on Karachi-Hyderabad-Nawabshah-Sukkur-Jacobabad-Sibi route was flown by aircraft AP-AFN with Capt. Hyrcak in command;

see John Stroud, op. cit. supra, note 7, p. 542. This airline also operated some charter flights between Karachi and London and Amsterdam and Hong Kong; see also S.U. Koreshi, op. cit. supra, note 25, p. 51.

32. In the years 1948 and 1949, Orient Airways losses were Rupees 1.431 million and Rupees .399 million, respectively; see M. M. Saleem, op. cit. supra, note 2, p. 43.

33. Ibid.

34. Ibid.

35. Ibid.

36. Ibid.

37. BOAC, for example, put Comet 1s on the Karachi-Calcutta and Karachi-Bombay routes and also operated several weekly non-stop four-engined (DC-4) services on Karachi-Dacca route. Because of the limited range of the twin-engined Convair, Orient had to stop at delhi; see Roadcap and Associates, op. cit. supra, note 13, p. 103.

38. Ibid. Whereas Orient had carried 108,446 passengers in 1950, its traffic had declined to 99,000 passengers in 1952; see M. M. Saleem, op. cit. supra, note 2, p. 41.

39. Ibid. In 1953, Orient's traffic had declined to a meagre 61,209 passengers.

40. Roadcap and Associates, op. cit. supra, note 13, p. 103.

41. J. Russell Andrus and Azizali F. Mohammed, op. cit. supra, note 15, p. 253.

42. Report of the Economic Appraisal Committee (Karachi: Government of Pakistan, 1952), para. 352; see also Oliver Topper, "Pakistan International Airlines Introduce the Trident," Hawker Siddeley Review, Vol. IV, No. 3, pp. 43-44.

43. At that time, PIA was not operating any services; see John Stroud, op. cit. supra, note 7, p. 541. See also R.E.G. Davies, op. cit. supra, note 2, p. 396; Roadcap

and Associates, op. cit. supra, note 13, p. 103; M. M. Saleem, op. cit. supra, note 2, p. 44, and J. Russell Andrus and Azizali F. Mohammed, op. cit. supra, note 15, p. 253. Incidentally, the decision to purchase Super-Constellations was against the advice of Orient Airways, which for standardization of aero-engines had recommended Douglas DC-6B, powered by the same engine that also powered Convair 240.

44. Roadcap and Associates, op. cit. supra, note 13, p. 103, and, John Stroud, op. cit. supra, note 7, p. 542.

45. M. M. Saleem, op. cit. supra, note 2, p. 44.

46. Ibid; see also Roadcap and Associates, op. cit. supra, note 13, p. 103; John Stroud, op. cit. supra, note 7, p. 542; S. U. Koreshi, op. cit. supra, note 25, p. 52; R.E.G. Davies, op. cit. supra, note 2, p. 396; Pakistan 1954-1955 (Karachi: Pakistan Publications, 1955), p.149; J. Russell Andrus and Azizali F. Mohammed, op. cit. supra, note 15, p. 253, and, Anwar Mooraj, "Spectacular Growth of Pakistan International Airlines," Pakistan Quarterly, XI, No. 1 (Summer, 1962), 41.

47. Budget for 1956-1957, Government of Pakistan, Karachi, para. 126.

48. M.M. Saleem, op. cit. supra, note 2, p. 45; J. Russell Andrus and Azizali F. Mohammed, op. cit. supra, note 15, p. 253; John Stroud, op. cit. supra, note 7, p. 542; Anwar Mooraj, op. cit. supra, note 46, p. 41; Pakistan 1954-1955, op. cit. supra, note 46, p. 149, and, R.E.G. Davies, op. cit. supra, note 2, p. 396; see also Roadcap and Associates, op. cit. supra, note 13, p. 103.

49. M.M. Saleem, op. cit. supra, note 2, p. 45.

50. Roadcap and Associates, op. cit. supra, note 13, p. 103; R.E.G. Davies, op. cit. supra, note 2, p. 396, and, John Stroud, op. cit. supra, note 7, p. 543.

51. J. Russell Andrus and Azizali F. Mohammed, op. cit. supra, note 15, p. 255, and, M. M. Saleem, op. cit. supra, note 2, p. 45.

52. Pakistan Affairs, Embassy of Pakistan, Washington, D.C., July 30, 1956.

53. Pakistan International Airlines, Eleventh Annual Report 1965-1966, p. 8.

54. M.M. Saleem, op. cit., supra, note 2, p. 45. PIA began operation of L-1049H Super-Constellations on March 6, 1958. The first flight, a Karachi-Dacca service, was flown by aircraft AP-AJY with Capt. Shaukat Hussain in command; see John Stroud, op. cit. supra, note 7, p. 543.

55. Budget for 1956-57, op. cit. supra, note 47, para. 126. During the first four years of its operations, i.e., 1955-56, 1956-57, 1957-58, and 1958-59, the corporation registered losses of Rs. 10.9 million, Rs. 9.63 million, Rs. 4.38 million and Rs. 6.71 million, respectively; see Pakistan Affairs, op. cit. supra, note 52, and, PIA 11th Annual Report 1965-66, op. cit. supra, note 53, p. 11. See also The Pakistan International Airlines Corporation Act, 1956, Sec. 26.

56. This Committee was headed by Air Marshal M. Asghar Khan, the then Commander-In-Chief of Pakistan Air Force, who, after his retirement from Air Force, became President of PIA for a term of three years starting in July, 1965.

57. Mirza Ahmad Ispahani, op. cit. supra, note 7, p. 36, and M. M. Saleem, op. cit. supra, note 2. p. 45.

58. Ibid. Air Commodore (later Air Marshal) M. Nur Khan was the first Managing Director.

59. John Stroud, op. cit. supra, note 7, p. 543, and, Roadcap and Associates, op. cit. supra, note 13, p. 105. See also Oliver Topper, op. cit. supra, note 42. pp.43-44.

60. M.M. Saleem, op. cit. supra, note 2, p. 45; John Stroud, op. cit. supra, note 7, p. 544, and Roadcap and Associates, op. cit. supra, note 13, p. 105.

61. Max Nibloe, op. cit. supra, note 17, p. 1186, and John Stroud, op. cit. supra, note 7, p. 544. See also R.E.G. Davies, op. cit. supra, note 2, p. 397, and, Andrew Wilson, "PIA Profile," Flyer International, V (March, 1968), 125.

62. Pilots Abdullah Baig (in command), M.T. Baig and R.Mobin, and Flight Engineer Khan.

63. Roadcap and Associates, op. cit. supra, note 13, p. 105, and John Stroud, op. cit. supra, note 7, p. 545. See also R.E.G. Davies, op. cit. supra, note 2, p. 397.

64. Oliver Topper, op. cit. supra, note 42, p. 43, and, M. M. Saleem, op. cit. supra, note 2, p. 45. See also PIA 11th Annual Report 1965-66, op. cit. supra, note 53, p. 11.

65. Roadcap and Associates, op. cit. supra, note 13, p. 105, and, M. M. Saleem, op. cit. supra, note 2, p. 45.

66. R.E.G. Davies, op. cit. supra, note 2, p. 397; Roadcap and Associates, op. cit. supra, note 13, p. 105; Max Nibloe, op. cit. supra, note 17, p. 1186; M.M. Saleem, op. cit. supra, note 2, p. 45, and, Gordon Ruddick, "PIA's International Links," Interavia, XIX (July, 1964), 977.

67. Roadcap and Associates, op. cit. supra, note 13, p. 105; Max Nibloe, op. cit. supra, note 17, p. 1186; M.M.Saleem, op. cit. supra, note 2, p. 45, and, Gordon Ruddick, op. cit. supra, note 66. p. 977.

68. Roadcap and Associates, op. cit. supra, note 13, p. 105.

69. "Choppers over Pakistan," Time, December 13, 1963, p. 80.

70. M.M. Saleem, op. cit. supra, note 2, p. 46; see also Andrew Wilson, op. cit. supra, note 61, p. 125; PIA 12th Annual Report 1966-67, p. 10, and Flight International, January 19, 1967, p. 82.

71. Max Nibloe, op. cit. supra, note 17, p. 1184.

72. Pakistan and China signed an air services agreement in the summer of 1963. According to President Ayub, "the whole thing was essentially dealt with as a commercial transaction"; but after the transaction had been concluded, all kinds of political interpretations were put on it. It was said that Pakistan had opened a window for the Chinese to look into the rest of the world. This development came as something of a surprise to the Western

world, and the United States reacted immediately, raised questions about the legality of PIA taking Boeings into China, and threatened cuts in aid. Aid was in fact denied to the new Kurmitola International Airport being developed for Dacca; see Mohammad Ayub Khan, Friends Not Masters - A Political Autobiography (Oxford University Press, 1967), pp. 164-165, and, Gordon Ruddick, op. cit. supra, note 66, p. 977.

73. M.M. Saleem, op. cit. supra, note 2, p. 45; Roadcap and Associates, op. cit. supra, note 13, p. 105; Gordon Ruddick, op. cit. supra, note 66, p. 977; Max Nibloe, op. cit. supra, note 17, pp. 1186-1187; Time, op. cit. supra, note 69. p. 80; Harriett E. Porch, Civil Aviation in Communist China Since 1942 (California: The Rand Corporation, 1966), pp. 35-36; John Bentley, op.cit. supra, note 18, pp. 471-472, and, S. M. Ali, "Pakistan: Land, Air and Sea," Far Eastern Economic Review, Vol. XLVI, No. 1,(October 1, 1964), 34; see also PIA 9th Annual Report 1963-64, p. 11, and, Andrew Wilson, op. cit., supra, note 61, p. 126.

74. Roadcap and Associates, op. cit. supra, note 13, p. 105. As a matter of fact, a Shanghai-Tokyo link remains a PIA objective and a leading Pakistani newspaper recently in an editorial commented that "the search for the Shanghai-Tokyo link has not been abandoned, however, and one can only hope that the efforts will at last prove successful"; see The Pakistan Times, November 3, 1963.

75. Gordon Ruddick, op. cit. supra, note 66, pp. 978-979; PIA 9th Annual Report 1963-64, op. cit. supra, note 73, p. 11; Max Nibloe, op. cit. supra, note 17, p. 1186; M. M. Saleem, op. cit. supra, note 2, p. 45; Roadcap and Associates, op. cit. supra, note 13, p. 105, and, Time, op. cit. supra, note 69. p. 80.

76. PIA 9th Annual Report 1963-64, op. cit. supra, note 73, p. 11.

77. John Stroud, op. cit. supra, note 7, p. 544.

78. Max Nibloe, op. cit. supra, note 17, p. 1186; see also PIA 9th Annual Report 1963-64, op. cit. supra, note 73, p. 13.

79. PIA 11th Annual Report 1965-66, op. cit. supra, note 53, pp. 11-15.

80. PIA 10th Annual Report 1964-65, p. 13.

81. PIA Report and Accounts 1968-69, p. 7.

82. PIA 10th Annual Report 1964-65, op. cit. supra, note 80, p. 10.

83. PIA 12th Annual Report 1966-67, p. 5.

84. Ibid, p. 10.

85. Ibid, p. 5.

86. Ibid.

87. Ibid.

88. Ibid.

89. The Pakistan Times, November 2, 1969.

90. Information provided by PIA; see also Topflight, PIA Forthnightly Newsletter, April 15, 1970, p. 8. (hereinafter called Topflight).

91. PIA Report and Accounts 1968-69, op. cit. supra, note 81, p. 7.

92. Ibid.

93. Information provided by PIA; The Boeings were introduced on West Pakistan domestic trunk routes in May, 1970, and are, as of now, operating all services on these routes which, previously, were operated by the Tridents.

94. Ordinance I of 1955.

95. The Pakistan International Airlines Corporation Act, 1956, Act No. XIX of 1956, Sec. 32. (Hereinafter called PIAC Act, 1956).

96. For Statement of Objects and Reasons, see Gazette of Pakistan, Extraordinary, April 5, 1956, p. 586.

97. Preamble of The PIAC Act, 1956.

98. PIAC Act, Sec. 3(2).

99. Ibid.

100. Ibid, Sec. 4 (1).

101. Ibid, Sec. 4 (2).

102. Ibid, Sec. 4 (3).

103. Ibid, Sec. 5 (2).

104. Ibid, Sec. 5 (1).

105. Ibid, Sec. 6 (1).

106. Ibid, Sec. 8 (1).

107. Ibid, Sec. 6 (1).

108. Ibid, Sec. 7 (1) and (2).

109. Regulations made under Sec. 30 of The PIAC Act, 1956, Chapter V, Regulation I; see also Gazette of Pakistan, 1958, pt. VII, pp. 13-16. (Hereinafter called PIAC Regulations).

110. The Pakistan International Airlines Corporation Rules, 1958; Rules made under Sec. 29 of The PIAC Act, 1956, Rule 22 (1); see also Gazette of Pakistan, 1958, pt. III, pp. (41-46). (Hereinafter called PIAC Rules).

111. Ibid, Rule 22 (2) (b) and (d).

112. Ibid, Rule 22 (2) (e).

113. Ibid, Rule 22 (2) (f).

114. Ibid, Rule 22 (2) (h).

115. Ibid, Rule 22 (2) (i).

116. Ibid, Rule 22 (2) (j).

117. Ibid, Rule 22 (2) (l).

118. Ibid, Rule 22 (2) (m).

119. Ibid, Rule 22 (2) (n).

120. Ibid, Rule 22 (2) (o).

121. Ibid, Rule 23.

122. PIAC Act, 1956, Sec. 12.

123. Ibid.

124. Ibid, Sec. 13.

125. Ibid, Sec. 14.

126. Ibid, Sec. 15.

127. Ibid, Sec. 16 (1).

128. Ibid, Sec. 17. The Central Government is obliged to lay the statement and report before the National Assembly.

129. Ibid, Sec. 18 (1).

130. Ibid, Sec. 25 (1).

131. Ibid, Sec. 25 (2). The value of the assets of Orient Airways was calculated as Rupees 9.3 million; see J. Russell Andrus and Azizali F. Mohammed, op. cit. supra, note 15, p. 253. Considering the legal limit of Rupees 10 million, and the fact that the shareholders of Orient Airways actually received shares worth Rs. 9.3 million in the Corporation, the statement of certain authors that the Orient shareholders received 40% of the stock of the new Corporation seems obviously incorrect; see Roadcap and Associates, op. cit. supra, note 13, p. 103, and, R.E.G. Davies, op. cit. supra, note 2, p. 396.

132. Ibid, Sec. 25 (3).

133. See Government of Pakistan Notification No. S.R.O. 132 (K)/61, December 30, 1960, para. 1, p. 39; see also Roadcap and Associates, op. cit. supra, note 13, p. 106.

134. See Government of Pakistan Notification No. S.R.O. 128(k)/67, August 2, 1967; all additional stock subscriptions were made by the Central Government.

135. PIAC Regulations, Chapter II, Regulation I.

136. Information provided by Secretary, PIAC; see also PIA Report and Accounts 1968-69, op. cit. supra, note 81, p. 18.

137. PIAC Act, Sec. 25 (4).

138. Ibid, Sec. 27.

139. Ibid, Sec. 28.

140. Ibid, Sec. 10.

141. Ibid, Sec. 6 (2).

142. Information provided by Secretary, PIAC.

143. Information provided by the administration department of PIAC. The office of Director, Special Projects was recently created in August, 1970. See Topflight, September 1, 1970, p. 8.

144. Sec. 9 (2) of PIAC Act, 1956, bars a salaried staff of the Corporation, with the sole exception of the Managing Director, to become a member of the Board of Directors.

145. PIA Annual Report 1967-68, p. 10.

146. Negotiations for sale were reported in early March, 1970, and the agreement for the sale was signed on May 27, 1970, in Karachi. The decision to dispose of Tridents was, however, taken in Mid-1969; see Flight International, March 5, 1970, p. 321; Aviation Week and Space Technology, March 9, 1970, p. 235; Flight International, June 18, 1970, p. 988; Aviation Week

and Space Technology, June 8, 1970, p. 35; Dawn, May 28, 1970; Topflight, June 15, 1970, p. 1, and, Interavia, XXV (July, 1970), 800.

147. An agreement to borrow $17 million from a consortium of U.S. banks was recently concluded to finance this purchase; see Aviation Week and Space Technology, August 10, 1970, p. 29; Topflight, August 15, 1970, p. 1, and, Dawn, August 13, 1970. See also Interavia, XXV (September, 1970), 1021 reporting PIA's order of three new 707s; one has, according to this report, already been delivered and the others will follow by December of this year. Flight International, August 6, 1970, p. 190, also carries a report on PIA's arranging a $17 million loan to buy three new 707s.

148. Information provided by PIA.

149. Actually, PIA had eleven F-27s, but one was lost in a crash near Rawalpindi on August 6, 1970; see The Montreal Star, August 6, 1970. See also Flight International, August 20, 1970, p. 267 for the report of PIA F-27 crash. As for details of PIA fleet, see also PIA Report and Accounts 1968-69, op. cit. supra, note 81, p. 9; "Inventory of Airline Aircraft," Air Transport World, December 1969, p. 43; "World Airline Equipment Inventory - 1968," Air Transport World, May, 1969, p. 144; IATA World Air Transport Statistics 1968, p. 33; Interavia, XXIV (October, 1969), op. cit. supra, note 4, p. 1654; M.M. Saleem, op. cit. supra, note 2, p. 46; Interavia, XXV (April, 1970), 471, and, Flight International, March 26, 1970, p. 495.

150. Information provided by PIA; PIA also has a fleet of 2 Lockheed L-382Bs which are leased to Pakistan Air Force; see "Turbine-engined fleets of the world's airlines, 1969," An Esso Air World Survey, Supplement to Esso Air World, Vol. XXI, No. 6 (May-June, 1969).

151. PIA Timetable, April 1, 1970.

152. Ibid.

153. PIA Report and Accounts 1968-69, op. cit. supra, note 81, p. 13. On the basis of its 1968 figures of 71,447

kilometres, PIA ranked 27th among world carriers in route length kms; see "Worldwide Route Mileage," Air Transport World, Ocrober, 1969, p. 26; Interavia, XXIV, (October, 1969), op. cit. supra, note 4, p. 1654, and, IATA World Air Transport Statistics 1968, op. cit. supra, note 149, p. 33.

154. PIA Report and Accounts 1968-69, op. cit. supra, note 81, p. 13.

155. IATA World Air Transport Statistics 1968, op. cit. supra, note 147, p. 33.

156. PIA 12th Annual Engineering Department Report 1968, pp. 7-11.

157. "IATA Airlines Top 200 Million Passengers," Air Transport World, October, 1969, p. 89; see also IATA World Air Transport Statistics 1968, op. cit. supra, note 149, p. 33, and, "International Airline Highlights - 1968," Air Transport World, May, 1969, p. 107.

158. PIA Report and Accounts 1968-69, op. cit. supra, note 81,p. 13.

159. Ibid

160. PIA Timetable, April 1, 1970, op. cit. supra, note 149.

161. Ibid.

162. J. Russell Andrus and Azizali F. Mohammed, op. cit. supra, note 15, p. 254.

163. M.M. Saleem, op. cit. supra, note 2, pp. 44-45.

164. PIAC Act, 1956, Sec. 26; see also supra note 55.

165. M. M. Saleem, op. cit. supra, note 2, p. 44.

166. See supra, note 47.

167. Information provided by PIA.

168. Ibid.

169. PIA 5 Year Operating Plan 1970-71 to 1974-75, Planning Department, July, 1969, pp. 12-14. (Hereinafter called PIA 5 Year Plan).

170. PIA 10th Annual Report 1964-65, op. cit. supra, note 80, p. 12, and, PIA Annual Report 1967-68, op.cit., supra, note 145, p. 5.

171. Pakistan 1954-55, op. cit. supra, note 46, p. 151.

172. PIA 10th Annual Report 1964-65, op. cit. supra, note 80, p. 9.

173. "IATA Airlines Scheduled Traffic - 1963 Year," Interavia,XIX (September, 1964), 1323.

174. PIA Annual Report 1967-68, op. cit. supra, note 145, p. 9.

175. Dawn, October 13, 1970.

176. Ibid.

177. PIA 10th Annual Report 1964-65, op. cit. supra, note 80, p. 8.

178. PIA Annual Report 1967-68, op. cit. supra, note 145, p. 6.

179. PIA Report and Accounts 1968-69, op. cit. supra, note 81, p. 4.

180. Ibid, p. 13.

181. Ibid., pp. 12-13.

182. IATA World Air Transport Statistics 1968, op. cit. supra, note 149, p. 7.

183. PIA 10th Annual Report 1964-65, op. cit. supra, note 80, p. 8.

184. PIA Report and Accounts 1968-69, op. cit. supra, note 81, p. 13.

185. Dawn, October 13, 1970.

186. PIA 10th Annual Report 1964-65, op. cit. supra, note 80, p. 8.

187. PIA Report and Accounts 1968-69, op. cit. supra, note 81, p. 13.

188. PIA 10th Annual Report 1964-65, op. cit. supra, note 80, p. 8.

189. PIA Report and Accounts 1968-69, op. cit. supra, note 81, pp. 12-13.

190. Ibid., p. 13.

191. IATA World Air Transport Statistics 1968, op. cit. supra, note 149, p. 6.

192. PIA Report and Accounts 1968-69, op. cit. supra, note 81, p. 17.

193. Dawn, January 17, 1970.

194. Information provided by Secretary, PIAC.

195. "Civil Aviation in Pakistan," Asian Review, Vol. L, No. 184, October 1954.

196. See supra, note 45.

197. See supra, note 62.

198. Information supplied by the Engineering and Flight Operations Departments of PIA.

199. Roadcap and Associates, op. cit. supra, note 13, p. 106.

200. Ibid.

201. The overhaul of first JT3D-1 was completed on September 26, 1964; see PIA Engineering Department 8th Annual Report 1964, p. 9, and, PIA 10th Annual Report 1964-65, op. cit. supra, note 80, p. 12.

202. PIA Engineering Department 8th Annual Report 1964, op. cit. supra, note 201, p. 7.

203. Ibid., p. 6.

204. Ibid.

205. PIA Engineering Department 10th Annual Report 1966, pp. 4-5; see also PIA 11th Annual Report 1965-66, op. cit. supra, note 53, p. 12.

206. PIA Engineering Department 11th Annual Report 1967, p. 17; see also PIA Annual Report 1967-68, op. cit. supra, note 145, p. 10, and, Aviation Week and Space Technology, August 21, 1967, p. 31.

207. PIA Engineering Department 12th Annual Report 1968, p. 15, and, PIA Report and Accounts 1968-69, op. cit. supra, note 81, p. 9; see also "Engineering Achievements 1968-1969," PIA Supplement to the Pakistan Times, November 1, 1969.

208. Ibid.

209. PIA Engineering Department 12th Annual Report 1968, op. cit. supra, note 207, p. 4.

210. See PIA Annual Reports from 1964-65 to 1968-69; see also IATA World Air Transport Statistics from 1964 to 1968.

211. See PIA Engineering Department Annual Reports from 1964 to 1968.

212. Oliver Topper, op. cit. supra, note 42, p. 44; see also Peter Bostock, "PIA Flies High," Flyer International, V (March, 1968), 103-104.

213. Information provided by PIA; see also Max Nibloe, op. cit. supra, note 17, p. 1187.

214. PIA Annual Report 1967-68, op. cit. supra, note 145, p. 11.

215. Topflight, March 15, 1970, p. 2.

216. Ibid, February 1, 1970, p. 8.

217. Ibid.

218. See supra, note 215.

219. Morning News, March 12, 1970; see also Topflight, October 15, 1970.

220. Ibid, March 17, 1970; see also Topflight, April 15, 1970, p. 1; Topflight, May 15, 1970, p. 8, and, Topflight, August 1, 1970, p. 1.

221. See supra, note 146.

222. See supra, note 215.

223. "IATA Employment Nears 700,000 Mark," Air Transport World, October 1969, pp. 98-99; IATA World Air Transport Statistics 1968, op. cit. supra, note 149, p. 33, and, PIA Report and Accounts 1968-69, op. cit. supra, note 81, p. 10.

224. PIA Annual Report 1967-68, op. cit. supra, note 145, p. 12; see also PIA Report and Accounts 1968-69, op. cit. supra, note 81, p. 11.

225. Information provided to the writer by Mr. M.M. Saleem, Director Planning, PIA, during an interview granted at the PIA Head Office on January 10, 1970. (Hereinafter called Interview with M. M. Saleem).

226. PIA 12th Annual Report 1966-67, op. cit. supra, note 83, p. 20; M.M. Saleem, op. cit. supra, note 2, pp.46-47; Interview with M.M. Saleem, op. cit. supra, note 225, and John Fricker, "PIA Looks Ahead," Flight International, May 29, 1969, p. 867. See also Kayhan International, November 23, 1967.

227. Aviation Week and Space Technology, April 6, 1970, p. 37, and, Interview with M.M. Saleem, op. cit. supra, note 225.

228. PIA 5 Year Plan, op. cit. supra, note 169, pp. 18-19.

229. Ibid, p. 9.

230. Ibid.

231. Dawn, October 16, 1970.

232. PIA 5 Year Plan, op. cit. supra, note 169, p. 10.

233. PIA 12th Annual Report 1966-67, op. cit. supra, note 83, p. 20; Aviation Week and Space Technology, October 16, 1967, p. 54; "PIA Sets Resumption of Atlantic Service," Aviation Week and Space Technology, October 20, 1967, p. 30, and, The Pakistan Times, November 3, 1969.

234. Kayhan International, January 21, 1968; see also M.M. Saleem, op. cit. supra, note 2, pp. 46-47.

235. PIA 5 Year Plan, op. cit. supra, note 169, p. 10.

236. Ibid. Although no agreement has yet been reached to form a single carrier, the national airlines of Iran, Pakistan and Turkey might operate a joint venture across the North Atlantic. This has been stated by Mr. Hooshang Tajadod, Deputy Managing Director (Commercial) of the Iran National Airlines Corporation at a press conference in New York recently; see Topflight, June 15, 1970, p. 8. Mr. M.M. Saleem, during his interview with the writer, while observing that "RCD collaboration would certainly accelerate the resumption of our services on this route," remarked that PIA may even operate over Atlantic without RCD collaboration, provided that it had "a reasonable potential on this route"; see supra note 225.

237. PIA 5 Year Plan, op. cit. supra, note 169, pp. 10-11.

238. Ibid, p. 11.

239. Ibid.

240. Ibid, p. 13.

241. Ibid, pp. 13-14.

242. Topflight, September 1, 1970, pp. 1,3. See also Aviation Week and Space Technology, September 21, 1970, p. 31.

243. PIA 5 Year Plan, op. cit. supra, note 169, p. 17.

244. Interview with M.M. Saleem, op. cit. supra, note 225; see also The Pakistan Times, November 3, 1969.

245. PIA Engineering Department Five Years 1970-1974 Engineering Facilities Plan. (Hereinafter called PIA Engineering Department 5 Year Plan).

246. Iran Almanac and Book of Facts (8th ed., 1969), p.439; R.E.G. Davies, op. cit. supra, note 2, p. 25 and p. 71, and, "Homa - The Iran Air," op. cit. supra, note 1, p. 155.

247. Iran Almanac and Book of Facts, op. cit. supra, note 246, p. 439.

248. R.E.G. Davies, op. cit. supra, note 2, p. 200.

249. Roadcap and Associates, op. cit. supra, note 13, p. 75; see also Iran Almanac and Book of Facts, op. cit. supra, note 246, p. 439.

250. Ibid.

251. Ibid.

252. Ibid.

253. Ibid.

254. Roadcap and Associates, op. cit. supra, note 13, p. 76.

255. Ibid.

256. Ibib.

257. Iran Almanac and Book of Facts, op. cit. supra, note 246, p. 439.

258. Ibid., see also R.E.G. Davies, op. cit. supra, note 2, p. 404, and, Roadcap and Associates, op. cit. supra, note 13, p. 76.

259. Iran Almanac and Book of Facts, op. cit. supra, note 246, p. 439, and, Roadcap and Associates, op. cit. supra, note 13, p. 76.

260. Iran Almanac and Book of Facts, op. cit. supra, note 246, p. 440.

261. Roadcap and Associates, op. cit. supra, note 13, p. 76.

262. Ibid, and, R.E.G. Davies, op. cit. supra, note 2, p. 404.

263. "Homa - The Iran Air," op. cit., supra, note 1, p. 155, and Iran Almanac and Book of Facts, op. cit. supra, note 246, p. 440.

264. Harold D. Watkins, "Major Challenges Face Iranian Effort to Build Carrier," Aviation Week and Space Technology, June 26, 1967, p. 42.

265. Ibid; see also Roadcap and Associates, op. cit. supra, note 13, pp. 76-77; Kayhan International, July 4, 1964; Kayhan International, July 6, 1964, and, Interavia, XX (May, 1965), 662-663.

266. Kayhan International, April 5, 1965, and, The Teheran Journal, April 4, 1965.

267. "Homa - The Iran Air," op. cit. supra, note 1, p. 155.

268. Harold D. Watkins, op. cit. supra, note 264, pp.48-49.

269. Kayhan International, July 2, 1966.

270. Ibid., July 3, 1966.

271. Ibid, August 3, 1966.

272. Ibid., May 4, 1967.

273. Information supplied by Iran National Airlines during a personal visit of the writer in January, 1970.

274. Iran National Airlines Winter Time Table 1969/70.

275. See supra, note 272.

276. "International Airline Highlights - 1968," op. cit., supra, note 157, p. 102.

277. Iran Almanac and Book of Facts, op. cit. supra, note 246, p. 442; see also Flight International, December 26, 1968, p. 1052.

278. Kayhan International, January 25, 1970, and, The Teheran Journal, January 25, 1970; Information also supplied by Iran National Airlines.

279. Collection of the Laws, Rules and Regulations of Civil Aviation, Imperial Government of Iran, p. 117.

280. Ibid.

281. Royal Order No. 2596 dated July 23, 1966, and Prime Minister's Order No. 4492 dated July 28, 1966.

282. Iran Almanac and Book of Facts, op. cit. supra, note 246, p. 675; see also Iranian Official Gazette dated May 27 and May 30, 1968.

283. The Act Establishing Iran National Airlines Corporation and Civil Aviation Operation, Art. 1 (Hereinafter called INAC Act).

284. Ibid., Art. 4.

285. Articles of Association, Art. 1.

286. Ibid, Art. 4.

287. INAC Act, Art. 5.

288. Ibid, Art. 6.

289. Ibid, Art. 7.

290. Ibid, Art. 8.

291. Ibid.

292. Ibid.

293. Ibid.

294. Articles of Association, Art. 6.

295. Ibid, Art. 7.

296. Ibid, Art. 8.

297. Ibid, Art. 9.

298. Ibid, Art. 8 (a).

299. Ibid, Art. 8 (b).

300. Ibid, Art. 8 (c).

301. Ibid.

302. Ibid, Art. 8 (d).

303. Ibid, Art. 8 (e).

304. Ibid, Art. 8 (f).

305. Ibid, Art. 8 (g).

306. Ibid, Art. 8 (h).

307. See supra note 297.

308. Articles of Association, Art. 10.

309. Ibid, Art. 12.

310. Ibid, Art. 13.

311. Ibid, Art. 14.

312. Ibid, Art. 15.

313. Ibid, Art. 16.

314. Ibid, Art. 17.

315. Ibid.

316. Ibid, Art. 18.

317. Information provided by the Management Services Department of Iran National Airlines Corporation.

318. Articles of Association, Art. 2.

319. INAC Act, Art. 2.

320. Articles of Association, Art. 5.

321. Ibid, Art. 19.

322. Ibid, Art. 21.

323. INAC Act, Art. 9.

324. Ibid, Art. 10.

325. Ibid, Art. 11.

326. Ibid, Art. 12.

327. Harold D. Watkins, op. cit. supra, note 264, p. 45.

328. Information provided by Commercial Department, Iran National Airlines Corporation; see also IATA World Air Transport Statistics 1968, op. cit. supra, note 149, p. 27; "World Airline Equipment Inventory-1968," op. cit. supra, note 149, p. 144; "Inventory of Airline Aircraft," op. cit. supra, note 149, p. 42; Interavia (April, 1970), op. cit. supra, note 149, p. 470; Interavia (October, 1969), op. cit. supra, note 4. p. 1653; "Turbine-engined fleets of the world's airlines 1969," op. cit. supra, note 150, and, Flight International, March 26, 1970, op. cit. supra, note 149, p. 485.

329. Aviation Week and Space Technology, July 20, 1970, p. 25, and, Flight International, July 23, 1970, p. 109. See also Interavia, XXV (August, 1970), 911.

330. Information supplied by Iran National Airlines Corporation.

331. Iran National Airlines Time Table 1969/70, op. cit. supra, note. 274.

332. See supra, note 268.

333. Aviation Week and Space Technology, April 13, 1970, p.33.

334. See supra, note 331.

335. IATA World Air Transport Statistics 1968, op. cit. supra, note 149, p. 27; see also "Worldwide Route Mileage," op. cit. supra, note 153, p. 96.

336. Ibid; see also "IATA Airlines Top 200 Million Passengers," op. cit. supra, note 157, p. 89; "International Airline Highlights - 1968," op. cit. supra, note 157, p. 102, and, "IATA Total Traffic Figures for 1968," Air Transport World, October 1969, p. 94.

337. Harold D. Watkins, op. cit. supra, note 264, p. 45.

338. See supra note 336.

339. See supra note 333.

340. Statistics provided to the writer by Iran National Airlines for years 1343-1347; other statistics provided from "Homa - The Iran Air," op. cit. supra, note 1, p. 157; see also Iran Almanac and Book of Facts, op. cit. supra, note 245, pp. 440-441.

341. Harold D. Watkins, op. cit. supra, note 264, p. 45.

342. "International Airline Highlights - 1968," op. cit. supra, note 157, p. 102.

343. "IATA Airlines Scheduled Traffic - 1963 Year," op. cit. supra, note 173, p. 1323.

344. IATA World Air Transport Statistics 1968, op. cit. supra, note 149, p. 27.

345. See supra note 343.

346. See supra note 344.

347. Ibid.

348. Aviation Week and Space Technology, op. cit. supra, note 333.

349. Information provided to the writer by Iran National Airlines.

350. IATA World Air Transport Statistics 1968, op. cit. supra, note 149, p. 27.

351. Harold D. Watkins, op. cit. supra, note 264, p. 45.

352. Ibid, p. 49.

353. Ibid. pp. 43-45.

354. "World Airline Revenues Climb 94% In Half-Decade; Traffic Up 105%," Air Transport World, May 1969, pp. 92-93.

355. Harold D. Watkins, op. cit. supra, note 264, p. 49.

356. Ibid

357. Ibid, p. 50.

358. Kayhan International, supra, note 269.

359. Harold D. Watkins, op. cit. supra, note 264, p. 53.

360. Ibid.

361. "Homa - The Iran Air," op. cit. supra, note 1, p. 157.

362. See supra note 265.

363. Iran Almanac and Book of Facts, op. cit. supra, note 246, p. 441.

364. Information provided by Iran National Airlines.

365. Ibid.

366. Ibid.

367. Ibid.

368. Ibid.

369. Ibid.

370. Ibid.

371. Aviation Week and Space Technology, op. cit. supra, note 333.

372. See supra note 236.

373. Information provided to the writer by Turkish Airlines during a personal visit to the airline's head office in Istanbul. Accordingly, the observation of Davies that the Turkish Airlines was established by the Ministry of Public Works seems incorrect; see R.E.G. Davies, op.cit. supra, note 2, p. 200.

374. Information provided by Turkish Airlines.

375. Ibid.

376. Roadcap and Associates, op. cit. supra, note 13, p. 117.

377. Ibid.

378. Ibid.

379. Ibid.

380. Ibid.

381. Ibid, p. 118; information also provided by Turkish Airlines.

382. Ibid.

383. Ibid, p. 118.

384. Turk Hava Yollari Annual Report 1965, p. 3.

385. Losses substantially decreased in 1964 and 1965 and in 1966 THY even made a slender profit; its first in many years; see THY Annual Reports for 1965 and 1966.

386. The number of revenue passengers had risen from 247,000 in 1962 to 409,625 in 1965; see Roadcap and Associates, op. cit. supra, note 13, p. 118, and, THY Annual Report 1965, p. 4.

387. THY Annual Report 1966, p. 22.

388. THY Annual Report 1967, p. 7.

389. The number of revenue passengers jumped from 527,745 in 1967 to 781,288 in 1968 with the introduction of jet aircraft; see THY Annual Report 1968, p. 13.

390. Ibid, p. 29. Actually, the Government had given approval to THY to order up to nine more short-medium-haul jets; see Flight International, October 31, 1968, p. 689.

391. Information provided by Turkish Airlines.

392. Ibid.

393. The Statute concerning The Turkish Airlines Corporation, Act No. 6623, Art. 1. (Hereinafter called Turkish Airlines Act).

394. Ibid, Art. 2.

395. Ibid, Supplementary Art. 1-8.

396. THY By-Laws, Art. 3.

397. Approved by the General Assembly of the Shareholders on March 30, 1966; see Art.4 of THY By-Laws.

398. Ibid, Art. 4 (a).

399. Ibid, Art. 4 (a) (I).

400. Ibid.

401. Ibid, Art. 4 (a) (II).

402. Ibid, Art. 4 (a) (III).

403. Ibid, Art. 4 (b).

404. Ibid, Art. 4 (c).

405. Ibid, Art. 4 (e).

406. Ibid, Art. 4 (f).

407. Turkish Airlines Act, Art. 9, 10, 12 and 13.

408. THY By-Laws, Art. 16.

409. Ibid, Art. 28.

410. Ibid, Art. 25.

411. Ibid, Art. 34.

412. Ibid, Art. 17; see also Art. 46 and Art. 61.

413. Ibid, Art. 27.

414. Ibid, Art. 35.

415. Ibid, Art. 36.

416. Ibid, Art. 37.

417. Ibid, Art. 38.

418. Ibid, Art. 39.

419. Ibid, Art. 40 and 41.

420. Ibid, Art. 43.

421. Ibid, Art. 48.

422. Ibid, Art. 38.

423. Turkish Airlines Act, Art. 12.

424. THY By-Laws, Art. 49.

425. Ibid, Art. 55.

426. Ibid, Art. 53. As Directors, they are disqualified from holding another assignment or an assignment with a company that has business relative with THY.

427. Ibid, Art. 54.

428. Ibid, Art. 52

429. Ibid, Art. 51 (a).

430. Ibid, Art. 51 (b).

431. Ibid, Art. 51 (c).

432. Ibid

433. Ibid, Art. 51 (d).

434. Ibid, Art. 51 (e).

435. Ibid, Art. 51 (f).

436. Ibid, Art. 51 (g).

437. Ibid, Art. 56.

438. Ibid, Art. 57.

439. Ibid, Art. 58.

440. See supra note 438.

441. THY By-Laws, Art. 62.

442. Ibid, Art. 63.

443. Ibid, Art. 64 (a).

444. Ibid, Art. 64 (b).

445. Ibid, Art. 64 (c).

446. Ibid.

447. Ibid, Art. 64 (d).

448. Ibid, Art. 64 (e).

449. Ibid, Art. 64 (f).

450. Ibid, Art. 64 (g).

451. Ibid, Art. 64 (i).

452. Ibid, Art. 64 (h).

453. Ibid, Art. 65.

454. Ibid, Art. 66.

455. Information provided by THY.

456. Turkish Airlines Act, Art. 3.

457. THY By-Laws, Art. 5.

458. Ibid; see also supra note 455.

459. Turkish Airlines Act, Art. 4.

460. Information provided by THY; see also Interavia, XXV, (February, 1970), 195, and supra note 4.

461. Turkish Airlines Act, Art. 6.

462. Ibid, Art. 11.

463. Ibid. Art. 17.

464. Ibid, Art. 19.

465. Ibid, Art. 20.

466. THY By-Laws, Art. 67.

467. Ibid, Art. 68.

468. Ibid, Art. 69 and 80, and Turkish Airlines Act, Art. 7 and 8.

469. Ibid.

470. Ibid, Art. 71.

471. Ibid, Art. 72; see also Turkish Airlines Act, Art. 16 and 18.

472. Information provided by THY. The airline also has a fleet of 12 DC-3s which have been retired from scheduled

services; see also Interavia, op. cit. supra, note 460, p. 195; "Turbine-engined fleets of the world's airlines 1969," op. cit. supra, note 150; "Inventory of Airline Aircraft," op. cit. supra, note 149, p. 44; "World Airline Equipment Inventory - 1968," op. cit. supra, note 149, p. 146, and, Flight International, March 26, 1970, op. cit. supra, note 149, p. 507.

473. Interavia, XXV (May, 1970), 504. See also Flight International, August 20, 1970, p. 264, and, Topflight, September 1, 1970, p. 2.

474. THY Winter Time Table 1969-1970.

475. Ibid.

476. IATA World Air Transport Statistics 1968, op. cit. supra, note 149, p. 37.

477. Roadcap and Associates, op. cit. supra, note 13, p.118.

478. Ibid.

479. THY Annual Report 1968, op. cit. supra, note 389, p. 13.

480. See THY Annual Reports from 1965 to 1968.

481. THY Annual Report, 1968, op. cit. supra, note 389, p. 13.

482. IATA World Air Transport Statistics 1968, op. cit. supra, note 149, p. 37.

483. See supra, note 481.

484. See supra,note 480.

485. Ibid

486. Ibid; see also Roadcap and Associates, op. cit. supra, note 13, pp. 117-118.

487. Ibid.

488. Information provided by THY.

489. THY Annuel Report 1968, op. cit. supra, note 389, pp. 21-22.

490. Information provided by THY.

491. Ibid.

492. Ibid.

CHAPTER III

FACTORS STIMULATING INCREASED COOPERATION AND CONSOLIDATION IN INTERNATIONAL AIRLINE INDUSTRY AND AIR TRANSPORT IN RCD REGION

1. The Advancing Aviation Technology.

The one consistent and inexorable factor in the history of air transport has been its dynamic growth. The international airline industry has developed at a spectacular rate, especially since World War II, and it is now one of the fastest growing and most technologically advanced of all international industries.[1] The march of science is continually changing the face of civil aviation, and the most striking example in this direction is the fantastic development in aircraft technology. The advance in technology in aircraft building, spurred on by two World Wars, has accelerated civil aeronautical progress to an embarrassing extent for the airlines. The manufacturers have designed, developed and gone into production with new types at a rate which was faster than the depreciation period over which the airlines were accustomed to paying for the aircraft. The rate of aircraft replacement

has been one of the most vital features of the economics of air transport.[2] Nothing has contributed more to it than the introduction of jet technology in the late fifties.

Jet aircraft swept upon the world of civil aviation with dramatic suddenness, when BOAC put into service the Comet I in May 1952.[3] Jet services came to a halt in 1954 with the grounding of the Comet I, and started to operate again in October 1958; once more BOAC, with the new Comet 4, was first in the field, but this time followed very closely by Pan American with the Boeing 707.[4] The jet revolution may be said to have been started by a Pan American announcement on October 13, 1955, that it had placed orders for 20 Boeing 707s and 20 DC-8s. The significance of this development lay not so much in the fact that the American flag carrier had ordered a new type of aircraft; it was the nature of the new type. The new technology promised a 600 m.p.h. airliner, about twice as big as any aircraft then in service, and with enough range to fly non-stop from one continent to another continent.[5] There followed something like a stampede of airline executives to order jet aircraft.[6] Within five years of their introduction into service, more than 700 long-range jet aircraft were providing jet travel on virtually all the intercontinental routes of the world.[7] By the end of

1968, the number of jet aircraft being operated by IATA airlines had risen to 2,471,[8] and virtually every corner of the globe was being served by jet aircraft. According to Wheatcroft "a major characteristic of the jet revolution" has been "the pressure towards total re-equipment with jet aircraft."[9]

Although the first-generation jet aircraft set up a new standard in speed, comfort and productivity, they were certainly not the last in the aircraft designing. As the process of the evolution of the new technology develops and the international airline industry maintains its growth, aircraft designing and production continue to change dramatically. Improvements in size, speed and safety are constantly sought and secured. A plane capable of carrying a maximum of 490 passengers[10] is already in scheduled service with a number of airlines, and the Concorde supersonic transport prototype 002 has already flown at a speed of Mach. 1.52.[11] There seems to be no end to the growth of the size and the speed of the aircraft.

In recent years, the most significant development in aircraft production has been the emergence of the large-capacity subsonic jets and the appearance of the two supersonic transports in prototype form; Concorde, TU-144 and the Bowing 747 are all flying. The McDonnell Douglas DC-10 and Lockheed Tri-

Star prototypes have also flown. The building of the US SST is expected to go ahead, subject to Congress approval of funds. A-300B European airbus is a firm project, and a go-ahead decision is nearing on the BAC Three-Eleven. A new era of long-and medium-haul air transport can thus be said to have begun in earnest. For air transport industry, the seventies promise to be the decade of the large-capacity subsonic jets and supersonic travel. During this decade, the following new aircraft are being groomed to carry passengers and cargo around the world.

a) Large-Capacity Subsonic Jets.

i) Boeing 747.- Boeing 747 is the largest and the fastest commercial aircraft in production and everything about it has set new records and established new standards for the industry. The 747 was announced as a firm project by Boeing in March 1966 as a long-range, large capacity aircraft faster than any other subsonic type.[12] Soon afterwards Pan American ordered a fleet of 25 aircraft for delivery beginning in latter 1969.[13] This set into motion a series of orders for the aircraft from vitrually every major airline in the world. To date, 32 customers have purchased 200 Boeing 747s.[14]

The aircraft made its maiden flight on February 19, 1969,[15] and entered scheduled airline service on January 21,

1970, when Pan American flew one from New York to London.[16] At present, a number of airlines are operating more than 50 747s from North America to Europe and Japan.[17] By the summer of 1971, it is expected to operate on almost all the long-haul routes. Although the 747 ran into many troubles during its early months of flight, it has been a big-top attraction for passengers.[18] In operation, it has achieved good load factors,[19] brought profits,[20] and has even been hijacked on two occasions.[21]

The 747 is 231 feet long and 20 feet wide inside the cabin. It usually hauls up to 392[22] passengers at 590 m.p.h. and has a range of 6,500 miles.[23] It is powered by four P and W JT9D engines of 43,500 lb[24] thrust each, and its maximum weight is 713,000 lb.[25]

ii) Lockheed L-1011 TriStar.- Another major new large-capacity aircraft is the Lockheed L-1011 TriStar, which was launched on March 31, 1968, with orders for 144 from Eastern, TWA and Air Holdings.[26] The L-1011 has the greater number of large-capacity trijet firm orders - all for the intermediate-range variant powered by Rolls Royce RB211-22s of 40,600 lb thrust.[27] At present, 8 customers have 173 Tri-Stars on order.[28]

The TriStar is smaller than the 747. Its intermediate range version is 177 feet 8 inches long[29] and measures 19 feet wide inside the cabin.[30] Its three RB-211-22 turbofan engines give it a speed of up to 600 m.p.h.,[31] and with maximum payload give it a range of 2,850 miles.[32] The TriStar can even operate economically on routes from 250 to 1,500 miles,[33] and depending upon the searing arrangements can carry 250 to 365 passengers.[34]

The production programme of TriStar is on schedule,[35] with rollout taking place in the first week of September, 1970[36] and first flight being due on November 17 this year.[37] First deliveries to the airlines are expected to begin late in 1971, and scheduled operations will commence immediately thereafter.[38]

Loockheed is also offering an intercontinental version of the TriStar which is known as the Lockheed L-1011 TriStar Intercontinental. It is a major revision of the intermediate-range aircraft,[39] involving an increase in the wing area[40] and fuselage length[41] and a virtually new engine - the Roll Royce RB-211-56; it has a range of over 5,000 nautical miles.[42][43] There are no firm orders for this type at the moment, but if orders materialise, then the certification of the Tri-Star Intercontinental is expected to take place in the autumn of 1973.[44] Standard seating on the TriStar Intercontinental will be 28 first-class and 252 economy.[45]

iii) McDonnell Douglas DC-10.- Strikingly similar to and closely parallel with the TriStar is the development of McDonnell Douglas DC-10, another large-capacity subsonic aircraft available in intermediate range, as well as intercontinental range versions. The medium-range trijet competitors are so close to each other, both in specification and programme management, that there is apparently little to choose between the two planes.[46] The dimensions of the intermediate range DC-10 are (basic TriStar figures in brackets), wing span 155 ft. 4 in. (155 ft. 4 in.); fuselage length 179 ft. 8 in. (177 ft. 8 in.); height over fin 57 ft. 6 in. (55 ft. 4 in.); wing area 3,550 sq. ft. (3,456 sq. ft.); wing sweep 35° (35°).[47] Both have three engines, two on the wings, one on the tail. The DC-10 intermediate range aircraft is powered by General Electric CF-6-6 turbofan engines of 40,000 lb. thrust, each,[48] and, depending upon seating arrangements, is capable of carrying 270 to 365 passengers.[49]

The DC-10 design, like the TriStar, resulted following studies made in response to an American Airlines requirement, issued in April 1966, for a large-capacity aircraft for US transcontinental operations.[50] After the American Airlines order for 25 DC-10s and a further option for 25 DC-10s on February 19, 1968, and United Air Lines order for 30 DC-10s with 30 options, Douglas decided to go ahead with the produc-

tion.[51] The first DC-10 was rolled out on July 23 this year[52] and flew for the first time on August 29.[53] Certification and first deliveries are expected in less than a year, and the aircraft is expected to enter service with American and United in October 1971.[54]

The long range variants of the DC-10 designated as DC-10-20/30 are the only extended range, large-capacity trijets so far ordered. They differ from the intermediate-range variant in having more powerful engines,[55] higher operating weights,[56] increased fuel tankage and a third main undercarriage leg to preserve pavement loadings.[57] Overall dimensions and seating capacity remain essentially unchanged.[58] The aircraft are said to have a range of 6,100 miles, enough to hop the Atlantic.[59]

The total orders and options for all versions of the DC-10 now stand at 241,[60] and are soon expected to increase to 250, out of which 126 will be firm orders and the remaining 124 will be options.[61] More than fifteen airlines have ordered this type.

iv) A-300B European Airbus.- The original A-300, intended to carry 330 passengers on 1,200 n.m. stages, was supported by the British, French and German governments on a 37 1/2, 37 1/2 and 25 per cent basis, respectively. It was to

be built by Sud (design leader), Hawker Siddeley and Deutsche Airbus and powered by two RB.207s of 57,500 lb. thrust, built by Rolls Royce, Snecma and Man Turbo.[62]

In December 1968, Sud and Hawker Siddeley announced plans to drop the aircraft in favour of a smaller, cheaper-to-develop airbus known as the A-300B.[63] The lukewarm attitude of the British Government to the project finally forced the other two governments to go it alone - a decision taken at the Paris show in June 1969.[64]

Final project definition proceeded last year with Hawker Siddeley still in the picture. Production is split, with Sud building cockpit, undercarriage and centre section and doing final assembly; Deutsche Airbus the fuselage and empennage; and Hawker Siddeley the wings. Fokker will build the flaps and slats.[65]

Powered by two GE CF6-50A turbofans of 49,000 lb. thrust, the A-300B is a large-capacity, short-to-medium range aircraft designed to carry a maximum of 295 passengers. Flight testing is scheduled to take place in 1972-73 with certification in the spring of 1973. Orders for the type have been slow to materialise, but Air Inter has taken option on four, and Air France and Lufthansa are on the threshold of ordering it.[66]

v) BAC Three-Eleven.- BAC is nearing a go-ahead decision on the production of its Three-Eleven design which was first made public at the Farnborough show in September 1968. The Three-Eleven design proposal is for a rear-mounted, twin-engined, large-capacity, short-to-medium range aircraft with a 237 inches fuselage cross-section giving a 227 inches internal trim-to-trim width, and accommodating from 233 to 294 passengers in various configurations. Power is provided by Rolls Royce RB.211-41 engines of 43,000 lb. thrust. The overall layout is rather like that of a scaled-up One-Eleven 400.[67]

Reservations for more than 40 of the 50 orders required by the company before it will embark on the programme are thought to have been received. Laker has placed a letter of intent for a number of aircraft, Court is known to be in the market, and BEA's chairman has spoken in favour of the project. The programme calls for a first flight by the end of September 1972, certification by the end of 1973, and 40 aircraft delivered during 1974.[68]

b) Supersonic Transport.

Few other means of transport, when first proposed, have created as much controversy as the development of commercial airplanes that can travel faster than sound. Not since the

first attempted introduction of the horseless carriage - which was to bring, with its conveniences, a major source of pollution and fatal accidents - has such a shrill cry of outrage swept the world.

It is a widely held opinion, and one widely trumpeted, that the noise of the supersonic airplane, or SST, is deafening;[69] that the sonic boom is unbearable;[70] that a fleet of supersonic planes, flying in the upper levels of the atmosphere at 60,000 feet, could change the climate.[71] Testimony has been given to the US Congress by public persons, private citizens, and scientists in and out of the government referring to ultraviolet radiation capable of stripping all life from the planet.[72] Jet contrails, it has been suggested, could have a permanent cloud cover, heating the earth, melting the polar icecaps, and flooding the continents.[73] Less dramatically, there are those who are against it because the governments are financing the SST development. Some consider government participation a move toward socialism; others insist that the public money will never be recovered; and that the taxpayer will be paying for a highly sophisticated commercial airplane to be used by the privileged few.[74] Prospective passengers aboard such aircraft, so some have warned, could suffer radiation exposure,[75] or in the event of a loss of pressure at the 60,000-foot level, be rendered unconscious

within a minute.[76] Calculations show that if British and American plane-makers sell their planned total of supersonic airlines, the world could face a critical oil shortage within 15 years.[77]

These pitfalls, dangers, annoyances, and disadvantages have been given wide public circulation by bands of outraged citizens, by conservation groups, by environmentalists, by academicians, by lawmakers, and by scientists of varying stripes.[78] In the United States, a powerful move is afoot to scrap entirely the SST project, on which 730 million dollars of Government money has been obligated.[79]

No one denies that the SST presents the greatest challenge in aviation history; it requires a high degree of technical, management and scheduling sophistication, besides great capital investments, to realize its full potential. Proponents of the SST, however, point out that the aircraft represents a technological advance in aviation with valuable spin-offs for other segments of the economy.[80] The supersonic transport is more than aviation evolution; it is a major revolution, economic as well as technical. According to an aviation writer, it is a "necessary revolution, an inevitable development, just as the age of subsonic flight had to succeed the lumbering pistons."[81] While observing that "many of the dire predictions being aimed at the SST have a curious

resemblance to the ones hurled a few years ago at the subsonic jets," he labels the critics of the SST as "the same cynics and voices of doom who scoffed at the subsonic jets," and accuses them of "exhibiting the same lack of faith in aviation progress that they did at the start of the jet age."[82]

The SST supporters also stress that every effort is being made to make the aircraft environmentally compatible.[83] The US Government is now spending 27 million dollars to study the effects SST's might have on the environment.[84] The National Research Council of the National Academy of Sciences and the Office of Meteorological Research have both concluded there would be "no appreciable atmospheric disturbance if SST's made 1,600 flights daily in the stratosphere."[85] General Electric has committed 25 million dollars to the development of a quiet, smokeless engine. Mr. Magruder, SST project director in the US Department of Transportation, predicts the end result would be an engine as quiet as those now in use on commercial jets or quieter.[86] Experiments on the American SST engine indicate that the airplane is already within the FAA's acceptable noise limits when landing and on take off.[87]

The Boeing Company challenges assertions that the engines will pollute the atmosphere, by stating that pollution from one jet engine is less than 1 per cent of that from an auto engine. The company claims a fully loaded SST cruising

at 1,780 miles an hour will produce less pollution than cars travelling at 60.[88]

When SST opponents raise the specter of sonic booms disturbing the population and causing property damage on the ground, Boeing notes that the U.S., Britain, France and others[89] have prohibited supersonic flight over land, thus removing that danger.[90]

In the United States, supporters of the SST insist that killing the SST would also kill the US's big stake in the world aircraft market, estimated at 125 billion dollars between now and 1990. Since the mid-1950s, the market has been 80 per cent dominated by the United States.[91] The British and the French are jointly developing the Concorde SST which is expected to enter commercial operation over the North Atlantic in 1974.[92] The Russians are in the final test stages of their SST, designated the TU-144, which they plan to place in service between New York and Moscow in 1972.[93] Aviation experts in the US fear that if the US loses the SST market, it will also lose most of the market of subsonic aircraft, particularly since the British and the French are also developing large-capacity subsonic "air buses" for short-distance travel.[94]

As for the Russians, they are embarked on a worldwide "hard sell" of their SST.[95] In exchange for buying the TU-144, government-owned airlines in Scandinavia, the Netherlands, India, Pakistan, Japan and even Britain and France are being offered the prospect of additional landing rights in the Soviet Union, along with permission to fly over Siberia.[96]

US airlines have indicated that if American SST's are not available, they will fly the foreign models on their overseas routes to maintain competition.[97] By Transportation Department calculations, the purchase of foreign SSTs by US airlines would result in a dollar drain of 7 billion.[98]

The Department of Transportation's request for a 290 million dollar appropriation to begin actual construction of two SST prototypes is before the Senate. The House approved the SST funding in May 1970 by a narrow margin of 176 to 162. On August 17, 1970, the House-Senate Sub-committee on Economy in Government recommended an end to federal participation in the project on the ground that the Government might wind up spending at least 3 billion dollars with little prospect of recovering its money.[99] In the opinion of US officials, the SST money request now before the Congress has reached what aviators call the "point of no return." For the Senate, they say, the choice is clear: the time for a final decision has

arrived - either keep the US in the SST race or turn back now.[100] Some of the Senators agree. Senator Henry Jackson observes: "It is a fact of life that the SST is here. The question is whether America is going to participate in this technology."[101]

According to The Montreal Star, "pride in the nation's technological record and reluctance to write off all the millions already spent in the venture probably will carry the day" for the US SST.[102] Considering that the Concorde and the TU-144 are on the way, and competition being what it is, the airlines will make the move to supersonic aircraft; it seems likely that the twin-issues of national prestige and national economics will prove to be the decisive factors in getting the SST approval in the Senate. The White House has already given its support to the project.[103] The writer, therefore, is inclined to believe that the US will stay in the SST race, and will ultimately develop and produce the Boeing 2707-300 SST as a competitor to the Concorde and the TU-144.

The supersonic transport, by virtue of its extremely high speed, has the potential of providing dramatic time savings. For example, flight time from New York to Paris will be 2 hours and 40 minutes, less than half the flight time now required. The SST will, in the words of Halaby, "turn the Atlantic into a river and the Pacific into a lake."[104]

The speed and the consequential capability of moving skilled people around the world faster, experts stress, is the major attraction of the SST. According to Wheatcroft, subject to the twin qualifications of costs and scheduling problems, "an increase in aircraft speed is almost always commercially attractive to the airlines."[105] For the passengers also, an increase in speed is a tempting attraction. A recent survey conducted for TWA revealed that two-thirds of all passengers responding would prefer to fly supersonically, and 56% would pay a premium of $50 to do so on a 2,000-mile flight.[106]

The second profoundly important economic characteristic of the SST is the vastly increased productivity of each individual airplane. The Concorde and the Boeing 2707 are estimated to have a productivity of 182,000 and 540,000 seat-miles-per-hour, as compared to a productivity of 77,000 seat-miles-per-hour for a DC-8.[107] The realization of this great potential will eventually depend on the commercial viability of the SST. During the past year, an all-out study of simulated operation on SST routes in the 1980's was carried out by FFA. Making the comparison on the basis of total operating cost rather than direct operating cost, and still using 1969 values, the SST beats the 707 substantially and comes much nearer to equalling the impressively low 747 costs.[108]

This is true because various elements of ground support and overhead costs gain the advantage of the SST's greater productivity in terms of seat-miles flown per hour.[109]

Projecting a little, the study revealed that the advantage of the SST's greater productivity increases each year as labour costs go up. A faster airplane is less labour-sensitive than a slower airplane. The study also found that by 1978, which is the introduction date for the American SST, its total operating cost comes within one-tenth of a cent per seat-mile of matching the 440-seat economy version of the 747. By the eighties, when larger number of SSTs would be in service, their total operating cost is projected to be approximately equal to the 747's. From the later 1980's on, the Boeing 2707-300 shows up more economical to operate.[110] Furthermore, during the first few years of service, the SSTs should experience very favourable load factors, due to high demand and short supply, as was the case when the jet transport was first introduced. When one gives weight to this increased profitability in the early years, the SST turns out to be economically competitive with the 747 through all the years of its operation.[111] Considering this, one has to agree with Horace Sutton that "the age of supersonic transport has arrived."[112]

Even if commercial supersonic flying is banned completely overland, about 50 per cent of the international markets over 700 miles can still receive supersonic service.[113] The Concorde's makers pointed out that 75 per cent of world's air traffic on long-haul routes is over the sea, and a complete ban on supersonic flying overland will not affect SSTs operation over high seas.[114] The large time savings and competitive cost of the SST in long stage lengths may well make it the dominant aircraft by 1990 in these markets, if the SST demand density is high enough to sustain load factors of about 60 per cent and utilization rates on the order of nine to ten hours per day.[115] The situation is best described by Pan Am's Najeeb Halaby who believes:

> "The supersonics are coming - as surely as tomorrow. You will be flying one version or another by 1980 and be trying to remember what the great debate was all about."[116]

i) Tupolev TU-144.- One of the coming supersonics, the first to appear was Russia's TU-144. Living up to claims that Soviet Russia would fly an SST in 1968, Tupolev had the TU-144 in the air for 38 minutes on December 31 of that year, beating Concorde by about two months.[117] The first supersonic flight was made on June 5, 1969, and the aircraft has subsequently made a number of supersonic flights.[118]

Like the Concorde, to which it bears a striking resemblance, the TU-144 has a fixed, swept-back delta-shaped wing. The plane has a lower gross weight (330,000 lb.) than Concorde, and slightly less seating capacity (126 passengers) and range (3,500 miles).[119] Powered by four Kugnetsov NK-144 by-pass turbofans of 38,580 lb. thrust (with reheat), the TU-144 is 180 ft. long and has a wing span of 81 ft.[120] No orders for the type have been announced so far, but it is learnt that Aeroflot plans to commence limited operations in 1972.[121] Design cruising speed is 1,550 m.p.h.[122]

ii) BAC/Sud Aviation Concorde.- The Anglo-French Concorde is based on aerodynamic research into the slender delta wing plan-form conducted by the Royal Aircraft Establishment during the mid-1950s. In 1959-61, a design competition between BAC and Hawker Siddeley to determine the optimum characteristics of a transatlantic commercial aircraft led to the initial specification of Concorde.[123]

At the 1961 Paris show, Sud-Aviation displayed a model of a similar aircraft called the Super Caravelle and designed for medium ranges, and during the following 18 months the possibility of a joint Anglo-French undertaking was investigated. On November 22, 1962, an agreement was signed to build four prototypes and two structural test airframes

of an aircraft to be capable of carrying an economic payload from Paris to New York at a cruising speed of Mach 2.2.[124]

The first prototype, 001, was rolled out of Sud-Aviation's Toulouse plant in December 1967 and the second prototype, 002, emerged from the BAC Filton factory the following September.[125] The French-assembled prototype first flew on March 2, 1969, with André Turcot at the controls,[126] and Brian Trubshaw flew 002 on April 9, 1969.[127] Concorde 001 went supersonic on October 1, 1969, during its 95th test flight.[128] Together, the two prototypes have logged about 225 hours of flight testing in 120 flights,[129] and the 002 in recent weeks, has flown at more than 1,140 miles an hour.[130] More recently, the 001 has flown at mach 2 or twice the speed of sound.[131]

The Concorde is a highly streamlined mid-wing monoplane with a fixed triangular (delta-shaped) wing and four Rolls Royce Bristol/Snecma Olympus 593 two-spool turbojets of 38,300 lb. thrust (with reheat), mounted in pairs boxed under the outer wings.[132] Other specifications are: length 204 ft; wing span 83 ft. 10 in.; maximum ramp weight 385,000 lb; number of passengers 128; cruising speed 1400 m.p.h.; and range 4,550 miles.[133] Concorde certification is expected in May or June 1973,[134] and the commercial operations will

commence in 1964.[135] Sixteen airlines have so far taken 74 delivery positions for the Concorde.[136]

iii) Boeing B-2707-300.- Being developed as a second-generation SST, the Boeing 2707 will be bigger, faster and cheaper to operate than its European competitors, the TU-144 and the Concorde.[137] It was on June 5, 1963, that President Kennedy described the supersonic flight as "the challenging new frontier in commercial aviation," and committed the United States to build "a commercially successful supersonic transport superior to that being built in any other country in the world."[138] Then followed three and one-half years of intense and bitter competition between Boeing and Lockheed (for airframe design) and General Electric and Pratt and Whitney (for engine design).[139] On December 31, 1966, the Government announced its decision in favour of the Boeing swing-wing airframe design and the General Electric engine.[140] On October 21, 1968, however, Boeing announced the abandonment of the swing-wing principle which had been favoured exclusively through successive design proposals since 1963.[141] The new design incorporating a fixed-wing delta plan-form of large span, of modest leading-edge sweep angle, and with high-lift flaps, in conjunction with a tailplane, and designated B-2707-300, was submitted to FAA on January 15, 1969.[142]

On September 23, 1969, President Nixon gave a go-ahead for the programme subject to Congress approval of the necessary finance.[143]

The Boeing 2707-300 will be 298 feet long and have a wing-span of 143 ft. 5 in. Its four General Electric GE4 single spool turbojets of 67,000 lb. (with reheat) thrust will give it a cruising speed of 1,786 m.p.h., and a range of 4,400 miles. Maximum passenger capacity will be 298, and maximum ramp weight will be 745,000 lb. The airframe will be mainly of titanium.[144]

Planned first flight of one of the two prototypes to be built has slipped from early 1972 to late that year,[145] and possibly into the first quarter of 1973.[146] Production is planned for 1975 with deliveries commencing in the spring of 1978.[147] Twenty-six carriers have taken 122 delivery positions for the Boeing 2707-300.[148]

2. Competitive Urge to Acquire and Operate Advanced Technology Aircraft.

At every milestone in the tremendous race of aviation technology, the hardware of the previous generation looks relatively crude, inefficient and uneconomic, before being phased out of service by a new generation of faster, larger, safer, more efficient and certainly much more expensive air-

craft. The pressure from the pace of new technology accelerates the early obsolescence of the previous generation of aircraft and advances the introduction of the new generation of aircraft. The airlines, attracted by the new characteristics both technical and commercial, and driven by the highly competitive nature of the industry, are forced to change their fleets as soon as the new aircraft move out of the assembly lines. Since World War II, a new generation of aircraft has entered the scheduled airline service at the rate of once every five to seven years. This has been going on despite the financial and organisational strains which the world's airlines had to put up with.

With the appearance of the 747, DC-10, L-1011, A-300B, Concorde and the TU-144, the decade of dominance by the first-generation jet transports is coming to an end.[149] The emergence of this new and galloping aviation technology is making a clear and unmistakable demand on the international airline industry: to remain competitive in the decade of the seventies and beyond, the airlines of the world must engage themselves in a massive and costly re-equipment programme involving advanced technology, large-capacity subsonic jets and supersonic transports. This indeed is an exacting demand and has provoked criticism against the pace of technology as well as

the desirability of embracing the consequential developments of advancing technology.

Boeing 747 is "five to ten years ahead of its time" from an airline's viewpoint in the opinion of Forwood G. Wiser Jr., Trans World Airlines president.[150] Wiser says that the airlines "would have been much better off in many ways had the Lockheed TriStar L-1011 and the McDonnell Douglas DC-10 preceded the 747." He adds, "the whole equipment picture is like a bad dream. Manufacturers are moving faster than we can absorb the new technology."[151] Sheikh Najib Alamuddin, MEA president, has similar views on the SST. He observes, "through pressure from the aircraft manufacturers and from the giant airlines, the industry has been forced to go into supersonics at a relatively early stage."[152]

The Montreal Star editorially comments that "the jumbo subsonics were pushed on the carriers through adroit salesmanship capitalizing on the industry's intense competitive position." It notes that the jumbos "are a few years ahead of their time and bringing a forced obsolescence to a generation of aircraft which should be good for a long time to come." Of the coming SSTs, it points out that "the operators would be the happiest people in the world if they could just forget the whole thing."[153]

Sir William Hildred, IATA's former director general, is even more bluntly critical. He remarks, "like a dog, an aeroplane is ready to die in twelve years. The jets, now middle-aged, only ask for another five or six years of useful life."[154] He sums up his feelings about the SST: "I hope I shall not live to see the damn thing."[155] Elwood Quesada, FAA's first administrator and now an American Airlines director, sums up the views of many airline chiefs when he says: "There are a lot of people that say that the airlines wish the (SST) airplane would go away, and I am one of them."[156]

There is no doubt that many airline managements harassed by the compelling demands of new technology would like to stop the technical clock and gasp out a few more years with their ageing jet transports before facing their fleet replacement problems.[157] But these hopes are doomed by the inexorable competitive pressure of revolutionary new technology.[158] "No major airline," according to Robert Hotz, "can hope to stay in business during the 1970s without phasing out its current equipment and embracing the operating economics and revenue production of the generation of wide-bodied transports."[159] The same will hold good in case of the SST as soon as it enters scheduled airline service.

Time and again the international airline industry has shown that when one airline buys a new generation of aircraft, all feel the urge to follow. Late in 1955, when Pan American ordered the first Boeing and Douglas jet transports, the development was followed by "an undignified rush to the west coast of the United States by the leaders of almost every airline operating long-distance trunk air routes."[160] Similarly in 1966, when Boeing decided to go ahead with the production of the 747, and the first order for the jumbo jet by Pan American forced Lufthansa, Japan Air Lines, BOAC and other carriers to follow; Interavia noted: "Other major airline companies can be expected to come out with procurement decisions in the near future for fear of finding themselves in an uncompetitive situation."[161] As expected, the other lines followed and to date more than 200 superjets have been ordered by 32 carriers.[162] About 25 airlines have ordered more than 400 of the slightly smaller trijet airbuses.[163] Nearly 200 delivery positions have already been taken for the Concorde and Boeing 2707-300 SSTs by 28 leading airlines of the world.[164]

Competition among airlines, although a strong motive for re-equipment, is not the sole motive for replacing previous equipment by new equipment; no one will deny that the

overwhelming competitive appeal of the advanced technology, that is, the economics of aircraft speed and aircraft size, are equally compelling forces for the introduction of new aircraft into airline service. The large-capacity subsonic jets and supersonic transports promise a change in the quality of air travel that is important. There are signs already that the new planes will have greater passenger appeal than their predecessors.

The 747s are recording higher load factors than their smaller competitors.[165] The competitive impact of the 747 is evident in Washington-London market where Pan American is using the giant airplane for its one-stop service through Boston against Trans World Airlines' non-stop 707 service. Despite the larger travel time, including a 55-min. Boston layover, Pan American's traffic for June 1970, the first month of service grew 86% over traffic in that market for the same month last year.[166] The Economist predicts that "the passengers who have once flown in the jumbos are going to take no more kindly to travelling in narrow jets again than the first jet passengers did when they went back to the propeller aircraft."[167] For the major carriers in the medium- and long-haul markets, advanced subsonic and coming supersonic technology seems to possess such great passenger appeal that it almost becomes a competitive necessity.

"The airlines realize," says Sir George Edwards, "that they are going to be pushed out of the trade on the highly competitive routes, like the North Atlantic run, unless they have got SSTs."[168] CP Air president, John C. Gilmer agrees: "In the hot contest for the air travel dollar, no top-flight airline can afford to fly second fastest. By promising to carry passengers at three times the speed of today's airliners, the bullet-velocity supersonic transport (SST) of the late seventies becomes mandatory for an airline that intends to compete successfully on the world's blue-ribbon routes."[169] Sir Giles Guthrie, former BOAC chairman, is on record having stated that if BOAC were to remain one of the world's two biggest international airlines, it had no choice but to acquire the new equipment like the 747 and the supersonic transports.[170]

Today, it has become obvious that the 747 will dominate the international aviation industry in the years to come. It will become the standard for long-distance travel. The first SSTs undoubtedly will pass it in speed and glamour, but mass travel by air will be accomplished by the 747, aided by its smaller, and lesser, tri-jet sisters.[171] Flight International accurately forecasts: "In the 70s, run-of-the-mill medium-to-long-range routes will be flown by the 747, DC-10, and TriStar, which will be so commonplace as to be taken for

granted."[172] FAA makes a similar forecast for the period 1970-1981: "Two- and three-engine jets will be the predominant aircraft in the U.S. fleet toward the end of the forecast period, reflecting a significant build-up of three-engine wide-body aircraft and the assumption that a two-engine wide-body jet will be available in the late 1970s. Four-engine jets will decline after 1972 as lower-capacity models are phased out of service. The Concorde is assumed to enter the fleet in fiscal year 1973, and initial U.S. SST airline service will begin in 1978."[173] FAA further forecasts: "Although some types of current two-, three-, and four-engine jets will continue to be produced for the next few years, there will be an increasing demand for the new wide-body jets."[174]

Japan Air Lines president, Shizuma Matous says: "We have every reason to believe that airline competition will grow fiercer and fiercer in future."[175] Almost every one in the airline industry agrees, and they further agree that in such competitive environment, no airline flying the second best equipment can hope to successfully compete against its better equipped competitors. The airlines realize that their survival in this decade and beyond lies in acquiring and operating the large-capacity, subsonic jets and supersonic

transports. Regardless of whether the airlines like it or not, the march of technology is dictating a changeover from the first-generation jet transports to the new jumbo jets, airbuses and the coming SSTs. Any international airline that intends to remain in business cannot afford to ignore this significant development and survive without operating advanced technology aircraft.

3. The Soaring Cost of New Equipment, Capital Shortage and Financing Problems in International Airline Industry.

The aviation technology advances at a considerable pace, and at a more considerable cost. In the history of aviation, every generation of new aircraft has always been much more expensive than the aircraft that it replaces. The new large-capacity subsonic jets and the supersonic transports are no exception to this general rule.

After World War II, a Convair 240 was available for only $240,000, and a DC-6 cost $1.4 million. The Constellation and the Electra were worth $2 million and $2.5 million, respectively. The early model 707 and DC-8 were sold for approximately $5 million, and more recently, the 707-320 and the Super DC-8-63 are valued at approximately $8.5 million and $10 million, respectively.[176] Thus, it is evident that every improvement in the aircraft performance and productivity has a staggering price tag.

Comparatively, the prices of the advanced technology aircraft are so high that they seem prohibitive. The Boeing 747, exclusive of spares, is quoted around $23-24 million.[177] The DC-10 and TriStar, trijet airbuses, cost $17 million each without spares.[178] Effective July 31, 1970, the prices of their intercontinental versions have been raised by 4%. Although estimates vary, the current fly-away price for both DC-10-20/30 and TriStar Intercontinental, excluding spares, is approximately $18 million.[179]

The Concorde, which was originally expected to cost about $12 million, is now expected to cost at least $21 million.[180] Some recent estimates, however, put the cost per unit at $23-25 million.[181] The Boeing 2707-300 SST is expected by the FFA to cost $37 million in terms of 1967 dollars and about $52 million in terms of dollars that apply when the planes are actually sold.[182] An analysis made by the Institute of Defence Analyses, Inc., at the request of FFA, indicates that the price may be $60 to $80 million, especially if supersonic flight over land is banned.[183]

The new planes are so costly that their advent has plunged the airline industry deeply into debt.[184] For some airlines, the $24 million purchase price of the Boeing 747 is proving an "embarrassingly expensive capital outlay."[185]

At a time when profits are down, credit is expensive and other costs are climbing, the airlines, however, feel that they have no choice but to order the 747 and other wide-bodied jets.[186] Already, they have obligated themselves to invest more than $11 billion to convert to the 747, the DC-10 and TriStar, not including spares and follow-on parts support costs.[187] An alarming aspect of this massive re-equipment is that the airlines are facing it with little in hand to face the greatly increased cost of new aircraft, and this could require an investment as high as 100 billion dollars (in terms of 1969 dollars) by 1985.[188]

The initial aircraft procurement cost is only the beginning of a new round of expensive investments that the superjets make necessary.[189] In the next few years, the airlines have to spend another 4-5 billion dollars on spares, additional equipment and ground facilities.[190] It has been estimated that investment other than aircraft raises the total investment by approximately 30 per cent.[191] While the level of investment in spare parts has been quite stable over time (18 to 20 per cent of the value of the aircraft for both piston and jet planes), investment requirements in ground equipment are increasing as terminals grow in size and become more crowded. The trend is clear in the aggregate

investment of U.S. airlines in recent years. Investment in flight equipment has grown from $593 million in 1960 to $644.5 million in 1964. Ground equipment investment in the same period has grown much faster, from $45.7 million to $80.6 million.[192]

The 747 well illustrates the magnitude of the costs of acquiring new ground equipment for the jumbo jets. Nothing now at an airport fits this new airplane. The passenger doors are six feet higher off the ground then those of a 707; fuel requirements have nearly trippled; and what used to be a walk-around inspection is now a drive-around, on a special piece of equipment which can lift mechanics, inspectors and flight engineers up to the areas they must check. In all, it requires some 50 different pieces of ground equipment to service a 747 during a routine transit. This ranges from a string of cargo contained dollies valued at $1,500 each to an aircraft tow tractor with a $125,000 price tag.[193] There is no real average cost available, what with pooling at one airport and independent operation at another, but it is safe to say that any station expected to handle the 747 needs a million dollars worth of equipment and terminal reconstruction to handle that one airplane.[194] Pan American, which is the first and also the largest operator of 747, has invested $18

million in special ground equipment and $50 million in a new passenger terminal at New York's Kennedy International Airport.[195]

The additional capital for spares and ground equipment thus substantially raises the cost of new aircraft. Air Afrique gives the cost of its two DC-10-30s with spares and support equipment as $50 million.[196] Air India is reported to have obtained a loan of $60 million to pay for the purchase of two Boeing 747s and spares.[197]

When new aircraft are purchased, additional capital must be invested in crew training.[198] The bigger jets require a four-man cockpit crew - three pilots and one navigator/flight engineer - and each needs a minimum of three crews to keep the plane running (because of the constraint on a pilot's flying time and because of the need to use planes 9 to 10 hours a day). The basic training procedure requires between 15 and 20 hours per man on an electronic flight simulator and an equal amount of time in live flying. The total training costs for pilots to staff first-generation jet transports has amounted to between $250,000 and $400,000 per pilot.[199] The training costs of pilots to fly the large-capacity aircraft and the SSTs, because of their higher operating costs, will tend to be still higher.

The new planes are so big in size that almost all airlines operating them are required to make capital investment for new hangars, workshops, and even major overhaul and maintenance bases. If a fleet is operated, this type of base requires an investment of several million dollars at a minimum.[200] Air Canada is developing a $15 million line maintenance facility at Dorval for the Boeing 747s, and Air France has already spent about $10 million on its new 747 hangars at Orly Airport, Paris.[201] BOAC is reported to have invested $9.6 million in a massive 747 airframe maintenance hangar at Heathrow Airport, London.[202] To overhaul the JT9D engines of the 747, BOAC has expended its Treforest overhaul facility by erecting a totally new building at a cost of $3.6 million.[203] The KSSU airlines have purchased a Boeing 747 flight simulator for $3 million.[204]

Leaving aside the investment required in spares and ground facilities, recent IATA estimates place total outstanding subsonic orders at about $18,000 million, of which $9,000 million accounts for some 550 high-capacity jets.[205] James P. Mitchell, a vice president of Chase Manhattan Bank, estimates that the US airlines alone would require $53,000 million to purchase new aircraft between now and 1980.[206] While noting that in the year 1969 about L 1,000 million was

spent on new aircraft, spares and so forth, Flight International estimates that in the first half of the seventies, the airlines will have to find, with spares and equipment, about L 6,000 million for new wide-body 747s, TriStars, DC-10s, short-haul airbuses, and Concordes. According to Flight, this rough, but probably "conservative"estimate does not include the heavy initial costs of training, excess capacity and technical delays usually associated with the introduction of new and bigger types. Nor do they take account of new terminals, or of the capital losses so often incurred when a wave of new technology flattens the market for current fleets and complacent depreciation policies are exposed.[207]

Evidently, the transition to wide-bodied jets and the SSTs has sharply raised the capital requirements in the airline industry. The absolute magnitude of investment in large-capacity subsonics and supersonics is large. Several planes are a minimum fleet for efficient operations, and this minimum depends upon participation in spares pools and negotiation of reasonable subcontracting arrangements for overhaul and maintenance work. The level of capital requirements is so high that it represents a certain entry barrier to large subsonic and supersonic operations.

Vast sums of money are needed by the airlines to take advantage of the recent advancement in fleet capability. As a measure of their needs, BOAC alone is committing L 401 million in its investment programme for 1967/68 to 1972/73.[208] But the supply is limited in the debt market and what is available is at exorbitant interest rates.[209] In the tight money market, the airlines are required to pay about 9% interest on borrowed money.[210] For the world's airlines, the raising of funds in the international markets is becoming more and more difficult, and the rates of interest are continuously going up. Down payments for aircraft vary now between 10 and 20% and interest rates are around 8% to 9%.[211] "With the increased demand for financing," reasons Sheikh Najib Alamuddin, "interest rates are likely to go still higher."[212] Competition for capital funds is intense and continued tight money makes their availability uncertain for airlines.[213] BOAC stresses that one of industry problems of the 1970s confronting many international airlines is "the problem of finding dollars on acceptable terms to buy the new American jet aircraft."[214] KLM, which, during the period 1970-74, will invest $695 million in additional aircraft, handling, maintenance and training equipment, notes that "it is difficult to effect the necessary financing without the interest to be paid exerting too strong a pressure on the profitability of the

Company."[215] It also adds: "The entire civil aviation industry is faced with this problem."[216] SAS maintains that the industry in general and SAS, as a carrier, are confronted with the problem of "the high rate of investments and the consequent demand on finance."[217] Pan Am chief Halaby suggests the formation of a European financial consortium, along the lines of the Export-Import Bank, to help provide airlines with funds to purchase the aircraft.[218]

It is needless to stress the effects of the shortage of capital. Difficulties in raising a loan of $A50 million ($55.5 million) on world markets at reasonable rates has forced Qantas to postpone plans to take up its option on two more Boeing 747s.[219] The airline tried to raise the money in Switzerland and West Germany, last year, but withdrew when it was indicated that it would be conditional on Swissair and Lufthansa being given additional rights to Australia.[220] "There are signs," Flight editorially comments, "that the growth of air transport in the seventies may be slowed down by a shortage of capital."[221] Aviation Week and Space Technology expresses a similar concern: "Capital restraints are likely to force revisions in equipment plans."[222]

The rapid evolution of aircraft technology and its use in commercial aviation has ushered in a whole new generation of highly-expensive jetliners, and necessitated huge

investments resulting in capital shortage on reasonable term. This economic problem represents a big challenge to the airlines; and, in order to assess their ability to tide over this difficult situation, it is considered necessary to examine the state of the world airline industry with special reference to its economic aspects creating increasing pressures in the industry towards greater inter-airline collaboration.

4. The Financial State of International Airline Industry.

Generally, in any industry, the financial results are a fairly reasonable index of its state of affairs. The state of airline industry is perhaps best described by Flight, which says: "For the airlines, the 1960s were the decade in which air transport finally established itself as the medium of mass travel. But they ended on a slightly sour note of financial difficulty, with a promise of fresh troubles on the way, at any rate in the early 1970s. Signs of upheaval caused by massive re-equipment are already appearing."[223]

First quarter 1970 reports from some of the world's leading airlines reveal that the air transport industry is in a sad condition financially.[224] The fact that this is the quarter when the Boeing 747, seen by many airline executives as a panacea for all their economic woes, was first introduced

into service, underlines the fact that the industry is in a depressed condition. The unsuccessful application to the CAB by a number of US carriers for a 5 per cent surcharge for travel on the B-747 doubly underlines this fact.[225]

In the United States, whose airlines account for about 55 per cent of the operating revenues of ICAO member states' airlines,[226] the overall traffic and financial outlook for the rest of the year is that the U.S. airline industry will have a deficit for the year. ATA termed the airline financial condition "critical".[227] Six of the twelve major carriers already have reported deficits totalling $92 million for the first half of the 1970.[228] Trans World Airlines alone suffered a $48.9 million net loss for the first half of 1970.[229] United reported a net loss of $20.7 million for the same period,[230] and American Airlines' net loss for the first half of this year was $1.7 million.[231] In the same period, Pan Am's net loss amounted to $19.6 million.[232]

Preliminary estimates of the financial results of airlines of ICAO Contracting States in 1969 show that the global economic situation of air transport, which constantly improved from 1962 to 1966, has deteriorated since, particularly in 1968 and 1969.[233] In fact, in 1969, total operating profit for these airlines, although reaching $627 million (preliminary results), was only 3.9 per cent of the operating revenues,

as against 5.4 per cent in 1968, 7.5 per cent in 1967 and 9.5 per cent in 1966.[234] It must also be remembered that operating profit is subject to substantial deductions due to non-operating items such as interest on loans and certain forms of tax, before net profit or loss can be determined.[235] These deductions can be in the order of several hundred million US dollars. Taking these deductions into account, it seems that in 1969, for the second consecutive year, the revenues of airlines of ICAO states as a whole scarcely covered their costs.[236]

These global results are occasionally rather misleading owing to the influence of a small number of very large airlines. Final individual airline financial statistics are not available for 1969, but it may be noted that in 1968, when the world average operating profit was 5.4 per cent of revenues, 57 per cent of the airlines were below it.[237]

In the same year, about a quarter of the airlines reported operating losses and a further 8 per cent made operating profits of less than 2 per cent of their revenues.[238] In 1969, Pan Am recorded a net loss of $25.3 million.[239] Other airlines that suffered losses include Allegheny, ALM, Air West, Mohawk, Overseas National Airlines, Ozark Airlines and Universal Airlines, and their losses were $6.2, $1.74, $20.8, $4.7, $0.67, $3.99 and $3.2 million, respectively.[240]

In 1968, continuing deterioration in the industry's financial situation produced inadequate margins of operating and net profit. IATA Director General, Mr. Knut Hammarskjold, notes that "the unfavourable financial trends that have been developing in the airline industry became even more pronounced in 1968," and that world scheduled airline operating expenses continued to increase at a faster rate than operating revenues - 15.5 per cent versus 11.3 per cent. As a result, the airlines' operating profit declined from $934 million in 1967 to $550 million in 1968. This meant that the operating profit, expressed as a percentage of total operating revenues, has declined over the past three years from 9.5 per cent in 1966 to 7.4 per cent in 1967 and 3.9 per cent last year.[241]

This is, of course, not a complete picture. When deductions are made for such non-operating items as interest payments and taxes, which amounted to some $500 million, there was only about $50 million left, or a return of 0.4 per cent on operating revenues in 1968. Indications are (and ICAO 1969 report proves) that these adverse financial trends are continuing.[242]

5. The Rising Costs in International Airline Industry.

The cause of the adverse economic and financial trends that have been developing of late in the airline industry is not difficult to pinpoint. It is simply that costs have been increasing faster than revenues. Over the last three years (1965-1968), the operating expenses of the world's airlines increased at an average of 16.5 per cent per year, while the rate of increase for total operating revenue was only 14.2 per cent per year. The result of expenses and revenues continuing to increase at these diverging rates is most disconcerting, and if expenses continued to exceed revenue by this amount, by 1972 the industry would have a deficit of some $1,400 million. By 1975, the deficit would be around $4,300 million.[243]

The faster increase in airline costs is partly due to worldwide inflationary trends in wage and salary levels, and in costs of materials and services purchased by the airlines, as well as such other factors as airport delays.[244]

Airline costs of all varieties are climbing at an accelerating pace. TWA's costs for rental and construction of ground facilities have gone up 15% in the past two years. The advent of the large-capacity jets has added another twist to the spiral. Pilots who fly 707s for Pan Am make

$46,000 a year, but pilots of the 747s draw $59,000.[245]

Airline bookkeepers are being forced to add a new item to their system of accounts: hijacking expense. The total for the two years since hijackings became frequent may amount for $15 million, according to one unofficial estimate. According to Tel Aviv sources, El Al's security bill is believed to be in excess of $1 million a year. El Al, Ethiopian, Cubana and a number of other carriers have security guards on scheduled trips.[246] The American Government's recent decision to put two guards on each American international flight as a preventive measure against hijacking is going to cost $28 million for the year 1970-71.[247] Even if the government or the passengers pay for them, their very presence on every flight may turn out to be a penalty on the payload, especially during peak season.

There is a possibility that the airlines may be required to pay damages to their passengers on hijacked flights. One of Canada's leading authorities on air law, Montreal lawyer N.M. Matte, observes that a passenger who was injured or who felt that his life was disrupted by a hijacking would have a good legal case against the carrier.[248] The first case of this nature claiming $75,000 damages has already been filed against Swissair by a 23-year old Brooklyn teacher who was hijacked to Jordan on September 6, 1970.[249]

One increased cost that the airline industry fears is an almost certainty is soaring insurance rates.[250] In London, the only market where war risk coverage is available, insurers say they envision 100 per cent increases on hijacking coverage and 25 per cent increases on basic coverage.[251]

One particular cost item giving the industry considerable cause for concern is the rapid increase in airport and air navigation charges. It is a cost item over which the airlines have no control and which has increased at a very high average annual rate of 20 per cent in the last ten years, reaching $527 million in 1968.[252]

Landing fees for a 707 jet last year were $330 in Paris and $738 in London; now it costs $808 to bring a 747 down in Paris, and $1,675 in London.[253]

If these past trends were to continue, these charges on an industry basis would have a considerable impact on the airline cost structure, rising to more than $1,400 million by 1972 and about $2,500 million by 1975. These charges already accounted for 4 per cent of total operating expenses in 1968 and if they continue to increase at these rates, they would amount to about 5.7 per cent of airline operating expenses by 1972 and to over 6 per cent by 1975.[254] At first, this increase of about 2% might not seem like a lot, but when it

is realized that the industry's profit margin in 1968 was a wafer-thin 1/3 of 1% (and even less in 1969), the increase is ominous.

In the recent past, it was possible for the air transport industry to overcome these trends because the jet aircraft was more efficient than its piston-engined predecessor. However, to do so now is increasingly difficult, particularly in view of the airlines' tremendous capital expenditures on aircraft, equipment and ground facilities for the era of mass travel by air.[255]

The high charges that the airlines pay for the use of airports and navigational aids show no sign of ending air traffic control delays which represent a significant cost item to many operators. As an example, the delays at Kennedy Airport in the summer of 1968 caused out-of-pocket expenses amounting to over $2 million per month to operators.[256]

While having to contend with increasing costs in recent years, the world airline industry has been experiencing a drop in revenue yields. ICAO figures for 1968 show that average revenue yield per tonne-kilometre performed dropped by 2.8 per cent over 1967 to 32.3 cents. Although this was lower than the 4.6 per cent decline in average revenue yields in 1967, it was combined with a 1 per cent increase in operating

costs per tonne-kilometre from 30.8 cents in 1967 to 31.1 cents in 1968.[257]

The deterioration in the economic situation of the airlines continued in 1969 as unit operating revenues per tonne-kilometre performed dropped from 32.28 cents to 31.91 cents (-1.1 per cent) while unit operating expenses per tonne-kilometre performed increased by 0.4 per cent from 30.54 cents to 30.65 cents.[258]

6. Falling Load Factors and Overcapacity.

Another alarming aspect of the world airline industry is the consistently declining load factors. During the last decade, there has been a general decrease in load factors. From 1961 to 1966, the decline was moderate, while since 1967 a new shift has been seen. The declining trend in load factors which was seen in 1967 and particularly in 1968, continued in 1969.[259]

The average weight load factor fell from 48.7 per cent in 1968 to 47.7 per cent in 1969 and was thus less than 50 per cent for the second consecutive year. Average passenger load factor also dropped in 1969, falling from 53.4 per cent in 1968 to 51.6 per cent in 1969.[260] Earlier in 1968, the over-

all weight load factor declined by 2.1 percentage points, and the passenger load factor fell by 3.6 percentage points.[261] The 1970 results so far available do not offer any encouragement, and as a matter of fact, there exists a possibility that this problem may be compounded by the introduction of large-capacity jets.[262]

The low average load factors experienced by the international airlines in 1960s show that the problem of excess capacity continues and is, indeed, likely to plague the industry for several years. This problem is further aggravated by the advent of large-capacity aircraft such as the Boeing 747. Wayne G. English, TWA senior vice-president, predicts: "The 747 would soon cause passenger over-capacity. It is entirely possible some airplanes will be sitting on the ground before 1971 is over."[263] "The immediate outlook," according to Time, "is for a few years of costly over-capacity."[263] BOAC also foresees "the danger of industry providing too much capacity as the result of over ordering of new jet aircraft."[265]

Some idea of the magnitude of the over-capacity is conveyed by the fact that by the summer of 1971, all B-747 operators together will have additional capacity in these aircraft for 30 million additional passengers annually.[266]

7. The Problems of Small Airlines.

Although the entire aviation industry is confronted with many serious problems, the problems of small international airlines are much more grave vis-à-vis their bigger competitors, particularly while facing the demands of the era of large-capacity subsonic jets and supersonic transports.

In general, the introduction of new equipment is a step which no carrier can afford to neglect, if it is to retain its share in competitive markets.[267] This obligates the small airlines to acquire large-capacity subsonic jets. They may wish that the SST would quietly go away for several years, but as soon as the leading airlines acquire the SST, competition will dictate that the small airlines follow.[268]

Each SST will cost more than most airlines earn in a single year.[269] Acquiring the new breed of advanced technology aircraft is a difficult problem for large operators, but much more difficult for the smaller airlines. They now find themselves faced with having to procure wide-bodied jets, costing three times as much each as the aircraft they are currently operating, and SSTs costing six times as much, and they are not even certain that they will be able to generate sufficient traffic to operate them economically.[270]

The Financial Post warns: "Small international airlines without the . . . jumbo jets, may suffer severe competition and could be forced into mergers."[271] Sheikh Najib Alamuddin observes: "Smaller airlines, who want to maintain their position in the market, have to re-equip in the early 1970s and this puts a tremendous strain on their finances. The most pressing need of smaller airlines is that for sufficient funds to keep pace with the rapid technological progress."[272]

Financing the jumbo jets and the supersonic transports is a very serious problem.[273] The problem is even more serious in case of small airlines, as very few of them can afford the financing of advanced technology aircraft, especially with the increased costs of obtaining money. Wassenbergh obviously refers to small airlines in stating: "The taking into service of these ever costlier, larger and swifter aircraft makes heavy demands on the airlines, and it may well be that not all of the present airlines will be able to continue flying with the most up-to-date machines."[274]

As for small airlines, there are very considerable problems in operating efficiently with small fleets. These problems arise both in the operational and engineering fields.[275]

On the operational side, an airline with a small fleet has great difficulty in providing adequate reserve cover to meet normal operating contingencies. It has equal difficulty

in finding enough spare time for crew training.[276] Small operators of wide-bodied jets and supersonic transports will find these problems even more pressing. I.S.MacDonald, of Air Canada, points out that all small operators of the SST will be getting much less utilisation out of them than out of their DC-8s or 707s. He cites the example of an airline with a fleet of six 2707s which could be faced with the need to have one aircraft as an operational spare, plus one on maintenance. Thus, only four aircraft, or 66 per cent of the fleet, would be operable at any one time. To produce the same number of passenger-miles per hour with 707s or DC-8s required about 20 aircraft. With two in maintenance and two as operational spares, there could still be 16 aircraft, or 80 per cent of the fleet, in use at any one time - making "a significant difference in operational efficiency."[278]

On the engineering side, small operators of large-capacity jets and SST will face equally serious problems. The maintenance and overhaul of these big jets will require a large investment in specialised equipment and test rigs. Disregarding the means or ability of financing, the smaller the fleet the more difficult it will become to justify economically the purchase of this specialised equipment. There will also be problems which arise from the need to hold adequate stocks of

spares and components, and this is inevitably more expensive for a small fleet of aircraft. Investment in spares holdings for an airline operating a fleet of less than five aircraft is likely to cost 50-60 per cent of the investment in the aircraft, whereas with a fleet of ten or more aircraft, the spares investment would be expected to be in the range 20 to 30 per cent.[279] It is for reasons of this kind that small fleets of large-capacity jets and SSTs will be inherently very expensive.

The small operators will also face difficulties in ensuring economic operation of two or three units, a nightmare for the planning and scheduling staffs if advantage is to be taken of the peak operating times throughout the day.[280] Mr. Donald Nyrop, the president of Northwest Airlines, is reported as having said that a fleet of five or six big jets is the minimum number of these aeroplanes which can successfully be operated by any airline. This opinion commands a good deal of support within the airline industry.[281]

"Many of the problems of small fleets can," according to Wheatcroft, "however, be alleviated, if not entirely overcome, by co-operative arrangements or by sub-contracting. For many airlines who have been obliged by the jet revolution to acquire a small fleet of these new aircraft, co-operative solutions have become an absolute necessity for survival."[282]

8. Increased Co-operation and Consolidation as a Requirement for Solving International Airline Industry's Problems.

The world's airlines are faced with many problems: capacity is increasing more rapidly than traffic; expenses are up more than revenues; labour is asking and getting big pay increases; and financing the coming generation of super-jets is giving airline executives anxious moments.[283]

The airlines do realize the gravity of these problems, and many of them are taking corrective measures leading to possible reduction of their operating costs. Pan American, which admittedly is "in trouble", has laid-off 2,300 employees[284] and prematurely retired several hundred others.[285] Recently, it announced the cancellation of its New York-California and New York-Hawaii flights.[286] Air Canada, whose profits went down to $1.5 million in 1969 from $8.1 million in 1968,[287] and which is committed for the purchases of ground equipment and aircraft worth $1 billion over the next ten years,[288] is seeking a 10 per cent raise in domestic fares[289] and laying off 145 management personnel.[290]

To remain profitable, SAS is searching for a successful solution of the problems of financing and the rapidly rising costs in all spheres of operation.[291] BOAC stresses the continuing need to reduce unit costs and the need to

achieve higher load factors than are currently experienced.[292] The major American carriers are asking for further fare increases of 4% to 10% on domestic flights.[293] To avoid sinking deeper and deeper into debt, the airlines must get a return of at least 10.5% of their capital investment.[294] To boost their earnings, the airlines operating across the well-travelled but highly-competitive transatlantic routes want a small fare increase. Their proposal for an increase of $5 one-way and $10 round-trip passenger fares was approved by IATA.[295] But the CAB has turned it down and called for further studies.[296]

Three major US trunklines - American, Trans World and United - are planning a continuation of diminished capacity growth.[297] They have reached an agreement placing a ceiling on available seat-miles in 15 major air travel markets between November 1, 1970 and September 15, 1972, as a limited experiment in cost control and improvement of load factors. This agreement, which has been submitted to the CAB for approval, carries the tacit approval of the White House and will receive full support of Board Chairman, Secor A. Browne, who has publicly expressed concern over excessive competition in some markets.[298]

It may be stressed that the airlines have limited control over their costs, as the bulk of expenditures are largely

determined by the action of outside organizations such as fuel and insurance companies, banks, airport authorities and labour unions. It is estimated that about 75% of total expenditures are highly affected by factors beyond the control of airlines.[299]

Under such circumstances, the above-mentioned measures do not hold the promise of offering a satisfactory solution to the complex problem of cost- control and financing and maintenance of new equipment. The problems of this decade are far too big for such arrangements which, in any case,must be regarded as interim in nature, and call for a much wider thought and a significantly greater effort by the entire industry, if it is to decisively overcome them. A number of aviation experts, airlines and organisations that have applied themselves to these problems, are recommending a much more comprehensive and elaborate solution in the form of increased airline co-operation and consolidation with the objective to obtain optimum advantages from the economies of scale.

Experts generally stress that the large increases in speed and size of the aircraft must be regarded as "the first of several pressures towards increased airline co-operation."[300] They further stress that these two features of evolving aviation technology, taken together in terms of increase in air-

craft productivity, have exerted additional pressures towards co-operation and consolidation in the airline industry.[301]

KLM, a firm believer in inter-line co-operation,[302] observes:

> "In our industry, characterised by the application of advanced technology, the work of highly specialized personnel and by a very wide geographic spread of activities, co-operation is of greatest importance for utilization of all facilities."[303]

It adds:

> "The continued rapid technical developments in aviation, which lead to the use of ever larger and more expensive aircraft, accentuate the need for co-operation in order to achieve maximum utilization of equipment and supporting staff."[304]

It further observes:

> "In a branch of industry having a very specialized staff, a highly developed technology and a wide geographical spread, efficiency is increased by joining forces with others."[305]

SAS, a carrier existing and operating under a unique co-operative arrangement, notes:

> "The large investments required to purchase new aircraft which have only recently gone into production show the desirability of closer international co-operation among operators."[306]

Mr. A.M. de Voursney, United Airlines' senior vice-president for Economic planning and research, remarks:

> "An essential element in our solutions for the future must be a significant increase in inter-carrier co-operation on matters of vital interest to all of us."[307]

Wassenbergh has the following comments on the problems confronting the airline industry and their solution:

> "The advent of the jet age has greatly stimulated air transportation, but at the same time . . . competition has become severe. New nations claim their rightful place in the air. Commercial airline operation faces the problem of the enormous investments required for the operation of jet aircraft.
>
> These factors together have prompted a number of airlines to seek closer co-operation in order to reduce the costs of their operations, to eliminate competition between them and to become more competitive with other airlines. Moreover, the tendency among nations to try to solve their civil aviation problems by forming regional groups, has become strong.
>
> At present, there is a desire in many quarters for still more extensive and far-reaching co-operation, in which the airlines might have to give up part, or the whole, of their independence."[308]

Considering the high investments involved in supersonic operations, he opines that the solution of the industry's present problems lies in mergers. He says:

> "In view of the anticipated capital investments entailed by supersonic aircraft, it is highly probable that these can only be put into operation successfully under joint ownership by several airlines of different national-

> ities. This would force airlines into combinations, not only as a means of providing capital, but above all in order to arrive at a pooling of traffic rights.
>
> And indeed, it may be that in the long run the solution to the present problems of the airline industry lies in mergers between airlines, cutting out competition between them and thus reducing the excessively large number of competing carriers, many of which are kept alive through subsidies and protectionism. To ensure fruitful co-operation, it is necessary to eliminate the competition between the partners. To do so effectively, a merger is the only workable method. Moreover, it should be noted that due to technical developments, the minimum economic size of an airline company is steadily increasing and this will make it practically impossible for smaller carriers to operate the most modern equipment on their own."[309]

Lawrence Doty believes that the investment requirements will lead to pooling of resources in the 1970s. He states:

> "New funds for flight equipment and ground facilities are placing a heavy burden on airlines. Some countries will continue to provide their flag carriers capital through subsidy. But, generally, most airlines with lean capital structure will resort to pooling for both the purchase and maintenance of next generation of aircraft, giant jets as well as supersonic transports."[310]

Interavia warns the smaller airlines that unless they pool their resources, they face the prospect of being squeezed out of the long-haul markets. Its comments are:

> "The solution could be a closer collaboration between the smaller airlines and pooling of resources, or withdrawal from long-range

> operation altogether. It is quite possible, therefore, that many of the familiar airline names will soon disappear from the world's air routes in a similar manner to the names of many aircraft builders which have disappeared and been forgotten over the past few years."[311]

In a noteworthy article, Sheikh Najib Alamuddin suggests that for all airlines, and especially smaller airlines, to keep pace with the advancing technology and to overcome the problem of capital shortage, it is imperative to pool resources and create bigger units. His observations are:

> ". . . the development of air transport industry makes it imperative to have more knowledgeable managers . . . Furthermore, crews will have to be of a higher educational calibre. Training programmes will become more complex . . . All of this will increase the strain on the airlines' financing and will raise problems of recruitment, especially in developing countries where technical know-how is relatively scarce.
>
> The . . . requirements of modern air transport create an urgent need for airlines of all sizes to pool their resources and coordinate their activities. Obviously, this need is much more pressing in the case of smaller airlines.
>
> One pertinent question in this respect is whether airline groupings are more successful if done on a regional basis or on the basis of similarity in size and outlook. The pooling of resources is definitely easier among airlines situated in the same area. However, a joint operation requires, above all, similarity of outlook on the part of operators and compatibility of political and economic policies on the part of the governments concerned.
>
> As a first step, cooperation could start in new fields of activity where vested interests play

> a smaller role. If smaller airlines do not treat this problem with sufficient urgency, the progress of the air transport industry will be definitely hampered.
>
> There is a limited number of giant airlines in the world today plus a multitude of smaller airlines. The giant airlines are studying possibilities of mergers in order to create still bigger giants; and the medium-sized airlines are considering projects for regional groupings in order to meet the competition of the giants. On the other hand, the smaller airlines . . . have done very little towards the pooling of their resources. If the present trend continues, the gap between the giants and the smaller airlines will become even wider. . . . the smaller airlines cannot survive by operating regional routes only and should therefore be allowed a fair share of the traffic on international routes.
>
> New types of bigger jets are soon coming on the market. The SSTs will most probably cater for business travel, while the conventional jets will transport the tourists. . . In order to remain in existence, the smaller airlines have to serve both markets, and, consequently would be forced to acquire new equipment . . . few small airlines can afford. . .
>
> The obvious solution is for the smaller airlines to pool their resources and group themselves in larger units capable of meeting these requirements.
>
> It is hoped . . . that by 1980 there will be fewer but stronger airlines."[312]

A similar concern, about the inability of the smaller carriers to survive in the era of large-capacity jets and SSTs without pooling of resources in joint co-operative arrangements, was expressed by Mr. M. Kraiem of Tunis Air

during a symposium organised by IATA in December 1967 in Manila. The proceedings of the symposium on the future of world air transport give the following record of his observations:

> "He felt, however, that the small airlines . . . were facing particularly critical problems arising out of . . . the production of much larger and much more expensive types such as the SST and high-capacity aircraft . . . the small airlines would not be able to survive in this new era because of limited financial resources unless they were able to find new working arrangements jointly with other airlines based on a pooling of resources. He did not think that total merger was the solution, but rather some form of cooperative operation."[313]

An excellent case for extended inter-line co-operation as the means to solve industry's current and future problems was presented by Per A. Norlin, chairman, Swedish Intercontinental Air Lines, before IATA's Amsterdam Symposium in October, 1969. He identified the areas, the rules, and the conditions for co-operative ventures. His observations, which deserve attention by all concerned, are:

> "Particularly important . . . is the financing and maintenance of the new equipment which is a big burden. Where a logical background exists, some type of merger or amalgamation with other companies might be a solution.
>
> During the last decade this sort of development has been witnessed, particularly in the United States. It is certainly easier to amalgamate companies of the same nationality than

companies which fly under different flags. Airlines need not necessarily go to such extremes as a merger to obtain efficiency and strength. Close cooperation between the airlines, especially within the technical and operational fields has proved to give excellent results.
The background is due to the fantastic trend for investments in airplanes during the last decade.

The continuing growth in the size of the airplanes creates many problems, particularly in the maintenance fields. The facilities necessary for today's and tomorrow's gigantic and technically sophisticated airplanes are extremely expensive.

As the investments and costs increase it becomes more and more essential that the facilities are used effectively.

Small and medium sized airlines normally have too small a fleet of these huge airplanes to obtain good utilization of the maintenance facilities unless they can share these facilities with other airlines. Today there are several examples, where groups of airlines have solved this problem by establishing such cooperative arrangements.

If two, three or four airlines with 10 to 15 new high-capacity modern jets cooperate in maintenance and overhaul and utilize facilities jointly substantial savings are evident.

The calculated (and also to some extent already experienced) economic results from this cooperation appear very advantageous, and promising. The total investment in facilities and equipment like flight simulators, overhaul hangars, workshops, spare engines, spare parts and workshop and test equipment can be reduced by approximately 30 per cent. Joint maintenance and overhaul make it possible to utilize facilities and manpower more effectively which will reduce the annual maintenance cost approximately 20 per cent.

> Nevertheless, there are some conditions apart from identical cockpit layout, etc., which must be fulfilled before a successful cooperation can be initiated.
> Practical experience from already existing co-operation has shown that some basic rules must be adhered to in order to achieve results.
> It is essential that the airplanes are built to the same specifications and are kept similar throughout the period of cooperation - otherwise it will not be possible to pool equipment and spares.
> The technical and operational policies and standards should be similar among the cooperating airlines.
> The geographical location of the cooperating airlines should be such as to enable easy transfer of equipment."[314]

In addition, Mr. Norlin spelled out certain general rules for co-operation in maintenance and overhaul. These are:

> The partner with the best facilities for overhaul of certain type of aircraft or engines or components should be selected as the servicing company.
>
> Uneven work distribution between partners should be accepted if economically justified.
>
> All work for partners should be performed at a fixed price.
>
> Spare units and spare parts should be handled as joint pool material.[315]

Dr. W. Berchtold of Swissair commented as a representative of one of the airlines involved in co-operative scheme and made some thought provoking remarks on Mr. Norlin's observations. He remarked:

". . . certain basic conditions were fundamental to the existence of such groups. First, it was necessary that airlines participating in such schemes shared an identical management philosophy. A further basic element . . . was geographical location. However, this was not an insurmountable obstacle as SAS and Swissair had shown and could be overcome by the determination of the parties involved. The third and most essential of all the conditions was a high degree of mutual confidence between the parties, not only at the top level of the management, but also and more important at the lower levels where the elements of selfishness and national pride were most evident.

A further problem lay in the inevitable disparity in size between cooperating partners. There would always be the tendency on the part of the bigger partner to dominate and perhaps even to swallow the smaller partners. If the fear of this were allowed to exist, it would undermine the mutual confidence that was a vital and basic element for successful cooperation. For this reason, Dr. Berchtold felt he must disagree with the speaker's contention that the partner with the best facilities should be selected as the servicing company. The partner with the best facilities would be the larger partner and if the larger partner became the servicing company, sooner or later the other partners would become dependent on the larger partner. Experience had shown that the smaller partners must be allocated their share of the work and must make their contribution to the partnership in order not to lose their technical experience and expertise and therefore in the long run their independence. If the smaller airlines were not able to contribute their share, mutual trust and confidence would disappear leading to the eventual breakdown of the group."[316]

Mr. Keck of United, the western world's biggest airline, finds a correlation between size and efficiency. He is reported to have stated:

> "air transport requires size for efficiency . . . the complexities that arise from size are far outweighed by the advantages of scale."[317]

Mr. Knul Hammarskjold, director general of IATA, has a word of advice for small airlines; cooperation is imperative for international operations. He comments:

> "A small airline . . . if it wishes to expand its operations may well find the best course of action is to co-operate with large carriers already experienced in intercontinental services . . . some of most successful international operations are those performed by multi-national airline partnerships, whereby cooperating small carriers play a much larger role on the whole air transport scene than they could ever do individually."[318]

Sheikh Najib Alamuddin, who considers that pooling of resources is inevitable for smaller airlines, goes even further, and more explicitly states:

> "The wide-bodied high-capacity jets and SSTs require huge financial investments and their operations pose many problems. It will be difficult for the smaller carriers to operate them except on a joint regional basis."[319]

Wayne G. Parrish, an aviation writer, concludes that small airlines are doomed for failure unless they join up. He observes:

> "The reasons are many, but in broad general terms it is simply a fact of life that airline economics dictate a big spread of geographic market, it is increasingly difficult in upcoming big-equipment era to see how a small carrier can survive, and . . . all competitive in one way or another, have laid down a groundwork that spell just one thing: join up or fail."[320]

Analysing the present problems of the industry, Time sees mergers as inevitable. It comments:

> ". . . some mergers seem almost inevitable to reduce the problems of climbing costs and too much competition for too little traffic."[321]

Pan American's former chairman and chief executive, Harold Gray believes that the solution to the industry's many problems lies in mergers. His contention is:

> "Merger within the industry can and will do much to solve the airlines' problems, improve service for the public and also improve results for stockholders."[322]

Another airline executive who believes that consolidating may be the order of the day is Mr. F.D. Hall, president and chief executive officer of Eastern Airlines. He favours extensive mergers to reduce the number of carriers and produce fewer airlines with greater assets.[323]

In an additional comment, Interavia suggests that, for those airlines that are not big enough to stand on their feet, "the answer is regional grouping on the Air Afrique and SAS pattern."[324]

Looking into the seventies, Flight International appropriately concludes:

> ". . . the answer to problems of scale and adequate resources may, in the USA (and to a much smaller degree in Britain), be found in the much-talked-of airline mergers. But outside the USA, it will be in the field of technical and operational consortia - often multi-national - that answers will be sought to the problems of acquiring and developing the new generation of aircraft."[325]

9. The Economic Advantages of Large-Scale Operations.

In all of the foregoing, it has been emphasized that larger airline units achieved through increased co-operation or consolidation hold the key to survival in airline business. With these general conclusions in mind, it is desirable to examine the economic advantages of large-scale operations in the airline industry. No one widely experienced in industrial organisation would attempt to make sweeping statements about the relationship of efficiency to size.[325]

There is, however, a general tendency in any production process for unit costs to fall as the scale of output is increased. This tendency follows from:

(i) the imperfect divisibility of many factors of production;

(ii) the "lowest common multiple" effects of combining

factors of production which are non-proportional (i.e. need different scales of output for their full utilisation);

(iii) the economics of bulk transactions; and

(iv) the advantages of spreading any reserve or contingency provisions over a large scale of output.[327]

Most people in the industry agree that aircraft maintenance and overhaul show significant economies from large scale. They point out that even though the most significant economies might be expected to follow from increasing the scale of airline maintenance and overhaul with a standard type of aircraft, there are, in addition, substantial economies in the base overheads as throughput of work increases.[328] The Edwards Committee, however, concludes that there is no evidence, either from the US or from Britain, of substantial advantage in this function from being a very large airline.[329]

Project engineering - study of entirely new aircraft requirements and entirely new aircraft operating systems - is a field in which the nature of work makes it essential to employ a team of people who bring together different skills. These skills are in short supply, especially in developing countries having smaller airlines. These two factors together

mean that project teams are indivisible factors, which cannot be mobilised effectively below a certain scale.[330]

Computers are another field in which there are undoubted economies of scale. A small airline cannot afford the hardware, software or professional back-up necessary to exploit the full possibilities of the computer, and may not be able to secure equivalent services of the same cost level by hiring from outside. The increasing size and capability of modern computers makes them large indivisible factors of production. Apart from the cost of computer installations, the desirability of compatibility and the world-wide shortage of skilled personnel reinforce the case for large-scale work.[331]

Certain quarters of the airline industry maintain that if manufacturers badly need a big order, which a major airline is able to give them, they will cut their price if necessary to get that order. There is, however, doubt on how much advantage a big airline gets in the price it pays for its aircraft. But one field in which there appears to be no doubt about the advantage for the large airlines is the purchase of fuel. Airlines are understandably reluctant to give full details about their fuel contracts, but the evidence available suggests that large airlines may enjoy a material advantage in this respect. This advantage seems to be related to their

bargaining strength as well as actual economies in supply. In other purchasing activities, there may be similar advantages in size, but their significance can only be very small in relation to total airline operating costs.[332]

It seems probable that airline growth is a significant source of lower unit costs only when an airline expands its activities, in effect, in the production of an homogeneous product. In airline operations, these scale economies from the homogeneity of the product may be associated either
(a) with the operation of a standard type of aircraft, or
(b) with the production and marketing of a specialised type of service.[333]

As an airline increases its scale of operations using only one type of aircraft, it may expect to enjoy cost advantages from the following six sources:

(i) Capital costs will be lower because spare holdings tend to be a lower percentage of the total investment as the number of aircraft in the fleet increases.

(ii) Capital costs and insurance costs per flying hour will also be lower if the airline operating a standart fleet of aircraft is able to achieve a higher level of utilisation than one operating a mixed fleet of aircraft.

(iii) Flying crew cost per hour will be lower with a standard aircraft fleet if this standardisation makes possible a higher level of crew utilisation. An airline with a standard fleet has much greater flexibility in the way its crews are scheduled.

(iv) Flying crew training costs will undoubtedly fall as a unit cost (or the standard of training will be better for the same costs) with an increase in fleet size.

(v) Maintenance and overhaul costs ought, without doubt, to fall as a standard fleet of aircraft is increased in size.

(vi) Ground equipment costs may be lower when an airline operates a standard type of aircraft. More important, the general efficiency of station activities may be higher when ground operations are standardised by the requirement of only one type of aircraft.[334]

Investigations of airline operations have revealed that (apart from differences between long-haul and short-haul operations) the most significant factors in determining commercial success are those which can broadly be related to standardisation of product. However, the size at which an airline may be most successful varies substantially depending upon the nature of the operations in which it is engaged. Almost certainly, the most efficient organisation for long-haul intercontinental operations is a large airline which can gain the advantages of operating a large standardised fleet.[335]

The commercial success of any undertaking will depend upon its marketing effectiveness as well as its efficiency of operations. There is clear evidence that, in some fields of airline operations, size may be a significant advantage in this respect.[336]

An aspect of airline strength, which is related directly to overall size, is the power of an airline in commercial bargaining. A large airline may, for example, gain commercial advantages from its bargaining strength in IATA Traffic Conferences, or from other commercial negotiations, although this point ought not to be over-rated.[337]

There is good evidence to support that only a large airline has the necessary strength to sustain the costs associated with technological innovation in air transport.[338] Similarly, large airlines are usually, but not always, better placed to sit out periods of adverse economic results.[339]

It has already been noted that to an increasing extent the economies of scale in airline operations can be best achieved by extended international collaboration. Since the major products of the aircraft manufacturing industries are operated by a number of different carriers, so it is not surprising that the co-operation is often initiated on an engineering basis. In the U.S.A. and within Europe, quite apart from the efforts of IATA, a great deal has been done and new possibilities of co-operation for their mutual benefit are continually being explored.[340]

To sum up, the principal sources of economy lie in the following areas of international collaboration:

(i) The regulation of available space to match the demands of traffic without the wasteful generation of excess capacity.

(ii) The reduction of maintenance costs by the maximum utilization of airline engineering resources and by decrease in the number of types.

(iii) The reduction of operating costs by the generation of maximum aircraft utilization throughout a multilateral system.

(iv) The reduction of overheads by restricting duplication (such as in project development, maintenance, burden, advertising, booking and handling).[341]

Since transport cannot be generated and stored as inventory, both production and demand must be closely matched in any efficient transport undertaking. It is in this process of matching that the collaboration of the transport organizations is so essential.[342]

10. The Various Aspects of Inter-Airline Co-operation.

Cost reduction is one of the primary motivations behind pooling and related types of carrier agreements. Arrangements of this type involve airline co-operation on the commercial and technological sides. Since many forms of inter-

national collaboration are now being sought by the airline industry, it is appropriate to make a comparative appraisal of the various aspects of inter-carrier co-operation.[343]

a) The Market Sharing Agreements.

The general basis of the market sharing agreements is that, on the routes which the airlines operate in parallel, they agree upon the capacity which should be operated by each partner to avoid excess capacity being offered; each airline bears the cost of its own operations; all revenues are paid into a common pool and are then shared out on a pre-determined basis.[344]

The market sharing agreements tend to prevent the major waste of competition, enable significant economies to be realized in operating costs, and result in better spread of services to the public.[345]

Of greater scope and implications than the market sharing agreements are the technical pooling agreements concerned with eliminating the duplication of certain overhead costs. These agreements have important implications for the nature of the production function, since they reduce heterogeneity among firms and have somewhat alleviated the problems of small size. It has not always been possible to obtain details of these co-operative arrangements, but the principles behind some of the most significant ones can be established.

b) Spare Parts Pools.

The most important type of agreements pertains to the pooling of spare parts. Typical of such an agreement is the one known as Beneswiss, originated in 1948 among KLM, Sabena and Swissair (later joined by SAS and Air France), which involved common maintenance service, mechanics, workshops, and spare parts for the DC-3, DC-4, Convair 240, and DC-6.[346] It has been estimated that the stock of spares was reduced by 30 per cent due to this pooling plan.[347]

Another such pool was formed in 1954 for the Lockheed 749 and 1049.[348] While the L-1049 was in operation with Air France and KLM, a spares-pooling agreement was initiated which was later joined by DLH, Air India and Avianca.[349] Many such spare parts pools providing service for a particular plane type have since been established, including pools for the Comet 4, DC-8 and 707.[350] The Boeing 707 pool was initiated in 1959, and by 1962, 16 airlines were participating. The Comet 4 pool was set up in 1960.[351]

Many but not all carriers using such equipment participate in these pools, which essentially allow participants to draw on a common inventory of spare parts. For example, the Boeing pool involves member carriers paying an "availability charge" annually for the right to draw parts when

needed, with repair and replacement in the inventory of any borrowed piece to be made as soon as possible.[352]

These spare pools have produced considerable cost savings. Air France has estimated that its savings from the Boeing pool amount to 70 per cent of the firm's spare parts expense for this type of aircraft.[353]

c) Maintenance Pools.

Co-operation of a bilateral nature also exists, as exemplified by the many sub-contracting and leasing arrangements made among firms. Reduction in maintenance expense has been a major objective. The most notable example is the "main agreement" concluded in 1958 between SAS and Swissair which provides for the joint maintenance and operation of their jet fleet.[354] All aircraft of a single type in the fleets of both companies are ordered according to agreed specifications for interior and cockpit configuration. The Caravelle 210, Convait 990 and DC-8 aircraft purchased by these airlines were identical in all respects, except for the outside paint scheme. Identical flight decks led to co-operative crew training (shared use of simulators) and greater utilization of crews and aircraft. Identical systems and equipment permitted minimum spares holding and maximum opportunities for interchange of components. Identical specifications for a

given type greatly assisted in-line maintenance at overseas stations.[355]

Under this far-reaching alliance, (a) SAS maintains the DC-8s belonging to each airline, (b) Swissair maintains the Convair 990s which it owns for its own services and also leases to SAS, and also maintains the Convairs owned by SAS, and (c) SAS maintains the Caravelles which it owns for its own services and also leases to Swissair.[356]

In 1964, Wheatcroft predicted:

> "Although the airlines have so far retained their separate commercial identities, it seems probable that the joint planning of schedules, which the joint operation of aircraft fleets obviously requires, will ultimately lead them to even closer forms of cooperation."[357]

Subsequent developments have only well proved the accuracy of this perfect assessment. When KLM, which has, since 1963, been overhauling Swissair's DC-8 fan engines, resolved to buy DC-9s, it entrusted Swissair with the overhaul of its DC-9 power-plants. This decision linked KLM with the co-operation arrangements between Swissair and SAS.[358]

The purchase of DC-9s by both Swissair and SAS, and Swissair's decision to order DC-8-62s with SAS specifications, had a great bearing on the technical co-operation.[359] The "main agreement" was renewed in 1966-67,[360] and this

afforded Swissair the guaranteed continuation of DC-8 airframe overhaul by SAS. Moreover, the arrangement allows Swissair to keep the engine exchange with KLM and to complement it with the DC-9 engines of SAS.[361]

With the advent of Boeing 747, this remarkable co-operation became the foundation stone of the KSSU group (KLM, Swissair, SAS and UTA), which is more fully described in subsequent pages. Parallel to the KSSU co-operative arrangements is the emergence of ATLAS group (Air France, Alitalia, Lufthansa and Sabena), the other working group of the Montparnasse Committee which, like the KSSU group, has combined for complete joint maintenance of the 747. The details of the ATLAS group too are explained in subsequent pages.

A large number of these maintenance agreements exist, generally involving small carriers subcontracting maintenance work to larger ones. The smaller carriers save on fixed costs and reduced capital requirements, while the larger airlines earn additional revenue by employing their fixed inputs more effectively. The BEA-Olympic consortium signed in 1959 is an excellent example. BEA maintains the Comet 4 fleet for Olympic and further guarantees that two aircraft will always be available for Olympic's use. In addition, these two carriers engage in a joint sales and advertising programme. Without the service agreement, Olympic would have required

one additional Comet at a cost of about $3 million, and also would have needed a jet overhaul base at a cost of about $2 million. Olympic also saves an estimated $850,000 in annual operating expenses.[362] Wheatcroft points out that "both airlines find substantial commercial and political advantages in closer collaboration and their consortium agreement goes far beyond technical aspects."[363] It involves, in effect, the integration of BEA and Olympic services on all routes between western Europe and the eastern end of the Mediterranean, thereby granting BEA the right of entry into Greece's routes in the Mediterranean.[364]

In maintenance subcontracting agreements of this general type, one party is often a smaller carrier of a less developed nation. Philippine Air Lines was able to begin jet service with one DC-8 because of a pooling arrangement with KLM. KLM agreed to maintain the Philippine Air Lines' DC-8 and to further guarantee that one plane would always be available.[365] Without such an agreement, this small airline would not have been able to enter jet service.

d) Equipment Pools.

A third type of pooling involved the leasing of equipment. Leasing often is one component of a wider intercarrier agreement. This is an effective means of circumventing capital constraints and is often used by developing countries.[366]

e) Space Leasing Arrangements.

Another recent form of co-operation is block space leasing. Under this type of agreement, one carrier leases space on another carrier's planes, sells the space in its own name, and pays for it irrespective of use. Air Afrique has leased seats from PAA on flights from New York to the eleven African member nations of Air Afrique. For the Africans, this is a means of circumventing a capital constraint, while PAA has accepted the arrangement, since it serves as a means of entry to certain African cities. This kind of co-operation will probably not become very important in the future, because the lessee tends to lose his "airline identity" too quickly, and passengers then approach the other carrier directly.[367]

f) Other Forms of Inter-Airline Co-operation.

There are some additional forms of co-operation not easily categorized. Sharing or leasing training responsibilities is one practice. Collective purchasing is another means of reducing costs.[368] The major European carriers have a standing organization for such co-operation.[369] Management subcontracting arrangements are another form of co-operation.[370]

11. The Increasing Inter-Airline Co-operation in International Airline Industry.

One of the most important developments in air transport during recent years has been the trend towards closer links between airlines of different nations. The evolution of jet technology and the advent of large-capacity aircraft and supersonic transport has further intensified inter-airline co-operation. In recent years a number of measures involving co-operative arrangements have either been accomplished or announced to take place shortly. These include both pooling of resources to maintain and operate jet fleets, particularly the wide-bodied jumbos, and also certain outright amalgamations creating bigger and commercially more viable airlines. Obviously, these far-reaching measures have been motivated by the irresistable pressures generated by the economic characteristics of advanced technology aircraft swiftly appearing on the international civil aviation's horizon. Virtually all international airlines are making co-operative efforts to facilitate the entry and operation of newer aircraft, and this inter-airline co-operation gives the first indication of the impact of the large-capacity transports on the airline industry.

An indication of the trend of thinking among the airlines is given by the formation of the Montparnasse Committee in June 1967 in Paris.[371]

The Committee originally consisted of ten European airlines and included Aer Lingus, Air France, Alitalia, BOAC, Iberia, KLM, Lufthansa, Sabena, SAS and Swissair. Since it came into being, Air India, El Al, TAP and UTA have also indicated an interest in the group's objectives.[372]

The purpose of the Committee is to standardize on future equipment and to provide more economic methods of introducing, operating and maintaining new aircraft. These objectives are not limited solely to the 747, but apply to other aircraft that may be procured by these airlines in future.[373]

Since the formation of the Montparnasse Committee, the members have succeeded in identifying closer community interests and have now subdivided into three groups. The first of these comprises Air France, Alitalia, Lufthansa and Sabena, and is known under the name of ATLAS. The second consists of KLM, SAS, Swissair and UTA, termed the KSSU group, and the three remaining companies, Aer Lingus, BOAC and Iberia as "independents". These subdivisions have been formed in the main on the basis of the specifications of the individual carriers' 747s in terms of equipment, etc.[374]

As an example of the pattern of this collaboration, the ATLAS group has allocated maintenance and overhaul work within its membership. In broad terms, the split is for Air France to do airframe and Lufthansa the engine overhauls for the members. Alitalia and Sabena look after systems and equipment. Another part of the collaboration is the use of the Lufthansa 747 flight simulator by all the ATLAS members for flight training.[375] Iberia, which plans to have its 747s in the ATLAS configuration, will also use the Lufthansa simulator.[376]

The ability to use one company's flight simulator points to the similarity in specification in all the ATLAS group aircraft. Operationally, the 747s of all the airlines will be similar as far as systems and equipment are concerned. In practice, it would be possible for a crew of one company to fly a 747 belonging to another member company of the group. It has been emphasised, however, that at present there are no plans for the exchange of equipment.[377]

Similar support plans have been elaborated by KSSU group. In addition to the existing bilateral arrangements between the partners, the agreement contains the understanding that KLM will overhaul 747 airframes and related components for Swissair and SAS; SAS will overhaul the 747 engines for Swissair and KLM; and Swissair will take care of the over-

haul of the airframes and related components for KLM's DC-9.[378] Swissair is also responsible for overhauling DC-10 airframes for KLM, SAS and UTA. UTA will perform certain services to be specified later.[379]

The KSSU group agreed on the standardisation of Boeing 747 cockpit and cabin layouts and loading arrangements. This standardisation will permit an exchange of technical services so that maintenance and overhaul of the 747s can be carried out more economically and with a higher degree of rationalisation. It will also provide the opportunity for these airlines to exchange aircraft and crews.[380] The partners will in future evaluate all new types of aircraft jointly with a view to obtaining them in standardised version, so that cooperation can be extended.[381] The KSSU carriers have further agreed to train their flight crews on a jointly acquired 747 flight simulator located at Schiphol.[382]

At present, the Montparnasse Committee has no executive power and its aim is to provide a clearing house for the exchange of information. Its main future, however, is that it is an airline instrument that has been called into existence by the demands of the 747, to enable the smaller airlines to support the operation of this aircraft efficiently and economically.[383]

The structure and aims of this new association, a most effective example of inter-airline collaboration, represent a vigorous attempt on the part of the airlines to meet the problems that are appearing in the air transport industry. Experts have pointed out that association on the lines established by the Montparnasse Committee could be the way to escape from the restrictions imposed by the fragmented, nationalist approach to air transport that exists outside the United States. This is probably the most significant first effect of the presence of the Boeing 747 on the air transport industry.[384]

The first plan on a major scale in the US for full-scale co-operation in the maintenance of and training for Boeing 747s, and later, BAC/Sud Concordes, was announced in late 1967 by Trans World and Eastern, two of the four biggest trunks. The first stage of this co-operation involves organization by TWA of work on their own 747s and those of Eastern, which delegated to TWA the authority to determine the specifications and to act as Eastern's agent for these, and for contract administration, pre-delivery inspection and acceptance, spares provisioning and documentation. The primary initial objective is the standardisation of aircraft and engines for the two carriers.[385]

TWA will also train Eastern's flight and ground crews and provide primary maintenance and operational support for Eastern's aircraft, engines and accessories, leaving Eastern responsible only for routine servicing. The two airlines will lease 747s to and from each other to meet specific seasonal traffic requirements on a long- and short-term basis. In return, Eastern will provide similar arrangements for the handling of their own and TWA's Concordes.[386] Following this arrangement, the two carriers have further agreed to standardise, where practicable, the Lockheed L-1011s which both of them have on order, and to co-operate on design, maintenance, crew training and seasonal leasing of this type as well.[387]

Some recent reports have indicated that Qantas, Air New Zealand, Malaysia-Singapore Airlines and possibly Philippine Air Lines are moving towards a European type of Boeing 747 agreement. It was suggested that Air New Zealand probably cannot afford the 747 unless it enters some such type of engineering and spares consortium. As for MSA, the suggested pool makes the 747 a distinct possibility.[388] The prospects of this pool, however, received a setback when Air New Zealand selected extended-range DC-10 as its choice for a wide-body jet,[389] and it is not certain if the other carriers are still interested in the proposed arrangement.

Aer Lingus, whose re-equipment bill for the next ten years is estimated at L 200-300 million, and Aerlinte Eireann, were likely to join an operating or technical consortium of European airlines, according to the Irish Minister for Transport and Power, Mr. Brian Leniham.[390]

In the Middle East, Arab airlines, that have so far failed in their efforts of setting up a joint airline, have now resolved to have joint operations on a consortium basis. The first such pool, suggested in 1967, involved twelve Arab carriers in the formation of a consortium for North Atlantic operations in which traffic rights, costs and profits were to be pooled. Aircraft were to be provided by three members, United Arab Air Lines, Middle East Airlines and Kuwait Airways - with long-haul aircraft on order, on prospective order, or in the service. The plans proposed nine services a week to the USA.[391]

Following a proposal from the Arab League to consider setting up a joint Arab operation, the Arab Air Carriers Organisation, meeting in an extraordinary session held in Cairo on January 24-25, 1970, approved the start of a far-flung network of long-haul services by a consortium of Arab airlines operating 707-320Cs. Planned services will radiate from the Middle East to New York, Rio de Janiero and Tokyo, each point to be served on a daily basis.[392] The AACO

meeting concluded that joint operation would be best achieved not by setting up a separate joint airline, but by existing carriers collaborating on a consortium basis, probably along the lines of that developed by BEA and Olympic Airways in the Comet 4 days.[393]

The basic idea is that the five operators of 707 equipment - MEA, UAA, Kuwait, Saudi and Alia - would each "sell" 707 flying hours to the consortium at pre-determined prices. The flying hours would then be scheduled on the long-haul services so as to cater an attractive network linking the Middle East with North America, South America and the Far East. Services would be marketed by all participating carriers (not necessarily restricted to the five 707 operators), although a decision has yet to be made as to whether this will be done on an airline or a consortium basis. Participating carriers would then share net proceeds on an agreed formula.[394]

At the Cairo meeting, decision was also taken to extend collaboration - assuming the consortium operation comes about by the first half of 1971 as planned - to a wide range of services. For instance, standardised training and licencing arrangements will be established for aircrew and engineers. Aircraft-maintenance and engine-overhaul arrangements will be standardised and also rationalised (for ins-

tance, all JT3D overhauls will be done at Cairo). And at major foreign stations (e.g. London and Paris), joint handling facilities will probably be established.[395] Although no specific reference was made to wide-bodied jets, this consortium is an obvious first step to the purchase by Arab carriers of such aircraft.[396] The exact legal structure of this consortium has not been discussed pending the establishment of the economic principles and their feasibility.[397]

Another report from the Middle East suggests that Egypt, Sudan, Jordan, Iraq and Kuwait have decided to form the first union of Arab international airline companies. The new organization, to be called "The Arab Union of Airline Companies", will co-ordinate work among member airlines in order to reduce operation costs and help toward the expansion of an Arab airline network.[398] Further details of this arrangement are not yet available.

Another significant development in the increasing worldwide co-operative arrangements is the very recent formation of an airline-operating consortium comprising of Pakistan International Airlines and Alia Royal Jordanian Airlines. The consortium will operate the two Boeing 707-320Cs which Alia has ordered for delivery next year. According to Flight, the intention is to make the consortium in effect an airline in its own right, with its own name (yet to be chosen) and

livery.[399] The permanent secretariat of the consortium is located in Amman the chairman of the consortium is Mr. Bahjab Talhouni, who is the chairman of Alia, and the chief executives of the constituent airlines will be joint managing directors. The executive director of the consortium will be nominated by PIA.[400] Operations are expected to include flights to Europe and South-east Asia, beginning next year.[401]

BOAC and Air India have recently concluded another co-operative agreement under which BOAC will overhaul Air India Boeing 747s' JT9D power-plants.[402]

12. The Urge to Merge in International Airline Industry.

Throughout the airline history, there have been examples of amalgamations between groups of airlines, or of large airlines swallowing little ones. In this way, rationalization of domestic airline networks was achieved and the operation of complex international systems co-ordinated. Before World War II, most of the major countries, to whom the airlines represented tools of commerce, had taken this step; first the United Kingdom in 1946, and India in 1953, welded all their airlines into two units, and in 1957 Ansett took over A.N.A. as a prelude to a mopping-up operation which simplified Australia's airline system. In the same year, Italy put an

end to its two separate airlines, each with its own world and regional networks. Now one of the main features of the airline world seems to be an added emphasis on larger operating units.[403]

In the U.S., the merging of airlines was never a conscious act of policy by the government. Mergers were condoned and authorized (or occasionally refused), but this was regarded as the natural result of sensible competition. Thus, from time to time, the number of domestic trunk airlines diminished; Mid-Continent merged with Braniff in 1952, Delta with Chicago and Southern in 1953; Eastern took over Colonial in 1956.[404]

Introduction of new aircraft since 1952 generally preceded or accompanied actual mergers which have whittled down the number of U.S. trunkline carriers from a total of 16 to 11.[405]

During 1960-62, when the jet transport began to dominate major routes, no carrier escaped either a formal or informal merger proposal. Overcapacity was then deemed a problem, but the driving forces that brought the signing of merger agreements were towering deficits being encountered by the weaker partners of the agreements. Fiscal disaster forced the merger of Capital into United in 1961. Prior to

the merger, Capital's management had approached eight other trunklines with merger propositions.[406]

There were two major moves towards consolidation in the airline industry in 1962 and 1963. The first was a proposal to merge two major domestic airlines, American and Eastern. The proposed merger was pursued aggressively through 18 months of proceedings as Eastern's shaky financial position worsened to a point where it sought subsidy from the Civil Aeronautics Board. The petition for merger was eventually dismissed by the Board with a 3-2 vote.[407] The second, involving a proposed merger between two very powerful international airlines, Pan American and TWA, was also shelved, because it would not get the necessary governmental approval. Moreover, TWA got disenchanted with the merger proposal as its traffic volume took a sharp upturn.[408] Thus, it would appear that financial difficulties can and do lead to mergers, but, because of the economic variables inherent in airline operations, do not necessarily force a final conclusion.[409]

Notwithstanding their failure, both proposals were, however, highly significant moves in the industry and it is worth noting briefly the reasons which were put forward in their support. In both cases, the primary arguments in favour

of the mergers were (a) saving in costs from the elimination of duplicated facilities, particularly station costs, and (b) reductions in excess capacity by the elimination of competition on routes operated in parallel. In the case of Pan American/TWA merger, a further argument from Pan American's point of view was the desirability of linking its overseas network with the extensive U.S. domestic network operated by TWA.[410]

The recent introduction of the high-capacity jet transports has provided a fresh impetus to the powerful tendency towards consolidation in the U.S. airline industry. For the ailing air transport industry, the only way out of the bind, many of the industry's leaders believe, is through a round of mergers. Halaby puts it aptly: "We should abandon the recent trend multiplication of carriers and the inevitable addition of deficits."[411]

This time, even the government is sympathetic; CAB chairman, Secor D. Browne, has privately let it be known that he favours mergers as a solution to the airlines' financial troubles,[412] and the vice chairman of the CAB, Mr. Whitney Gillilland, has even gone to the extent of suggesting mergers between trunk and local service airlines.[413]

The new aircraft have spurred the merger movement so intensely that there is not even one airline in the U.S. that is not looking, studying, spurring, approaching, or being approached for a merger. An indication of the thinking among airlines is given by the fact that one major trunk has made a study of how its system would match up with every single other airline and group of airlines.[414]

Today, there are 11 trunks plus Pan American and nine remaining locals. Everyone seems to expect that in the next several years, the number of majors will drop to anywhere from five to seven, and the locals will either merge among themselves to become fewer but larger systems, or some will simply be absorbed into trunk systems.[415]

The first significant merger move in the recent years involving two trunks was made late last year when, subject to a number of conditions, Northwest Airlines and Northeast Airlines agreed in principle to merge.[416] The proposed merger, which is seen by many as the forerunner of a wave of mergers in the industry, has been found to be "consistent with the public interest" by CAB examiner Mr. Robert L. Park,[417] and is thus virtually assured of the CAB approval.

The movement toward airline consolidations took another step forward when in the beginning of 1970 American Airlines

and Trans Caribbean Airways agreed to merge, subject to approval of stockholders of both airlines and then the Civil Aeronautics Board.[418]

Another recent case of consolidation was the merger of three local service operators, Bonanza Air Lines, Pacific Air Lines and West Coast Airlines into Air West Inc., which came into existence on April 17, 1968.[419] While granting approval to these airlines to merge into a single operating entity, the CAB's Bureau of Operating Rights estimated that the Government would save $700,000 in subsidies in the first year of the merger and possibly as much as $1 million in the second year.[420]

In April 1968, Wien Alaska Airlines and Northern Consolidated Airlines merged to form Wien Consolidated Airlines Inc.[421] During the same year, Alaska Airlines merged with Alaska Coastal and Cordova, and Western made final adjustments of its merger with Pacific Northern.[422] It is of some interest to note here that in their first year of merged operation, the Alaskan carriers recorded a substantial revenue increase.[423]

In 1968, American Flyers Airline and Universal Airlines revealed their plans to merge subject to the CAB approval. More recently, Hawaii's inter-island airlines have

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launched their second attempt this year to solve their economic problems through merger. Hawaiian and Aloha airlines, which broke off an initial round of merger nagotiations last March,[424] outlined a plan under which Hawaiian would become Hawaii/Aloha Airlines and Aloha would be merged into Hawaiian/Aloha. A definitive proposal is being prepared for submission to stockholders and the CAB.[425] Meanwhile in California, PSA and Air California have settled on the terms of their merger through which the merged airline aims to get out of the purely interstate role where increasing costs and short stages/low yields are draining profits.[426] Other recent mergers are that of Central into Frontier,[427] and Lake Central into Allegheny.[428]

Apart from these actual mergers, many trunklines have shown active interest in merger propositions. Pan American has intensified its long-cherished desire to merge with a domestic carrier, and has held merger discussions with "two or three" carriers, according to its president, Najieb E. Halaby.[429] Floyd D. Hall, president of the giant but deficit-ridden Eastern Airlines, has publicly indicated that Eastern is looking for a merger partner. He has gone so far as to name some specific carriers.[430] TWA, admits L. Edwin Smart, vice president - external affairs, is "well down the road" on merger plans, and is looking for a logical candidate to join

hands.[431] American Airlines is reported to have discussed merger with Western.[432]

In Britain, the British United Airways, the nation's biggest independent airline, after an unsuccessful BOAC bid to take it over,[433] is now merging with Caledonian Airways to form a new "second force" airline.[434] BUA which was established in 1960 as an amalgamation of several British independents, was forced to seek a merger because it could not raise enough capital for necessary investment in wide-bodied jets.[435] For almost similar reasons, Cambrian and BKS were taken over by BEA's subsidiary BAS.[436] The BUA/Caledonian merger has been given a go-ahead by the British Government, and there is a distinct possibility that the new carrier may get some of the routes from the State airline, BOAC.[437]

Of much greater significance is the likely amalgamation of BEA and BOAC within one or two years. If and when the airlines are amalgamated, BEA will become the European and BOAC, the international "division". Apart from increased collaboration and a common procurement policy, the uniting of the two carriers will mean route rationalisation.[438] Sir Anthony Milward, chairman of BEA, who believes that there will be a BEA-BOAC merger in the foreseeable future, further believes that eventually there might be an advantage in having a single corporation.[439]

In a potentially significant move during 1964, the Canadian Minister of Transport directed representatives of Air Canada and Canadian Pacific to seek ways of integrating operations, either through partnership, merger or co-operative agreement, so that a stronger airline system might be evolved. Air Canada is understood to favour merger, while Canadian Pacific is believed to oppose such consolidation.[440] There is, however, still a strong possibility of a merger between the two carriers.[441]

Subject to Government and other necessary approvals, Nordair of Montreal and Eastern Provincial Airways of Gander, Newfoundland, are to merge while retaining their identities as regional carriers. If the deal goes through, the systems and equipment will be integrated.[442]

One of the important and recent merger moves in the Middle East was the amalgamation of Middle East Airlines and Lebanese International Airways into Middle East Airlines Airliban in 1969.[443] Earlier, the two Egyptian carriers United Arab Airlines and Misrair merged in 1967.[444] In December 1968, Ghana Airways and Nigeria Airways announced their agreement to merge and form bi-national airline by the name of Air West Africa.[445] A date for the integration of the fleets and routes of the two operators has yet to be announced.[446]

Another significant decision to amalgamate operations in Africa is the proposed multi-national airline Air Afrique Centrale. Announced in late 1968, the new carrier is likely to operate services within Chad, Central African Republic, Congo-Brazzaville and Congo-Kinshasa.[447]

The Arab Air Carriers Organization is studying a proposal of considerable merit put forward by Trans-Mediterranean Airways, the Lebanese freight carrier, for the creation of a pan-Arab all-freight airline. The plan, which was unveiled at a recent meeting in Cairo of AACO, also provides for the setting up of a pan-Arab jet transport overhaul facility. The proposed airline would be named Arab Trans-Mediterranean Airways.[448]

The carrier would be based in Beirut and its shares would be distributed as follows: Alia, Royal Jordanian Airlines, 3 per cent; Syrian Arab Airlines, 3 per cent; Iraqi Airways, 3 per cent; Sudan Airways, 3 per cent; Kuwait Airways, 9 per cent; United Arab Airlines, 14 per cent; Saudi Arabian Airlines, 14 per cent; Middle East Airlines, 14 per cent; Trans-Mediterranean Airways, 37 per cent. If the plan is approved, discussions would start on the new airline's operations over the next five years, the raising of the necessary capital, and the distribution of shares and obligations in accordance with the above ratio.[449]

In another merger move, the presidents of Air Maroc, Air Algérie, Tunis Air and Libya Airlines have agreed in principle on the formation of a joint operating company with the title of "Air Maghreb". If government approvals are forthcoming, the airlines will finalise a detailed agreement and implement the merger.[450]

A complicated competitive situation in the French airline industry was satisfactorily resolved when the two privately owned airlines companies, UAT (Union Aéromaritime de Transport) and TAI (Compagnie de Transports Aériens Intercontinentaux) amalgamated to form Union de Transports Aériens (UTA) on October 1, 1963.[451]

From the foregoing, it is evident that as air transport enters the 1970s, certain trends seem clearly developing. Examination of the major problems confronting the industry reveals that the most significant consequence of the advancing aviation technology is the added emphasis on inter-carrier cooperation and multi-national collaboration. With this conclusion in mind, it is appropriate to proceed to an examination of the prospects of RCD airlines in this decade and beyond, and further to examine the factors favourable to the formation of a joint airline in this region.

13. Air Transport in RCD States and its Role in the Era of Large-Capacity Jets and SSTs.

In a preceding chapter, the existing state of development of air transport in RCD countries was examined. It was noted that the industry in the region, and especially in Pakistan, had made substantial progress. Equipped with first-generation jetliners, the three national flag carriers are serving extensive domestic markets and also flying to a number of foreign destinations. It is difficult to assess precisely the value of their operations in terms of national economy or national development, but it may safely be stated that air transport has played an important role in linking the various points within the region, particularly in Iran and Pakistan, where the conditions of terrain and climate have served as an obstacle to the development of surface transport in many areas.

The role played by the international operations is equally valuable. The effects of decreases in travel time and costs and of improved communications on trade, investment and tourism are obviously evident. Air transport has made the RCD region more accessible and facilitated investment, technical and economic co-operation, and importation of advisory personnel. Besides aiding the development pro-

cess, air transport has also enhanced the national image; PIA being a case-study where the national image was bolstered by efficient international operations.

It has already been stated that the world airline industry is in the process of switching over to large-capacity subsonic jets and supersonic transports. The competitive element in the industry will soon demand that the RCD airlines also acquire and operate similar equipment if they wish to continue their international operations successfully. During the coming years, the RCD countries will be accelerating their economic development activities. This will, in turn, call for continued development of air transport in the region. With the promise of better economic conditions, a substantial increase in travel within and outside the region is quite likely. It is, therefore, obvious that in the age of advanced technology aircraft, air transport in the RCD region will be called upon to play an even more important role.

a) The RCD Market, its Resources and Potential.

The RCD market is quite big considering the population and the area of the region. Pakistan, the most populous country in the region, has an estimated population of over 121 million,[452] and an area of 365,529 square miles.[453] The growth rate of population is estimated at 2.2% per annum.[454]

Iran,which has an area of 628,000 square miles, has a population of nearly 25 million,[455] and Turkey, with an area of 301,380 square miles,[456] has a population of approximately 35 million.[457] In Turkey, population is growing at a rate of nearly 2.6% per annum.[458] The RCD market thus comprises of more than 180 million, and even assuming that growth rate falls due to intensive family planning measures in the region,[459] the population is expected to top more than 200 million by 1980.

An increase in population will also mean increased use of air transport for travel within and outside the region. The use of air transport is further expected to go up by economic growth in the region which is receiving full attention of the three national governments. "As the most economically successful nation in the Moslem Middle East,"[460] Iran is vigorously pursuing its fourth development plan (March 20, 1968 to March 19, 1973). The main object of the plan, which calls for a total investment of 810 billion rials, is to raise the average economic growth of the country to 9% per annum, that is, 54% during the entire plan period. Thus, the GNP will reach 815 billion rials in year 1972-73, and the national income to 720,000,000,000 rials, and per capita income to rials 23,300. The population is estimated to grow to 30.3 million, and the industrial growth is estimated to

go up by 13% per year.[461] Considering that since the mid-1960s, the Iranian GNP has increased 10.5% annually,[462] the objectives of the current development plan seem realistic and attainable.

Besides economic growth, tourism has shown a remarkable upward trend in Iran. While there were only 6,783 foreign tourists in Iran in 1957-58, the number of tourists had risen to 275,000 in 1968-69. By 1972-73, the 4th development plan aims at increasing the tourist traffic to about 520,000 persons.[463] Naturally, this large increase will have a corresponding increase in the use of air transport services within and outside the country.

Turkey, whose economy recorded an annual growth rate of 6.5% during the period 1962.66, is now almost mid-way with its second five-year development plan (1968-1972). The basic objective of the plan is to achieve an aggregate growth rate of around 40.3% in GNP during the period 1968-1972. This works out to an average rate of growth of 7 per cent per annum, which seems attainable in view of the past performance of the Turkish economy. Turkish GNP, which is estimated to be TL. 85,100 million in 1967 at 1967 prices, will rise to TL 119,400 million by 1972.[464]

In addition, Turkey possesses the fastest growing tourist industry in the region. The number of foreign tourists

rose from 99,414 persons in 1956[465] to 470,000 persons in 1967,[466] and it has been estimated in the second development plan that 1.5 million foreign tourists will visit Turkey in 1972.[467] It is also estimated that in 1972 370,000 Turkish citizens will travel abroad.[468] This development of tourism coupled with economic development is likely to stimulate additional traffic which, in turn, will assure a greater role for air transport in and outside Turkey.

Pakistan, whose gross national product recorded a growth rate of 7.5%, 5.2% and more than 5% in 1967-68, 1968-69[469] and 1969-1970,[470] respectively, is also making a determined effort to improve its economic condition. The nation has recently launched its fourth five-year plan which envisages a total investment of Rupees 75,000 million during the period 1970-1974. The primary objective of the plan is to achieve a growth rate of 7.5 per cent in East Pakistan and 5.5 per cent in West Pakistan.[471] Under a 20-year perspective plan, Pakistan's GNP, which in 1964-65 stood at Rupees 41,058 million,[472] is expected to quadruple by 1985.[473]

In spite of a number of ancient sites and other places of interest, the tourist potential of Pakistan is yet to be fully exploited. While Pakistan received only 48,000 tourists in 1960, their number is expected to increase to 200,000 in 1970.[474] In the coming years, however, a substantial increase in tourists inflow is anticipated in view of the various

measures being taken for the development of tourism. Accelerated development and increased tourism are likely to have a favourable impact on air transport, which will be called upon to play a still greater role inside and outside the country.

From the foregoing, it is evident that the RCD market has a fairly big size and scope. It is also clear that the market has a healthy growth and significant potential. This indeed augurs well for the air transport in the region. In a preceding chapter, it was noted that the three RCD flag carriers carry almost 2.5 million passengers per year on their networks, out of which nearly 25 per cent passengers are carried on international flights. So far, the RCD carriers have maintained healthy growth rates, and assuming that their traffic will continue to grow at the rate of about 15% per annum, the number of passengers on their networks is expected to double in the next five years. This anticipated growth on the international routes, however, can only be materialised provided that the RCD carriers remain competitive equipmentwise in the era of large-capacity subsonic jets and supersonic transports. For small carriers, the new equipment means a big challenge and there is no doubt that, like the others, the RCD carriers are confronted with this problem. It

is, therefore, appropriate to examine as to how the RCD carriers are preparing themselves to meet this challenge.

b) RCD Airlines and the Era of Large-Capacity Jets and SSTs.

i) The RCD Airlines' Requirements for Large-Capacity Jets and SSTs and the Economic Feasibility of their Acquisition and Operation.-

With the exception of PIA, which had the distinction of being the first with first-generation jetliners in Asia, the jet age came comparatively much later to the other areas of RCD region; Iran Air and THY converted to jet equipment on their international networks in 1965 and 1967, respectively. There are indications that this may be repeated in the case of wide-bodied jets and SSTs. It is a matter of some concern that none of the RCD carriers has so far ordered any type of wide-bodied jets. This underscores the problems of small carriers in acquiring and operating the new breed of bigger and much more expensive aircraft. In case of supersonic transports, however, PIA is the only carrier in the region which holds two delivery positions on the Boeing SST.[475]

Under any circumstances, this situation of indecision with respect to the large-capacity aircraft will not continue for long. Competition on international routes will compel the RCD airlines to acquire and operate large-capacity subsonic jets. Considering this, there is a definite requirement of

the RCD airlines to acquire jumbo jets in the early 1970s and SSTs in the late 1970s. Experts have not yet assessed the exact fleet requirements of the RCD airlines in respect of these new aircraft. The writer visited the headquarters of all the RCD airlines and was given to understand that all the three carriers were still evaluating their requirements for the jumbo jets. No details about the possible date of introduction or the type or fleet size to be ordered were provided by Iran Air or Turkish Airlines officials, but a senior PIA official indicated that initially they have a requirement for two wide-bodied trijets.[476] This number, however, will increase, the writer was told, if additional routes such as the inter-wing operations between East and West Pakistan are also served by wide-bodied aircraft.[477] Incidentally, PIA's 5 year operating plan (1970-71 to 1974-75) assumes that the wide-bodied aircraft will be available for operation during 1973-74.[478]

Details are not available, but in the case of Iran Air and THY, it may reasonably be assumed that both carriers may have a requirement for a fleet of two wide-bodied aircraft each. It may be stressed that this, of course, is a layman's assessment and in arriving at this interim conclusion the writer was influenced by many patent considerations. Firstly, both Iran Air and THY have developing European oper-

ations; their main international services link Teheran and Istanbul approximately ten times a week with various European destinations. Their existing international traffic while maintaining its steady growth will still not qualify bigger large-capacity aircraft requirements for a few years. The requirement for Iran Air may, however, rise as the carrier has an eye on the Atlantic operations. Secondly, both carriers are likely to suffer intensive competition in the European market and will be forced to operate wide-bodied jets like their bigger and better established competitors. Thirdly, most airline experts suggest that two is the bare minimum number for an aircraft type to be operated by an airline. Even this small number poses many critical maintenance and scheduling problems which can be somewhat alleviated by some sort of co-operative arrangements.

In respect of SSTs, PIA obviously foresees a requirement of two aircraft.[479] As for the other RCD carriers, no data concerning their requirements for this type is available. Considering the great speed and productivity of the supersonic transport and various other factors such as the noise, sonic boom and scheduling problems involved in the supersonic operations, it is neither possible nor advisable to make even a provisional estimate of RCD airlines' requirements for the SST aircraft. It may, however, be added that Iran Air will

definitely have a requirement for SST aircraft in late 1970s if it starts its planned Atlantic operations.

Airline executives in the RCD region, particularly in Iran and Turkey, are understandably reluctant to talk about the economic feasibility of the acquisition and operation of the jumbo jets and SSTs. They point out that it is too early to discuss this aspect of supersonic operations, and that in the case of jumbo jets they are still examining the various aspects relating to its operation on their networks. Of the RCD carriers, PIA, however, is more specific, and is "reasonably confident that the growth in traffic will justify the operations of wide-body aircraft."[480] In view of its past performance, PIA appears to be similarly optimistic in case of its intended supersonic operations.

ii) Financial Resources for Acquisition of New Equipment.- As the RCD airlines enter the age of jumbo jets and SSTs, they will be required to make huge investments for acquiring new planes, related equipment and support facilities. Naturally, this will put a tremendous strain on their financial resources, which are not much anyway in view of the fact that out of three airlines in the region, only PIA is a profitable airline. Since all the three carriers are state-owned, it might create an impression that the Governments in the region might provide them finances for the new aircraft. In this

context, it may be stressed that the RCD region is a developing area, and, besides air transport, there are increasing social demands elsewhere for public funds. The huge capital requirement for new aircraft and support facilities might make it difficult for the Governments to give an all-out financial backing to their carriers in their re-equipment plans. A notable precedent exists in the case of Turkey where, in the early 1960s, the Government was not anxious to make available the necessary foreign exchange for the purchase of first-generation medium-range jetliners.[481] It is thus conceivable that the RCD airlines will probably have to raise the necessary capital for re-equipment from the world markets, which by no means will be an easy task.

On the basis of its past performance, profitability and financial resources, PIA seems to be confident of its ability in raising necessary finance. One of its senior executives observes: "I do not think that we will have any major problems in raising the necessary capital for the acquisition of either the wide-body jets or the SST aircraft."[482] The airline recently demonstrated its borrowing ability by raising 17 million Eurodollar loan to pay for three new 707-320Cs.[483] As regards Iran Air and THY, it is difficult to make any sweeping statement either way on their ability to raise sufficient capital to pay for the new equipment and facilities. How-

ever, this much can be said that their financial performance and lack of profitability might create certain problems in the raising of capital to purchase new aircraft and equipment.

iii) Technical Resources for the Maintenance and Operation of Large-Capacity Jets and SSTs.- The introduction of jumbo jets and SSTs by the RCD carriers will require the establishment of elaborate maintenance and overhaul facilities for these aircraft. The development of these important facilities requires considerable technical know-how besides significant capital investment. It, therefore, becomes necessary to examine whether the RCD airlines have the requisite resources and manpower to develop and operate such sophisticated facilities.

It has been noted that PIA is the only carrier in the region which possesses complete maintenance and overhaul facilities for its current jet fleet consisting of 707s and 720-Bs. Incidentally, this excellent engineering base is fully staffed by Pakistani engineers and mechanics. Indeed, it has a potential of maintaining and overhauling the new breed of aircraft if necessary investments are made. PIA's Engineering Director, Syed Ejaz Ali, on being questioned by the writer, made the following observations on PIA's engineering capability:

> "We have nearly 300 engineers and approximately 2,000 skilled mechanics. Our workshops are also approved by ARB and FAA. Now when this capability and facility is being available to start with, it is relatively easier to develop it further in order to take similar overhaul work. Obviously, there is considerable expansion in our facilities that will be required. Staff will have to be trained; new tools, test equipment will have to be purchased. We have the basic nucleus available for further development in order to handle the jumbo jets and supersonics in 1970s."[484]

As a measure of further development, PIA is actually planning a number of steps to achieve adequate capability for the servicing of new generation of aircraft. A twin-hangar for wide-bodied aircraft will be ready by 1972-73, and the expansion of engine overhaul shop will take place even earlier in 1971-72.[485] It is being expected that by the time PIA introduces wide-body aircraft into service in 1973-74, it will have sufficient internal resources and facilities to maintain and overhaul their airframes and engines.

A similar situation, however, does not exist in the case of Iran Air and THY. They do not possess adequate facilities and manpower for maintaining and overhauling their first-generation jet transports and, although they are trying to develop their technical facilities, it is a matter of doubt if they will be able to develop adequate technical facilities

in time for the wide-bodied jets and SSTs. Another factor which reinforces this view is the lack of profitability of both these carriers. The resultant strain on capital is likely to make it more difficult to make the huge investment required for developing facilities necessary for maintaining and overhauling the new aircraft.

iv) The Need for RCD Collaboration.- From the foregoing discussion, it is evident that the entry of the RCD airlines into the age of jumbo jets and SSTs is not going to be an easy matter. The RCD carriers are essentially small airlines trying to securely establish themselves with their first-generation jets, and their problems in this decade are typical of those which the advent of advanced technology aircraft has created for the smaller carriers the world over. Much has been said earlier about the smaller carriers, their problems and the possible solutions for them. It is not worthwhile to repeat all the reasons and arguments already discussed hereinabove, but suffice it to say that a study of the RCD airlines, their resources and potential, clearly demonstrates a need for collaboration to acquire and operate wide-bodied jets and supersonic transports. The pros and cons of the need for RCD collaboration will, however, be more fully examined in a following chapter wherein the writer proposes the formation of a joint airline in the region to overcome

the problems confronted by the evolving aviation technology. Assuming that a joint airline in the region can exist and operate, it is now intended to examine those factors which are favourable to its formation.

14. Factors Favourable to the Formation of a Joint Airline in the RCD Region.

a) Economic.

A detailed discussion on the economics of air transport in the age of jumbo jets and SSTs has already followed in which the various factors causing an industrywide swing towards increased co-operation and consolidation were highlighted. The pressures being applied by the emergence of advanced aviation technology on the international airline industry in general are also being felt by the RCD airlines. It is not intended to repeat all the problems being faced by the airline industry and the smaller airlines in particular, and to further stress the advantages of togetherness; but it may be pointed out that economic conditions in the industry are the single most important cause for developing increased tendencies for co-operation in the airline community. The existing economic state of the RCD airlines, with the exception of PIA, is not a very happy one, and there is a

possibility that even PIA's financial condition may deteriorate if it goes alone on the jumbo jets and SSTs. The limitations of size, in case of the RCD airlines, will compound their difficulty in facing future costs, and are eventually likely to create an atmosphere where the formation of a joint airline may be considered as a sheer economic necessity. PIA's M. M. Saleem, who foresees such a development, says:

> "Collaboration in civil aviation due to economic pressures is taking place. The benefits of collaboration are both immense and evident.
>
> In my opinion, there is a need for collaboration purely on economic grounds. In the long run, the possibility of economic factors providing greater incentive for collaboration in civil aviation cannot be ruled out."[486]

It can, therefore, be visualised that the problems of acquiring and operating advanced technology aircraft coupled with the patent advantages of collaboration will in the long run provide an over-riding reason for the formation of a joint airline in the region. The significance of economic factors promoting the establishment of joint airlines needs hardly any emphasis. All the existing joint multi-national airlines and consortia owe their existence primarily to the inherent economies of scale, and all other non-economic factors such as history, politics or geography are only

secondary in character and reinforce, in varying degree, the basic urge for consolidation created by the peculiar characteristics of economics of air transport. Multi-national airlines such as Air Afrique, East African, SAS and MSA were created mainly because the constituent states could not alone afford the cost of international operations. Similar reason, it is hoped, accentuated by the introduction of the advanced technology aircraft, will promote the establishment of a joint airline in the RCD region, an area bound by close cultural and political links.

b) Political.

Experience has, however, shown that economic factors in isolation are not sufficient to promote any multi-national undertaking. Imam points out that although considerable economic benefits would accrue to participants in co-operative ventures, one of the main reasons for the frequent failure to attain such co-operation may be attributed to the diverse political objectives of the parties.[487] A major prerequisite in this respect is that the potential participants be convinced that the co-operative venture will not be in direct conflict with their national interests. Accordingly, when there is absence of serious political discort, the incentives for joint economic undertaking become strong.[488] This has

been demonstrated in the cases of Air Afrique, CAA, EAA and SAS. Further instances of co-operation boosted by harmonious political relations were the jointly owned and operated British Commonwealth Pacific Airways (BCPA) and the Tasman Empire Airways Limited (TEAL); the three constituent countries, Australia, Britain and New Zealand, had excellent political relations as members of the British Commonwealth.[489]

In the RCD alliance, the three member states, Iran, Pakistan and Turkey, have close political relations deriving from several factors. The three countries have a common religion; geographically, they are neighbours; culturally, Pakistan, especially its western wing, has drawn heavily on Iran in language, literature and customs. There is, therefore, considerable warmth in their relations, both at the government level and among the people. Each country has supported the others' major causes without reservation.

The Regional Co-operation for Development Agreement is one notable outcome of this close friendship. The three countries are also partners in the Central Treaty Organization.

With Iran and Turkey, the foreign policy of Pakistan reflects a continuity of the traditional sense of devotion felt by the Muslims of the subcontinent with those nations.

Since independence, Pakistan's relations with them have been further developed and consolidated. Pakistan's sympathy and support for Iran and Turkey on all questions involving their rights and interests have been unequivocal.[490]

More than any other country, Iran holds a special place in the hearts of Pakistanis. It was the first Muslim country to recognize Pakistan.[491] Therefore, when, in the early fifties, the Government of Iran nationalised its oil industry and terminated the concession of the Anglo-Iranian Oil Company, Pakistan upheld the sovereign right of Iran to take that action. The boundary between the two countries had remained unsettled during the entire period of British rule. A few years ago, an agreement on its alignment was concluded between Iran and Pakistan and the boundary was demarcated by their experts.[492]

When Sultan Abdul Hamid of Turkey strove to gather together all Muslims in the spiritual fold of Khilefat, no Muslim people responded to his appeal as did the Muslims of the subcontinent. They rallied to the Ottoman cause and made it their own. They denounced their British rulers for policies and actions aimed at undermining and encroaching upon the Ottoman empire.[493]

In the first decade of the present century, attacks on Iran by Russia and on Turkey by Balkan allies roused the

Muslims of the subcontinent. Muslim leadership stirred the community with their poetry, speeches and writings. Students of the great Muslim College at Aligarh opened a relief fund for the sufferers. Large contributions were made to the Red Crescent Fund and a medical mission was sent to tend to the Turks wounded in the Balkan Wars.[494]

Pakistan's support to Turkey on the question of Cyprus is categorical. When the question was referred to the United Nations General Assembly in 1954 and 1955, the Pakistan delegation supported the claims of Turkey. Later, when troubles began in 1963, Pakistan demanded that the agreements of 1960 on the independence of Cyprus, which brought about the settlement of the problem, should be respected.[495]

Pakistan's foreign minister Bhutto said in 1963: "We are with Turkey in her moment of crisis and whatever co-operation may be needed from Pakistan will be extended in full measure."[496] Very similar sentiments were expressed by Turkey in Pakistan's moment of crisis in September 1965, and Turkey extended valuable moral, material and diplomatic support to Pakistan during the Indo-Pakistan war. Turkey's support to Pakistan on the Kashmir issue is incidentally as categorical as is Pakistan's on Cyprus.[497]

Since the birth of Pakistan as a free nation, Iran and Pakistan have on an overwhelming majority of international

issues reacted and responded in a similar fashion. From the very beginning, Iran has supported the Kashmiris right to determine their own destiny and has pleaded for the implementation of the UN resolutions to end the unfortunate conflict between India and Pakistan.[498]

When Pakistan's very existence was threatened by Indian armed aggression in September 1965, Iran stood by Pakistan like a rock. The moral and material help extended by Iran was one of the factors which helped Pakistan repulse the attach against its sovereignty and freedom.[499]

While citing Iran's support for Pakistan, certain quarters maintain that after the September 1965 war with India, some F-86 jet fighters originally in West Germany had reached Pakistan through Iran.[500]

The Shahinshah of Iran, who, in Pakistan, is described as "one so near and dear" and considered as "one of us", was personally instrumental in bringing about a conciliation between Afghanistan and Pakistan in 1962 and then in 1966, between Pakistan and Malaysia.[501]

While Iran, Pakistan and Turkey enjoy excellent political relations among themselves, and are often acting together on most of the problems in the international politics, it is logical, as well as natural, that as sovereign and independent states, they may not have a complete identity of

views on certain issues. One such issue lately has been their relationship with the western powers, particularly the United States. Initially, all the three countries were closely allied with the United States. However, since the last few years, Pakistan's relationship with the United States has cooled down quite a bit due to various reasons, and although she is still technically allied to the U.S. through SEATO and a bilateral agreement, she no longer has the special relationship with the U.S. which existed in the mid- and late-fifties. Iran and Turkey have, at times, voiced their grievances against the United States, but continue to enjoy a more cordial relationship with the U.S. as compared to the Pak-US ties. One has to, however, appreciate that the deterioration in the Pak-US link has not adversely affected Pakistan's close relationship with Iran and Turkey.

Another area where certain differences may be discerned is the relationship with the socialist powers. As far as Russia is concerned, all the three countries in the RCD region have improved their relationship with Soviet Russia. Comparatively speaking, Pakistan and Iran are closer to Russia than Turkey. PIA and Iran Air both fly to Moscow and beyond, and Iran and Pakistan have both received certain economic assistance from the U.S.S.R. It is also understood that both countries have received limited quantities of

certain military equipment from Russia. Even Turkey is reported to have received $300 million Soviet credit for industrial projects.[502]

In the case of China, however, the differences are far more easily appreciable. Of the RCD countries, only Pakistan enjoys diplomatic relations with the Peoples Republic of China, and Iran and Turkey still maintain relations with Taiwan. This situation is likely to be resolved as and when Iran and Turkey establish diplomatic ties with China. An indication to this effect was given in 1965 when it was revealed that Pakistan was mediating for the establishment of relations between China and Turkey.[503]

Israel is another issue where the RCD members do not have a complete identity of views. While Turkey and Iran recognise the state of Israel, Pakistan has not accorded recognition to the Jewish state. Turkey, which has formal diplomatic relations with Israel, has also a bilateral air agreement with Israel under which THY and El Al fly to Tel Aviv and Istanbul, respectively. Israel maintains a trade mission in Iran and El Al also flies to Teheran, but Iran and Israel have no formal diplomatic relations.[504] On the Arab-Israeli dispute, however, Iran and Turkey are much closer to Pakistan. At the conference of Islamic government leaders at Rabat, Morocco, in December 1969, and at the

conference of Islamic foreign ministers at Jeddah, Saudi Arabia in March 1970, Iran joined other Muslim countries in condemning Israeli aggression.[505] The Turkish foreign minister is on record having recently stated that his Government supported the cause of the Palestinians and opposed the use of force by Israel to occupy Arab lands. He insisted that Israel should pull back all her forces before peace talks can begin.[506] It may be emphasised that all RCD members stand for the Israeli withdrawal from all occupied Arab territories and support a solution of this problem in accordance with the UN resolution of November 1967.

While assessing the political outlook of the RCD members, it is worthwhile to mention that while Iran and Pakistan are Asian countries, Turkey, whose great bulk of territory is in Asia, often identifies itself with the European community. Even before the emergence of RCD alliance, she had become an associate member of the European Economic Community on September 12, 1963.[507] Moreover, she is an important and active member of the NATO.[508]

In analysing the political collaboration between the RCD partners, it requires to be stressed that their differences in certain areas of their foreign policies have never assumed such proportions where they may pose a threat to the basic fibre of political consensus between the partners. A

heartening note of this collaboration is the absence of any political dispute between the RCD members. Another notable feature is the absence of fear of domination; no RCD member has any apprehension that others are likely to dominate in this alliance. These factors no doubt contribute to a better political understanding among the partners.

It has been observed that sometimes differences in politico-economic structures of the various countries, especially in the degree of government influence on economic life, stand in the way of multi-national economic co-operation. In the RCD region, the political structures have many similarities. Turkey has an elected parliamentary form of government; Iran has a constitutional monarchy, and in Pakistan, general elections, on the basis of universal adult franchise, to pick a parliamentary form of Government, are going to take place in December 1970. Experience in the RCD region has shown that even when the political structures were not identical, at times, in the past, the three governments and the peoples always enjoyed close and friendly relations. Even the many changes of various governments in the region have not affected this friendship.

The economic structures in the RCD region have also many similarities. All members believe in the system of free enterprise and encouraging private investment in the

industrial field. State enterprise is restricted to a few selected areas where private investment is not easily forthcoming. All three countries have more or less the same degree of government influence on the economic life. There is a notable similarity in the investment pattern in the three countries, and in certain areas they have reached almost the same stage of economic development.

It is thus evident that in spite of certain limitations, a degree of political consensus and identity of view, which is required for any successful economic co-operation, is clearly present in the RCD region.

c) Culture, History and Religion.

Imam suggests that cultural factors stimulating joint enterprisory activities are usually founded in common history and common heritage. However, they may in some instances be borne out by political relationship of long standing. The colonial regimes embraced all of these. It is evident that the British and the French left a marked impact of their culture and language which still finds a large measure of effectiveness in some of the newly independent states. Thus, the African states constituting Air Afrique are all French speaking and were, prior to their independence, under the same colonial regime; hence, the link of a common hereditary

culture. The same may be said of the African states co-operating in the East African Airways, and the Asian states participating in the Malaysia-Singapore Airlines.[509]

The cordial relations between Iran, Pakistan and Turkey have neither sprung overnight nor are they mere sentimental outbursts. They are grounded in hundreds of years of history; they spring forth from centuries of cultural contact; religion binds them together in an unbreakable union; and geography makes them eternal neighbours.

The cultural and religious ties between the RCD countries are very strong and their origin can be traced to the sixth century B.C. when the Persian empire was extended to the Indus valley.[510] In the year 400 B.C., soldiers from the Panjab and Sindh in West Pakistan fought shoulder to shoulder with the Achaemanian army against the Greek onslaught.[511]

The introduction of Turkish influence in the subcontinent came in the eleventh century with successive Turkish invasions, the first led by Mahmud of Ghazni. By the end of the twelfth century, Turkish control had been carried to the Ganges-Brahmaputra delta. The five centuries between Mahmud of Ghazni and Vasco de Gama witnessed a series of Turkish dynasties. In this period, there also began a synthesis of art, language and architecture.[512]

Nothing, perhaps, can better illustrate the close cultural ties in the RCD region than the common origin of Urdu, one of the national languages of Pakistan, and today this truth is evident in the close similarity which the Bengali and Urdu languages have with Persian.[513]

The origins of Urdu can be traced to the Muslims who came to the subcontinent speaking first Turki and later Persian. These languages became intermixed with the local dialect spoken in the area of Delhi which was most often the seat of Muslim power. When the Moghul armies carried out their campaigns from Delhi, their speech came to be called "Zaban-e-Urdu-e-Mualla" or the language of the exalted camp or court. From its earliest use in the subcontinent, it was written in the Persian script.[514]

In terms of the broad sweep of cultural history, West Pakistan has been characterised by the importance of influences coming from outside. West Pakistan has been the scene of the influx of numerous peoples and cultures, for all the overland invaders of the subcontinent entered through this area. When it was not independent, it was often annexed to lands in western Asia as it was to empires centered in northern India. Iran often exerted a strong influence, especially during the period of Muslim rule. To the present day, West Pakistanis feel themselves closely identified with the western Islamic world.[515]

In architecture, the Muslims of the subcontinent borrowed heavily from Iran; early buildings in stone were greatly influenced by the Seljuk architecture of Asia Minor; other adaptations were distinctively Indo-Islamic.[516]

In West Pakistan, especially in Sindh, the Iranian tradition was ascendant, as is evident in the lovely tiled mosques of Tatta.[517]

In fine arts, the great bulk of the famous Moghul painting is in miniature. The delicate ornamental conventions of Moghul painting are of Persian derivation.[518]

The official and literary language of most of the Muslim rulers of India was Persian and in both style and context, the rich literature which flourished in Muslim India was heavily indebted to Persia.[519]

The most significant development in Urdu poetry has been the successful adaptation of the Persian "Ghazal" so that the Urdu poet can use it without discomfort.[520]

According to a noted Iranian scholar, Professor Syed Hussain Nasr, the nations of Iran, Pakistan and Turkey show unmistakable similarity in social customs and practices, proverbs and folklores, art and architecture, calligraphy, etc. In the sphere of literature, the great giants have cast a great shadow all over the region, no matter where

they belong to. As the professor asks: "Who could say whether Rumi is more appreciated in Konya, Teheran or Peshawar."[521]

The same is true in the field of arts, where, from miniatures to minarets and domes, one discerns a surprising unity. In the realm of philosophy, mysticism and poetry, one again meets with a likeness and identity which is symbolic of the closeness of the peoples of Iran, Pakistan and Turkey.[522] The latest indication of their cultural closeness comes from the report that the world-famous Iranian tiles are being used for the decoration of the interior of the dome of the Quaid-e-Azam's mausoleum.[523]

Added to the common culture and history, the peoples of Iran, Pakistan and Turkey share the religion of Islam which creates a strong and unifying emotional and spiritual bond between them.

With this cultural background and political agreement, the chances of a meaningful economic collaboration in the region seem promising.

d) Geographic Contiguity.

Geographic proximity between countries alone is not a sufficient condition of a basis for regional co-operation as India and Pakistan, Egypt and Israel illustrate. There must be a basis of common interest, such as usually arises bet-

ween neighbours, and a common if frequently limited purpose. On the other hand, geography cannot be abandoned altogether.[524]

History of air transport, however, suggests that subject to the presence of certain other basic conditions, geographic proximity has contributed to the formation of multi-national airlines, such as Air Afrique, EAA, MSA and SAS. Even in the proposed joint air transport arrangements such as Air Union, International Arab Airways Corporation and Flota Aerea Latino Americana, participants are invariably geographical neighbours. Nevertheless, if the political and cultural bonds between the states concerned are sufficiently strong, joint ventures may still materialize despite the geographic separation between the partners. The only precedent of such co-operation in air transport was the British participation in BCPA and TEAL in 1946.[525]

It is, however, safe to assume that geographic proximity accelerates the establishment of multi-national airlines, since it contributes to the development of traffic on intra-state routes, especially in developing areas. It is an essential consideration in any all-embracing scheme of technical, economic and commercial co-operation.[526]

With this conclusion, it is needless to reiterate that Turkey, Iran and Pakistan, who share common frontiers,

constitute one geographical unit. It is obvious that this physical togetherness can play an important role in the consolidation of air transport in the region.

Having demonstrated the presence of certain factors promoting airline consolidation, this study will now proceed to a comparative appraisal of the past and present transnational co-operation in air transport and the legal principles involved therein.

CHAPTER III

FOOTNOTES

1. Mahlon R. Straszheim, The International Airline Industry (Washington, D.C.: The Brokkings Institution Transport Research Program, 1969), p. 1. For a detailed discussion on the growth potential of airline industry, see Frits Besancon, "Air Travel Over the Next Thirty Years," Esso Air World, March/April 1970, pp. 121-126.

2. R.E.G. Davies, A History of the World's Airlines (London: Oxford University Press, 1964), p. 479.

3. Ibid.

4. Stephen Wheatcroft, Air Transport Policy (London: Michael Joseph, 1964), pp. 93-94.

5. R.E.G. Davies, op. cit. supra, note 2. p. 480.

6. Stephen Wheatcroft, op. cit. supra, note 4, p. 94; see also R.E.G. Davies, op. cit. supra, note 2, p. 480.

7. Ibid.

8. IATA World Air Transport Statistics 1968, p. 8.

9. Op. cit. supra, note 4, p. 95.

10. Boeing 747 commonly described as "jumbo jets" is in scheduled airline service since January 21, 1970, and has already carried more than a million passengers; see Aviation Week and Space Technology, July 20, 1970, p. 25. For a discussion on the specifications of the Boeing 747, see J.T. Dyment, "IATA in the 1970s," December 1967, pp. 4-6.

11. Aviation Week and Space Technology, August 31, 1970, p. 14. On September 28, the 002 reached mach 1.65 or about 1,100 m.p.h.; see The Gazette, September 29,

1970. On October 4, the 002 reached a speed of 1,210 m.p.h.; see The Gazette, October 5, 1970.

12. Flight International, November 20, 1970, p. 780.

13. Ibid.

14. Aviation Week and Space Technology, July 6, 1970, p. 31.

15. See supra note 12.

16. Aviation Week and Space Technology, January 26, 1970, p. 31.

17. See supra note 10.

18. Newsweek, July 13, 1970, p. 40; Time, July 13, 1970, p. 56; see also Des Allard, "Aviation," The Montreal Star, August 29, 1970; "The 747: Consumer Report." Flight International, June 18, 1970, pp. 1002-1006; "Six Months of the Boeing 747," Interavia, XXV (August, 1970), 992; Topflight, May 1, 1970, p. 2, and, Topflight, June 15, 1970, p. 6. See also Desmond Allard, "Airlines worried by jumbo incidents," The Montreal Star, November 5, 1970.

19. During the first four weeks of its operation, Pan American Boeing 747s averaged 58% passenger load factor on the New York-London route; see Aviation Week and Space Technology, February 9, 1970, p. 31. Load factor for all services till middle of July 1970 had been 63%. Boeing Aircraft Company reported that highest had been New York-San Juan with 87%, and 84% between Los Angeles and Honolulu, the second highest. Transcontinental US 747 load factor had been 70%. Boeing 747 carried its one millionth passenger despite being in service less than six months; see Aviation Week and Space Technology, op. cit. supra, note 10, p. 29. By October 1, 1970, B-747 had carried more than 2 million passengers; see The Montreal Star, October 2, 1970.

20. The New York Times, February 24, 1970; The Gazette, May 30, 1970, and, Time, op. cit. supra, note 18, p. 56.

21. The first hijacking involved a Pan American 747,

which, with 359 passengers aboard, was forced to fly to Havana while making a scheduled New York-San Juan run on August 2, 1970; see Los Angeles Times, August 3, 1970, and Flight International, August 6, 1970, p. 187. The second hijacking, also involving a Pan American 747, was carried out by Palestinian guerillas on September 6, 1970. The plane was taken from Europe to Cairo and was blown up after passengers and crew had disembarked. This was incidentally the first loss of the huge jet-liner; see The Gazette, September 8, 1970, and, The Montreal Star, September 8, 1970.

22. In all economy configuration, it can carry a maximum of 490 passengers. Most airlines, however, have ordered it in configurations allowing about 350-375 passengers in both first and economy classes.

23. "Planes for Rough Weather," Time, August 3, 1970, p. 48.

24. 747's B, C and F versions will have bigger power-plants. Their thrust will be 45,000, 45,500 and 47,000 lb, respectively. These will be operated versions of JT9D engine.

25. The maximum weight for 747B, 747C and 747F versions will be 775,000 lb; see Flight International, op. cit. supra, note 12, p. 776.

26. Ibid, p. 783.

27. Ibid. Nine customers had originally ordered a total of 181 TriStars; see also Air Transport World, November 1969, p. 15.

28. Because of Northeast Airline's merger with Northwest, Lockheed has lost eight orders as these airlines after merger want a standardised fleet of DC-10. Lockheed is, therefore, left with only 173 orders; see "Aviation: One Up and Away," Newsweek, September 7, 1970, p. 62, and, "Aviation: Lockheed flies into heavier flak," Business Week, May 30, 1970, p. 28. See also Flight International, February 12, 1970, p. 220 for cancellation of Northeast's TriStar order. Latest reports indicate that the total number of orders and options for the TriStar has reached 178. See Flight International, September 10, 1970, p. 386.

29. Flight International, op. cit. supra, note 12, p. 784.

30. "Planes for Rough Weather," op. cit. supra, note 23, p. 48.

31. Ibid.

32. Flight International, op. cit. supra, note 12, p.785.

33. "Planes for Rough Weather," op. cit. supra, note 23, p. 48.

34. "Aviation: One Up and Away," op. cit. supra note 28, p. 62.

35. For details and background of the TriStar production programme, see "Lockheat 1011 TriStar-Background to Burbank's multi-range trijet transport," Flight International, February 20, 1969, pp. 289-300, and, "Lockheed L-1011 TriStar takes shape," Interavia, XXV (February, 1970), 168-173. See also "TriStar: Lockheed Linchpin," Flight International, October 10, 1970, pp. 527-532.

36. "Aviation: One Up and Away," op. cit. supra note 28, p. 62. See also Flight International, op. cit. supra, note 12, p. 783. Roll out actually happened on September 1, and first flight is now scheduled for November 16; see Aviation Week and Space Technology, September 7, 1970, p. 25. The TriStar made its first flight on November 16, 1970, according to its scheduled flight test programme. The aircraft flew for two hours at altitudes of up to 20,000 feet. See The Gazette, November 17, 1970.

37. Air Transport World, July 1970, p. 9; see also Flight International, op. cit. supra, note 12, p. 783, and, Aviation Week and Space Technology, op. cit. supra, note 36, p. 25.

38. "Civil Aviation in 1969 - A Special Report," ICAO Bulletin, May 1970, p. 47; see also Flight International, op. cit. supra, note 12, p. 783.

39. To get the additional range for the intercontinental version, the weight had to go up by about 166,000 lb.

The maximum ramp weight of the Lockheed Intercontinental is quoted at 577,000 lb, and the maximum design take-off weight is 575,000. The decision to redesign L-1011 for intercontinental use was taken by Lockheed in mid-February 1969. See Flight International, op. cit. supra, note 12, p. 783; Interavia, XXIV (September, 1969), 1516, and, "KSSU's evaluation of the Tri-jets," Interavia, XXIV, (October, 1969), 1667-1668.

40. The increase in wing area was slightly more than 20%; increasing it from 3,456 sq. ft. to 4,180 sq.ft.; see Interavia, XXIV (October, 1969), 1699. See also Flight International, op. cit. supra, note 12, p. 783, and "KSSU's evaluation of the tri-jets," op. cit. supra, note 39, p. 1667.

41. A small fuselage stretch was incorporated; the intercontinental version measuring 182.67 ft. as compared to the 177.67 ft. length of the intermediate version; see Flight International, op. cit. supra, note 12, p. 776, and, Interavia, op. cit. supra, note 40, p. 1699.

42. The Rolls Royce RB-211-56 engine rated at 52,500 lb. thrust is being developed at a cost of L 60 million. It will be ultimately uprated to 55,000 lb. thrust and have the designation RB-211-57. This engine will power the heavier TriStar Intercontinental and will be available in new aircraft delivered from late 1974 onwards. The earlier TriStar will also be convertible to the uprated engine; see Flight International, op. cit. supra, note 12, p. 783, and, Interavia, op. cit. supra, note 40, p. 1699.

43. Ibid. The ultimate potential of the TriStar Intercontinental range is 6,000 n.m.

44. Flight International, op. cit. supra, note 12, p. 783.

45. Interavia, op. cit. supra, note 40, p. 1699.

46. The vice president of one large carrier, asked why his line had chosen Lockheed, replied: "Because it is a better plane. It is a better plane because we are going to be flying it. Don't worry about all that

technical nitty-gritty. They're both just alike;" see "Aviation: One Up and Away," op. cit. supra, note 28, p. 62.

47. Flight International, op. cit. supra, note 12. pp. 784-785.

48. Ibid.

49. "Aviation: One Up and Away," op. cit. supra, note 28, p. 62.

50. Flight International, op. cit. supra, note 12, p. 784.

51. Ibid. For technical details of the DC-10 production, see "The DC-10 in production," Interavia XXV, (March, 1970), 228.

52. "Planes for Rough Weather," op. cit. supra, note 23, p. 48; see also Air Transport World, op. cit. supra, note 37, p. 9.

53. "Aviation: One Up and Away," op. cit. supra, note 28, p. 62; see also Aviation Week and Space Technology, August 10, 1970, p. 25, and, Aviation Week and Space Technology, op. cit. supra, note 36, p. 26.

54. Flight International, op. cit. supra, note 12, p. 784.

55. Douglas DC-10-20 version ordered by Northwest is powered by JT9D-17 engines of 49,800 lb. thrust each. Up to now, it is the only airline to do so, and there is a certain possibility that it may switch to CF-6-50 engines of 49,000 lb. thrust each, which power the DC-10-30.

56. The maximum ramp weight of the DC-10-20/30 versions is 533,000 lb. as compared to 413,000 lb. for the medium-range DC-10-10. Maximum take-off and landing weights for the DC-10 intercontinental and intermediate range versions are 530,000 lb. and 376,000 lb.,and 410,000 lb. and 347,800 lb. respectively.

57. The tankage capacity in the intercontinental DC-10 is 27,000 imperial gallons as compared to 18,280 imperial gallons for the intermediate-range DC-10.

For the details of the long-range DC-10, see Flight International, February 5, 1970, p. 178.

58. Flight International, op. cit. supra, note 12. p. 781.

59. Ibid. See also "Planes for Rough Weather," op. cit. supra, note 23, p. 48.

60. "Aviation:One Up and Away," op. cit. supra, note 28, p. 62.

61. Aviation Week and Space Technology, op. cit. supra, note 53, p. 25.

62. Flight International, op. cit. supra, note 12. p. 790.

63. Ibid. The A300B is 165 ft. 1 in. long and has a wing span of 147 ft.

64. Ibid. The Government did not consider that the project was a sound investment without firm orders for 75 aircraft, which were not forthcoming, and without the guaranteed adoption of a Rolls-Royce engine.

65. Ibid.

66. Ibid. Recently, however, Air France and Lufthansa have placed orders for six aircraft with 10 more on option for each carrier; see Larry Birger, "Britain, U.S. face similar problems in deciding on faster jets," The Miami News, September 12, 1970, p. 4-A. See also Flight International, op. cit. supra, note 28, September 10, 1970, p. 384.

67. Flight International, op. cit. supra, note 12. p. 790.

68. Ibid.

69. The most effective argument being used against the SST in this Year of the Environment, as it is being called, is noise. A popular term of reference that has been given wide display is that an American SST would, on the runway, sound like fifty subsonic jets taking off at the same time. This comparison, which was devised by Dr. Richard Garwin, chairman of the SST panel on

environmental and sociological impact of the President's SST ad hoc Review Committee, has been both supported and hotly contested by scientists and aeronautical engineers in and out of the SST programme. According to Mr. William M. Magruder, US SST project director, a test pilot and one of foremost engineers and designers in the US, those who say that the SST would be the equivalent of 50 subsonic jets taking off simultaneously are engaging in what he calls "scientific mischief". For a discussion of the noise problem created by the SST, see Horrace Sutton, "Is the SST Really Necessary?" Saturday Review, August 15, 1970, pp. 15-16; "Showdown on the SST - Will US Stay in the Running?" U.S. News and World Report, September 7,1970, pp. 44-45; Aerospace Technology, May 20, 1968, p. 53; Guardian, October 7, 1968, and, President's SST ad hoc Review Committee, Report of March 1969, Congressional Record, October 31, 1969, p. H-10435. See also Alan H. Stratford, Air Transport Economics in the Supersonic Era (New York: St.Martin's Press, 1967), pp. 298-300. Admittedly, the SST is expected to be noisier than the existing subsonic jets. An idea of the noise and the consequential annoyance can be had from the fact that the British Airports Authority received more than 50 complaints when the Concorde 002 made its first and unscheduled landing at Heathrow airport, London; its first landing at a major international airport. One woman living near the airport reportedly commented: "If they were to skyjack that one and blow it up, I would not complain." See The Montreal Star, September 14, 1970. See also William Hines, "SST: A decibal dilemma," The Montreal Star, October 28, 1970, for a discussion of the noise problem relating to the SSTs.

70. When a plane flies along a straight route at supersonic speed, it creates an extremely energetic, jolting shockwave, commonly known as the sonic boom. The shockwave has the shape of a cone, something like an ice-cream lying on its side. More exactly, the plane creates two cone-shaped waves that vest close together; one originates at the nose of the plane and the other at the tail. They spread out fast and far, eventually attaining a width of 10 to 80 miles, depending on the weight, shape, and altitude of the plane. They spread

downward also, striking the earth and delivering sudden, sledge-hammer-like blows to buildings, people and everything else encountered. The area of ground struck by the shockwave from a single supersonic plane is enormous. The width of the affected area (width of sonic-boom carpet, or bang-zone) is about 50 miles. The length of the bang-zone is the entire length of the supersonic flight.

There have been several dramatic demonstrations of boom damage potential when military pilots accidentally flew too low and created considerable property damage and inflicted personal injuries. For people, the sonic boom is annoying because it is very loud and creates a startle effect. Moreover, the sonic boom can upset people who do delicate work (brain surgeons) and may also harm persons with nervous ailments.

For accounts of the physics of the sonic boom, see W.F. Baxter, "The SST: From Watts to Harlem in Two Hours," Stanford Law Review, November 1968, pp. 1-57; H.W. Carlson and F.E. McLean, "The Sonic Boom," International Science and Technology, 55, July 1966; U.S. National Aeronautics and Space Administration Report "On Supersonic Vehicle Shapes for Reducing Auditory Response to Sonic Booms," W.L. Howes, NASA-TMX-52294, April 12, 1967, and, U.S. National Aeronautics and Space Administration "Second Conference on Sonic Boom Research," NASA Sp.180, May. 9-10, 1968.

For a detailed discussion of the sonic boom and its effects, see, William A. Shurcliff, SST and Sonic Boom Handbook (New York: Ballantine Books, 1970), pp.21-63; Horrace Sutton, op. cit. supra, note 69, p. 16; "Boom or Boom-Doggle?" Time, June 1, 1970, p. 56; Mahlon R. Straszheim, op. cit. supra, note 1. p. 225; John C. Gilmer, "Why CP Air Will Go Supersonic," Canadian Business, May 1970, p. 30; "The SST: Riding a Technological Tiger," Time, October 3, 1969, p. 79; Don Dwiggins, The SST Here It Comes Ready or Not (New YorK: Doubleday and Company, Inc., 1968), pp. 56-82; Bo K.O. Lundberg, "Is This 1,400 M.P.H. Airliner Really Necessary?" Washington Post, September 15,1963; Bo K.O. Lundberg, "Acceptable Nominal Sonic Boom Overpressure in SST Operation Over Land and Sea," paper presented at June 14, 1968 National Conference on Noise as a Public Health Hazard, American Speech and Hearing

Association; C.S. Newberry, "Response of Buildings to Sonic Booms," Journal of Sound and Vibration VI (1967), 406; Bo K.O. Lundberg, "Atmospheric Magnification of Sonic Booms in the Oklahama Tests," Aeronautical Research Institute of Sweden Report 112 of June 1967; Bo K.O. Lundberg, "Summary Statement on the unacceptability of the SST Sonic Boom over Land and Sea and the Economic Losses of SST Operation Confined to Oversea Routes," BL Report 118, October 24, 1969, 16 pages; M. Parent, "Effets des vols supersoniques," Les Monuments Historiques de la France, XIV (1968), 5-21; Bo K.O. Lundberg, "The Menace of the Sonic Boom to Society and Civil Aviation," Aeronautical Research Institute of Sweden Report FFA-PE-19, May 1966; Organisation for Economic Cooperation and Development, Directorate for Scientific Affairs: "The Sonic Boom and its Implications for Public Policy" by the Secretariat, DAS/CSI/T69, June 20,1969; G.M. Lilley, "Report in Five Parts on the Sonic Boom," prepared for OECD Conference on the Sonic Boom, August 1969; F.S. Parkhurst Jr., "Noise, Jets and the Sonic Boom," August 11, 1967, Guilford College, Greensboro, North Carolina; Stanford Research Institute "Sonic Boom Experiments at Edwards Air Force Base," July 28, 1967, Report ETU-6065; U.S. Air Force Booklet "Sonic Boom Background Information," 68-1, 1968, and, U.S. Department of the Interior, Sonic Boom Study Group: "Noise and Sonic Boom in Relation to Man," November 4, 1968.

For a discussion on the legal problems arising out of the sonic boom, see G.K. Gleason, "The Supersonic Transport and the Boom Problem," Thesis for Harvard Law School Seminar on Legal Protection of Environmental Quality," May 31, 1968, and L.A. Huard, "The Roar, The Whine, The Boom and The Law: Some Legal Concerns about the SST," Santa Clara Lawyer, Spring 1969.

For a discussion on the economic effects of the sonic boom, see N.J. Asher, "Economic Effects of the Sonic Boom," Institute for Defence Analyses, Inc., December 1964, AD 655608.

For a discussion on the influence of the noise boom on the world SST market, see Alan H. Stratford, op.cit. supra, note 69, pp. 311-316.

71. Horace Sutton, op. cit. supra, note 69, p. 14.

72. Ibid, pp. 16-17. Testifying before Senator William Proxmire's House-Senate Sub-committee on Economy in Government, Dr. Russell Train, chairman of the Council on Environmental Quality, said: "The supersonic transport will fly at an altitude of between sixty thousand ans seventy thousand feet. It will place into this part of atmosphere large quantities of water, carbon dioxide, nitrogen oxides, and particular matter... A fleet of five hundred American SSTs and Concordes flying in this region of the atmosphere could, over a period of years, increase the water content by as much as fifty to one hundred per cent. This could be very significant, because observations indicate that the water vapour content of the stratosphere has already increased about fifty per cent over the last five years, due presumably to natural processes." A water-vapour blanket, Train contends, could lead to greater ground-level heat and hamper the formation of ozone that shields the earth from the sun's ultraviolet rays.

Dr. Gordon J.F. MacDonald, a geochemist and also a member of the Council on Environmental Quality also appeared before the Proxmire sub-committee and testified that if the water vapour concentration is increased sufficiently in the stratosphere, "it could form high, thin layers of cloud that could persist for a long time and potentially could have a very large effect on climate. MacDonald described the sun's radiation, and told about ultraviolet or hard radiation, which destroys cells. Ultraviolet radiation causes sunburn - "the fraction that does reach the surface" - and the ozone acts as a shield. As ozone is decreased in the upper atmosphere, "we might have some effect at ground level." If the ozone were to be stripped from the atmosphere, MacDonald said, and the surface of the earth exposed to the full force of solar radiation, "it would wipe out all the life except in the oceans." See also "Boom or Boom-Doggle?" op. cit. supra, note 70, p. 56.

73. Water vapours deposited by fleets of SSTs operating in the stratosphere might form a cloud blanket around the earth, causing the globe to become overheated and incapable of sustaining the present poles

ice masses, thus flooding the continents; see "Showdown on the SST - Will U.S. Stay in the Running?", op. cit. supra, note 69, p. 45.

Dr. V.J. Schaefer, world famous atmospheric physicist and Director of Atmospheric Research Centre at Albany, New York, worries lest a fleet of SSTs, discharging on the order of 150,000 tons of water vapour daily (from fuel combustion) into the upper atmosphere, produce "global gloom"; see This Week, August 11, 1968, p. 4.

The President's ad hoc Review Committee believes that by raising the humidity in the upper atmosphere, the SSTs "...would alter the radiation balance and thereby possibly affect the general circulation of atmospheric components"; see supra, note 69, p. H-10436.

74. In United States, beyond all the threats to environment, are the further twin deterrents of national priorities and economic doubt. Should the monies that the Government is investing in the SST programme be put in medicine, education, and environmental control? Richard Ottinger, the New York Representative who is running for the U.S. Senate has called the "funding bill for fiscal 1970 a gross distortion of our national priorities." Representative Reuss has called the SST "an environment - despoiling superplane for the jet set." According to him, "instead of building pyramids, they ought to be doing something that benefits large number of people. Putting $290 million into the SST and one-third of that into fighting air pollution - that is not a good allocation of priorities."

The New York Times comments, "against the SST in the beginning and against it now is the threat of unbearable noise, both from the sonic boom in flight and the deafening sound at take off. The sum earmarked in the transportation budget for this needless and noisy monster is almost $300 million. Mass transit is down for an additional $80 million, which it may not even get. An administration that cannot order its priorities better than that should have no complaint if Congress offers no help."
See Horace Sutton, op. cit. supra, note 69, pp. 14 and 37.

Senator William Proxmire has labelled the SST programme as "a waste," and ecologist Godfrey calls it a billion-dollar "boom-doggle"; see "Boom or Boom-Doggle?" op. cit. supra, note 70. p. 56.

75. William A. Shurcliff, op. cit. supra, note 70. pp. 72-74; for a detailed analysis of the cosmic ray problem, see, International Commission on Radiological Protection, Task Group on the Biological Effects of High-Energy Radiation, "Radiological Aspects of the Supersonic Transport," Health Physics, XXII (1966), 209-225.

76. Horace Sutton, op. cit. supra, note 69, p.14. For a detailed discussion of the dangers in the SST flight, see William A. Shurcliff, op. cit. supra, note 70, pp. 64-79. See also IATA 14th Technical Conference Report, April 17-22, 1961.

77. The Montreal Star, September 9, 1970.

78. Horace Sutton, op. cit. supra, note 69, p. 14.

79. "Showdown on the SST - Will U.S. Stay in the Running?" op. cit. supra, note 69, p. 44.

80. "Boom or Boom-Doggle?" op. cit. supra, note 70, p.56. Advanced technology, exports and consequential improvement in balance of payments, and creation of job opportunities are some of the benefits claimed by the supporters of the SST; see Horace Sutton, op. cit. supra, note 69, pp. 37-38; "Showdown on the SST - Will U.S. Stay in the Running?" op. cit. supra, note 69, p. 44, and, IATA Annual Report 1969, p. 10. According to Roderick Heitmeyer, IATA's Chief Economist, in terms of national employment, technological expertise and balance of payments advantages, the SSTs hold out considerable benefits to the economies of the countries concerned. See "Supersonic Transport - An Economist's View," IATA News Review, January 1970, p. 7.

81. Robert J. Serling in his introduction to Don Dwiggin's The SST: Here It Comes Ready or Not, op. cit. supra, note 70, p. xiv.

82. Ibid. According to FAA Administrator, John H. Shaffer,

there is a natural tendency to underestimate something new. It happened with the steamship, the locomotive, the automobile and the airplane, each of which ultimately led to tremendous follow-on developments. But doubts persist. Not too many years ago, there was a widespread belief that the pure "jet" could not possibly compete with piston engine and turbo-prop powered aircraft. But it turned out much differently. The older airplanes could not compete with the jets. Today, the SST faces almost identical arguments, under similar circumstances; see John A. Shaffer, "SST Economics," Interavia, XXV, (February, 1970), 178.

83. "Boom or Boom-Doggle?" op. cit. supra, note 70. p. 56.

84. "Showdown on the SST - Will U.S. Stay in the Running?" op. cit. supra, note 69, p. 45.

85. Ibid.

86. Ibid.

87. Horace Sutton, op. cit. supra, note 69, p. 15. Boeing engineers claim that on approaches and take-offs, the Boeing SST will actually be quieter than existing jets. This is partly because the high rate of climb gets the SST up and away so quickly; see John C. Gilmer, op. cit. supra, note 70, p. 30.

Proposed solution to sideline noise and sonic boom have thus far been less than encouraging. Some scientists have proposed recycling jet engine exhausts to reduce noise. Others have suggested powerful electrostatic fields to ionize and brush aside air molecules before they can pile up and form boom-producing shock waves; see "Boom or Boom-Doggle?" op. cit. supra, note 70, p. 56. According to Gilmer, a great deal of research is being devoted to this problem and there is considerable optimism that it can be solved.

88. "Showdown on the SST - Will U.S. Stay in the Running?" op. cit. supra, note 69, p. 46.

89. Sweden, Ireland and West Germany; see "TheSST: Riding a Technological Tiger," op. cit. supra, note 70, p.79. Canada has banned sonic booms that would cause damage.

Section 515 of the Canadian Air Regulations provides that:

> "No aircraft shall be flown in such a manner as to create a shockwave the effect of which is to create or is likely to create a hazard to other aircraft or to persons or property on the ground."

Switzerland, Netherlands and Bermuda are likely to ban supersonic flight over their territories; see William A. Shurcliff, op. cit. supra, note 70, pp. 108-110. According to latest information, Switzerland, the Netherlands, and Norway have also banned sonic booms overland; see U.S. News and World Report, September 9, 1970, p. 45.

90. See supra note 88.

91. Ibid, p. 44.

92. Ibid.

93. Ibid.

94. Ibid.

95. Some reports suggest that the Soviets are offering the TU-144 to Pakistan at $10 million per aircraft; see "Market Outlook Hinges on Concorde Sales," Aviation Week and Space Technology, January 5, 1970, p. 52.

96. "Showdown on the SST - Will U.S. Stay in the Running?" op. cit. supra, note 69, p. 44, and, Horace Sutton, op. cit. supra, note 69, p. 14.

97. Ibid. Already, the US airlines have 38 delivery reservations for Anglo-French Concorde; see William A. Shurcliff, op. cit. supra, note 69, p.95.

98. "Showdown on the SST - Will U.S. Stay in the Running?" op. cit. supra, note 69, p. 44.

99. Ibid.

100. Ibid, p. 46.

101. Quoted by Horace Sutton, op.cit. supra, note 69, p.37.

102. "The SST headache" (editorial), The Montreal Star, May 26, 1970.

103. See Aviation Week and Space Technology, September 29, 1969, p. 16.

104. Quoted in "Boom or Boom-Doggle?" op. cit. supra, note 70, p. 56. See also "Supersonic Transport - An Economist's View," op. cit. supra, note 80, p. 7.

105. Stephen Wheatcroft, op. cit. supra, note 4, p. 97.

106. "The SST: Riding a Technological Tiger," op. cit. supra, note 70, p. 79.

107. John C. Gilmer, op. cit. supra, note 70, p. 30. See also "Supersonic Transport - An Economist's View," op. cit. supra, note 80, p. 7.

108. John H. Shaffer, op. cit. supra, note 82, p. 178.

109. Ibid.

110. Ibid. Another expert, however, believes that in the longer-haul markets, the supersonic plane is expected to be essentially competitive with the stretched DC-8s, and its projected costs are only slightly above the costs of the humbo jets; see Mahlon R. Straszheim, op. cit. supra, note 1, p. 225.

111. John H. Shaffer, op. cit. supra, note 82, p. 178.

112. Horace Sutton, op. cit. supra, note 69, p. 38.

113. Mahlon R. Straszheim, op. cit. supra, note 1, p. 225. This author further believes that despite the arguments as to whether the SST should be developed and how it should be financed, it now appears that such a plane would be available by 1975; see p. 90.

114. U.S. News and World Report, op. cit. supra, note 89, p. 46.

115. Mahlon R. Straszheim, op. cit. supra, note 1, p. 225.

116. Quoted in "Boom or Boom-Doggle?" op. cit. supra, note 70, p. 56.

117. Flight International, January 9, 1969, p. 47; Time, January 10, 1969, p. 25; American Aviation, May 12, 1969, p. 41, and, Interavia, XXIV (November, 1969), 1744; see also William A. Shufcliff, op. cit. supra, note 70, p. 6, and, Interavia, XXIV, (July, 1969), 863.

118. Flight International, op. cit. supra, note 12, p. 780; see also William A. Shurcliff, op. cit. supra, note 70, p. 14, and, IATA Annual Report 1962, op. cit. supra, note 80, p. 11.
According to this report, the TU-144 is at least six months ahead of the Concorde in flight testing. According to Tass, the TU-144 had completed 250 hours of test flying by early October 1969; see Interavia, op. cit. supra, note 117, p.1744.

119. Flight International, op. cit. supra, note 12, p. 780.

120. Ibid; see also Don dwiggins, op. cit. supra, note 70, pp. 213-215.

121. Flight International, September 4, 1969, p. 345, and, Flight International, op. cit. supra, note 12, p. 780. See also supra note 93.

122. Don Dwiggins, op. cit. supra, note 70, p. 215.

123. Flight International, op. cit. supra, note 12, p. 775; see also Alan H. Stratford, op. cit. supra, note 69, pp. 285-287.

124. Flight International, op. cit. supra, note 12, p. 775, and, Don Dwiggins, op. cit. supra, note 70, pp. 197-205. For a discussion on the specifications of the Concorde, see J.T. Dyment, op. cit. supra, note 10, pp. 5-6.

125. Flight International, op. cit. supra, note 12, p. 775.

126. Flight International, March 6, 1969, p. 352; see also American Aviation, op. cit. supra, note 117, p. 41.

127. Flight International, op. cit. supra, note 12, p. 775; see also American Aviation, op. cit. supra, note 117, p. 41.

128. Interavia, op. cit. supra, note 117, p. 1828; see also William A. Shurcliff, op. cit. supra, note 70, p. 12.

129. Don Cook, "Supersonic Concorde Faces Crucial Period," Los Angeles Times, August 3, 1970, pp. 8-10. On Concorde test flying, also see, Donald E. Fink, "Concorde SST Enters Mach 2 Development Test Phases," Aviation Week and Space Technology, March 16, 1970, pp. 30-35.

130. Larry Birger, op. cit. supra, note 66, p. 4-A. Earlier on its 75th flight on December 13, 1969, Concorde 001 had reached speed in excess of Mach 1.5 or 1,000 miles an hour; see The Gazette, December 18, 1969, and Flight International, December 18, 1969, p. 937.

131. The first Concorde flight at mach 2 was made on November 4, 1970, near Toulouse in southern France. See The Montreal Star, November 5, 1970.

132. William A. Shurcliff, op. cit. supra, note 70, p.12 and Flight International, op. cit. supra, note 12, pp. 775-776.

133. Ibid.

134. Interavia, op. cit. supra, note 117, p. 1744.

135. See supra note 92.

136. Flight International, op. cit. supra, note 12, p. 775.

137. "The SST: Riding a Technological Tiger," op. cit. supra, note 70, p. 79.

138. Speech delivered on the graduation day for the United States Air Force Academy, Colorado Springs, Colorado; see New York Times, June 6, 1963.

139. For details of this design competition and relative merits and demerits of each design, see, Don Dwiggin, op. cit. supra, note 70, pp. 172-190, and pp. 216-235. Some details of the Boeing and Lockheed designs are also available in, Alan H. Stratford, op. cit. supra, note 69, pp. 289-290.

140. William A. Shurcliff, op. cit. supra, note 70, p.15. For a discussion on the specifications of the B-2707, see J.T. Dyment, op. cit. supra, note 10, pp. 5-6.

141. The New York Times, October 22,1968. For detailed accounts of the problems faced by Boeing in designing a supersonic transport, see, C.J.D. Murphy, "Boeing's Ordeal with the SST," Fortune, October 1968, p. 129, and U.S. Congress, Hearings, Department of Transportation and Related Agencies Appropriations for 1970.

142. William A. Shurcliff, op. cit. supra, note 70, pp. 17-18.

143. Flight International, op. cit. supra, note 12, p. 780; see also "Air Transport as it enters the 1970s", Interavia, XXIV (December, 1969), 1894.

144. Flight International, op. cit. supra, note 12, p. 780.

145. Laurence Doty, "Reprogramming Bolsters 2707 Effort in Overcoming Early Difficulties," Aviation Week and Space Technology, January 5, 1970, p.26.

146. "SST Test, Development Shortcuts Sought," Aviation Week and Space Technology, February 9, 1970, p.24.

147. See supra note 145.

148. Flight International, op. cit. supra, note 12, p. 780.

149. Robert Hotz, "Galloping Technology's New Dilemma," Aviation Week and Space Technology, June 22, 1970, p. 21.

150. "Overcapacity Feared Accompanying 747," Aviation Week and Space Technology, February 2, 1970, p. 37.

151. Ibid. In April 1969, John A.Crooker Jr., the Chairman of CAB, admonished the U.S. aircraft industry for pursuing an expensive passenger and cargo aircraft building programme which, in his view, the airlines cannot afford; see "Signs of Stress?", Interavia, XXIV (June,1969), 705.

152. Sheikh Najib Alamuddin, "Small Airlines: Pool Resources or Perish!" Air Transport World, October, 1969, p. 85.

153. The Montreal Star, op. cit. supra, note 102.

154. Sir William Hildred, speech before Royal Society of Arts, London, April 28, 1965.

155. Congressional Record, August 9, 1966, p. 17864.

156. Quoted in "Jumbo headache rattles airlines," The Montreal Star, September 5, 1970, p. 11.

157. Robert Hotz, op. cit. supra, note 149, p. 21.

158. Ibid.

159. Ibid.

160. R.E.G.Davies, op. cit. supra, note 2, p. 480.

161. "Viewpoint - Elephantine problems", Interavia, XXI (September, 1966), 1266.

162. See supra note 14.

163. See supra notes 28 and 60.

164. See supra notes 136 and 148.

165. See supra note 19; see also Aviation Week and Space Technology, February 9, 1970, p. 31, and Flight International, June 11, 1970, p. 955.

166. Aviation Week and Space Technology, July 13, 1970, p. 29.

167. "Troubles come Junbo-Sized," The Economist, January 17, 1970, p. 56.

168. Quoted by Don Dwiggins, op. cit. supra, note 70, p. 196.

169. John C. Gilmer, op. cit. supra, note 70, p. 28.

170. Sir Giles Guthrie, "The Way Ahead - BOAC In the 1970s," Flyer International, V (March, 1968),85.

171. Harold L. Graham, "The 747 - a new Standard," Interavia, XXIV (October, 1969), 1664.

172. "Into The Seventies," Flight International, January 1, 1970, p. 12.

173. FAA Aviation Forecasts Fiscal Years 1970-1981, January 1970, p. 11.

174. Ibid, p. 16.

175. Japan Air Lines Annual Report 1968-1969, p. 6.

176. Don Dwiggins, op. cit. supra, note 70, p. 230. See also Alan H. Stratford, op. cit. supra, note 69, pp. 12-13.

177. See"Boom or Boom-Doggle?" op. cit. supra, note 70, p. 56; Newsweek, op. cit. supra, note 18, p. 40; "Jumbo headache rattles airlines," op. cit. supra. note 155, p. 11, and, "Ready or Not, Here Comes Jumbo," Time, January 19, 1970, p. 40.

178. Air Transport World, op. cit. supra, note 37, p. 9.

179. Aviation Week and Space Technology, June 27, 1970, p. 31. KSSU's long-range DC-10s, including spares, will cost about $20 million each; see Flight International, June 19, 1969, p. 996.

180. U.S. Congress, Hearings, op. cit. supra, note 141, p. 67.

181. "Showdown on the SST - Will U.S. Stay in the Running?" op. cit. supra, note 69, p. 45; John C. Gilmer, op. cit, supra, note 70, p. 40, and, "Overcapacity Feared Accompanying 747," op. cit. supra, note 150, p. 37.

182. Statement of B.J. Vierling, FAA Acting Director of SST Programme; see U.S. Congress,Hearings, op. cit. supra, note 141, p. 67. See also "Market Outlook Hinges on Concorde Sales," op. cit. supra, note 95, p. 52.

183. William A. Shurcliff, op. cit. supra, note 70, p. 94.

184. "Ready or Not Here Comes Jumbo," op. cit. supra, note 177, p. 40.

185. "Jumbo headache rattles airlines," op. cit, supra, note 156, p. 11.

186. See supra note 184.

187. Air Transport World, op. cit. supra, note 37, p.9. See also, Time, August 1, 1969, p. 47, and, Time, November 7, 1969, p. 71.

188. "Signs of Stress?", op. cit. supra, note 151, p.705, Frits Besancon, op. cit. supra, note 1, p. 126.

189. "Ready or Not, Here Comes Jumbo," op. cit. supra, note 177, p. 40. Interavia comments: "Financing of the purchase of 747s places a heavy burden on the airlines and this is compounded by introduction costs, training, ground handling equipment and in many cases construction of new terminals or extension of existing facilities borne by the operator. Now that many airlines have committed themselves to the purchase of wide-bodied three-and four-engined jet transports, they must absorb the associated costs;" see "Viewpoint," Interavia, XXV (June, 1970, 678. Interavia also notes that a major factor in the unfavourable financial position which faces the airlines is the huge capital committment for new aircraft and support equipment together with introduction costs; see Interavia, op. cit. supra, note 143, p. 1893.

190. Ibid; see also "Paying for Jumbo," Time, August 31, 1970, p. 53.

191. Mahlon R. Straszheim, op. cit. supra, note 1, p. 103. See also "Big Jet Investment Analysis of Operating Costs," Aviation Report Supplement No. 111 (London:

192. American Aviation, XXVIII (May, 1965), 17-18. Mr. Sergis Orlandini, KLM's vice president, economic planning, says that increasingly large outlay is needed for ground equipment. This has risen from 5% of total investment to 20% over the last 15 years, and this trend is likely to continue; stated in a talk before the 10th IATA Public Relations Conference 1970 held at Kyoto (Japan) and reported in Topflight, April 15, 1970, p. 2.

193. Thomas J. Flanagan, "Operating the 747," Interavia, XXIV (October, 1969), 1662.

194. Ibid.

195. "Pan American sets up B-747 operation," Interavia, XXIV (October, 1969, 1661.

196. Flight International, February 26, 1970, p. 287.

197. Interavia, XXIII (August, 1968), 921.

198. Mahlon R. Straszheim, op. cit. supra, note 1, p. 103.

199. See "The Cost of Introducing the jets in Terms of Additional Airline Investment," ITA Research Paper No. 333 (Paris: Institut du Transport Aérien, May, 1960), pp. 7-58.

200. See supra note 198, p. 102. See also "Big Jet Investment Analysis of Operating Costs," op. cit. supra, note 191.

201. As told to the writer by Mr. Jean Betheuil, Ingénieur en Chef, Compagnie Nationale Air France, during a visit to Air France 747 maintenance base on July 22, 1970. For the development of Air Canada's 747 facilities, see The Gazette, October 21, 1970.

202. James P. Woolsey, "BOAC Gears Support Facilities for 747," Aviation Week and Space Technology, September 14, 1970, p. 50.

203. Ibid, p. 51.

204. Flight International, August 1, 1968, p. 162.

205. IATA Annual Report 1969, op. cit. supra, note 80, p. 9.

206. "Signs of Stress?" op. cit. supra, note 151, p. 705.

207. "Airline Capital Famine?" Flight International, January 8, 1970, p. 38.

208. BOAC Annual Report and Accounts 1967-68, p. 11.

209. Airline Management and Marketing Including American Aviation, September 1969, p. 32. For a discussion on the problems of adequate availability of finance, see also, D.H. Glover, IATA in the 1970s, December, 1967, p. 43.

210. Time, op. cit. supra, note 187, p. 47.

211. Sheikh Najib Alamuddin, op. cit. supra, note 152, p. 85.

212. Ibid.

213. "Market Outlook Hinges on Concorde Sales," op. cit. supra, note 95, p. 52.

214. BOAC Annual Report and Accounts 1967-68, op. cit. supra, note 208, p. 11.

215. KLM Annual Report 1969/70, pp. 22-25.

216. Ibid.

217. SAS Annual Report 1966/67, p. 3.

218. Suggestion made during a symposium held at Air France headquarters in Paris; see Aviation Week and Space Technology, February 16, 1970, p. 21.

219. Interavia, XXV (June, 1970), 657; see also Topflight, June 15, 1970, p. 7.

220. Ibid.

221. "Airline Capital Famine?" op. cit. supra, note 207, p. 33.

222. "Market Outlook Hinges on Concorde Sales," op. cit. supra, note 95, p. 52. As an example, rising capital costs have forced SAS to request a postponement from McDonnell Douglas of delivery of five DC-9s until 1972; see Aviation Week and Space Technology, January 19, 1970, p. 31.

223. "Into The Seventies," op. cit. supra, note 172, p. 11. For a review of the state of industry up to 1965, see "A Review of the Economic Situation of Air Transport," ICAO Circular 73-AT/10, June 1965; and for an appraisal of the economic condition of industry for the period 1957-67, see "A Review of the Economic Situation of Air Transport 1957-1967," ICAO Circular 89-AT/15, July 1968.

224. "Viewpoint," op. cit. supra, note 189, p. 678.

225. Ibid. Trans World Airlines' request to the CAB for a Boeing 747 fare surcharge and a 5 per cent peek season long-haul increase has been rejected. The Board likewise denied similar requests by American, Braniff, Continental and United; see Interavia, op. cit. supra, note 219, p. 657.

226. "Civil Aviation in 1969 - A Special Report," op. cit. supra, note 38, p. 25.

227. James P. Woolsey, "Traffic Slump Hits Major Trunks," Aviation Week and Space Terminology, July 27, 1970, p. 25.

228. "Paying for Jumbo," op. cit. supra, note 190, p. 53. According to Aviation Week and Space Technology, however, U.S. scheduled airlines suffered a net loss of $73.2 for the first half of 1970; see op. cit. supra, note 11, p. 20.

229. Ibid. See also James P. Woolsey, op. cit. supra, note 227, pp. 25-26.

230. Ibid.; see also Flight International, July 30, 1970, p. 150.

231. Ibid.

232. The New York Times, July 30, 1970.

233. "Civil Aviation in 1969 - A Special Report," op. cit. supra, note 38, p. 25.

234. Ibid.

235. Ibid.

236. Ibid.

237. Ibid.

238. Ibid.

239. Flight International, February 26, 1970, p. 230; see also Aviation Week and Space Technology, February 16, 1970, p. 26.

240. Interavia, XXV (May, 1970), 503; see also Aviation Week and Space Technology, op. cit. supra, note 239, p. 37.

241. IATA Annual Report 1969, op. cit. supra, note 80, p. 7. For critical appraisal of the ICAO airlines 1968 financial results, see "Viewpoint," Interavia, XXIV (July, 1969), 802.

242. Ibid.

243. Knut Hammarskjold, "Economic Aspects of the World Airline Industry," Interavia, XXIV (October, 1969), 1645.

244. IATA Annual Report 1969, op. cit. supra, note 80, p. 7.

245. "Paying for Jumbo," op. cit. supra, note 190, p. 53; see also "Ready Or Not, Here Comes Jumbo," op. cit. supra, note 177, p. 44.

246. David D. Gollan, "Hijackings: A Costly Diversion," The New York Times, September 13, 1970.

247. The Montreal Star, September 11, 1970; The Montreal Star, September 15,1970, and, The Gazette, September 15, 1970. Recently, the American Government signed an agreementestablishing a permanent anti-skyjacking force of more than 2,000 marshals. The cost of the force for the rest of this financial year would be $28 million. After that, the cost would be about $50 million a year. The programme would be financed by an eight to 8 1/2 per cent increase in the airline ticket tax and an increase from three to five dollars in the head tax on international flights originating in the United States. See The Gazette, October 29, 1970.

248. The Montreal Star, September 12, 1970.

249. Ibid, September 22, 1970. Noted American aviation lawyer, Lee S. Kriendler, filed this suit for the plaintiff.

250. See supra note 246.

251. Ibid.

252. IATA Annual Report 1969, op. cit. supra, note 80, p. 7.

253. "Paying for Jumbo," op. cit. supra, note 190, p.53. According to J.G. Somerville, landing fees are "probably the fastest growing item of airline cost... Already for most, landing charges are five per cent of total cost but for some they are as high as nine per cent;" see J.G. Somerville, IATA in the 1970s, December, 1967, p. 46.

254. See supra, note 252.

255. Knut Hammarskjold, op. cit. supra, note 243, p.1645.

256. Ibid.

257. Ibid.

258. "Civil Aviation in 1969 - A Special Report," op. cit. supra, note 38, p. 26.

259. Ibid, p. 19.

260. Ibid. See also Flight International, July 23, 1970, p. 112.

261. IATA Annual Report 1969, op. cit. supra, note 80, p. 4.

262. TWA and American recorded load factors of 47.2 and 49.6 per cent, respectively; see "Paying for Jumbo," op. cit. supra, note 190, p. 53.

263. "Overcapacity Feared Accompanying 747," op. cit. supra, note 150, p. 37; see also "An Interview with Sheikh Najib Alamuddin," Interavia, XXV (June, 1970), 727.

264. "Ready or Not, Here Comes Jumbo," op. cit. supra, note 177, p. 43.

265. BOAC Annual Report and Accounts 1967-68, op. cit. supra, note 208, p. 11.

266. "Pan American sets up B-747 operation," op. cit. supra, note 195, p. 661. On the problem of excess capacity in airline industry, see also, "The Airlines' quandary - Excess capacity and rising costs in early 1970," Interavia, XXV (April, 1970, 415-418, and, D.H. Glover, op. cit. supra, note 209, p. 43.

267. Mahlon R. Straszheim, op. cit. supra, note 1, p.107.

268. "The SST: Riding a Technological Tiger," op. cit. supra, note 70, p. 79.

269. Ibid.

270. "Viewpoint - Elephantine problems," op. cit. supra, note 161, p. 1266.

271. The Financial Post, December 6, 1969.

272. Sheikh Najib Alamuddin, op. cit. supra, note 152, p. 85.

273. Frits Besancon, op. cit. supra, note 1, p. 126.

274. H.A. Wassenbergh, Post-War International Civil Aviation Policy and The Law of the Air (ed. ed. rev.; The Hague: Martinus Nijhoff, 1962), p. 149.

275. Stephen Wheatcroft, op. cit. supra, note 4, p.103.

276. Ibid, pp. 103-104.

277. Only eleven airlines have six or more delivery positions for 2707; see William A. Shurcliff, op. cit. supra, note 70, p. 95.

278. Flight International, November 16, 1967, p. 798.

279. Stephen Wheatcroft, op. cit. supra, note 4, p.104.

280. "Signs of Stress?" op. cit. supra, note 151, p.705.

281. Stephen Wheatcroft, op. cit. supra, note 4,p.104.

282. Ibid.

283. "Air Transport Progress," American Aviation, May 12, 1969, p. 25. For a discussion of the industry problems of 1970, see also, "Challenges Mark Opening of 1970s," Aviation Week and Space Technology, Mid-December, 1969, p. 14.

284. These include 450 pilots and flight engineers.

285. "Pan Am in Trouble," Flight International, June 11, 1970, p. 955; "Troubles at Pan Am," Newsweek, November 10, 1969, p. 92; "Pan Am Losses and Lay-Offs," Flight International, February 26, 1970, p. 290, and, "Bargain Season," Time, November 7, 1969, p. 71.

286. The Montreal Star, August 21, 1970.

287. Ibid, April 22, 1970.

288. Ibid, September 30, 1970.

289. The Gazette, June 20, 1970.

290. Ibid, September 2, 1970.

291. SAS Annual Report 1966-67, op. cit. supra, note 217, p. 3.

292. BOAC Annual Report and Accounts 1967-68, op. cit. supra, note 208, p. 11.

293. "Paying for Jumbo," op. cit. supra, note 190, p.58.

294. Time, op. cit. supra, note 187, p. 47.

295. Flight International, July 9, 1970, p. 44; Interavia, XXV (August, 1970), 911; Aviation Week and Space Technology, June 8, 1970, p. 34, and, Aviation Week and Space Technology, June 29, 1970, p. 22.

296. "Jumbo headache rattles airlines," op. cit. supra, note 156, p. 11.

297. Aviation Week and Space Technology, May 11, 1970, p. 33.

298. Laurence Doty, "Three Trunks Join in Capacity Cut," Aviation Week and Space Technology, September 7, 1970, pp. 22-23; see also Laurence Doty, "Airline Curbs Boost Load Factor," Aviation Week and Space Technology, August 17, 1970, pp. 21-22, and, "Jumbo headache rattles airlines," op. cit. supra, note 156, p. 11.

299. "An Interview with Sheikh Najib Alamuddin, op. cit. supra,note 263, p. 728.

300. See Stephen Wheatcroft, op. cit. supra, note 4, p. 99.

301. Ibid, p. 103.

302. For details of KLM's various co-operative arrangements, see "KLM celebrates its golden jubilee," Interavia, XXIV (October, 1970), 1637-38, and various annual reports.

303. KLM Annual Report 1967/68, p. 19.

304. KLM Annual Report 1968/69, p. 21.

305. KLM Annual Report 1969/70, op. cit. supra, note 215, p. 30.

306. SAS Annual Report 1967-1968, pp. 6-7.

307. Concluding remark in his paper "The Airlines' Role in the Future Economy," presented at the 10th Biennial IATA Public Relations Conference at Kyoto, Japan, February 24-26, 1970, and reported in IATA News Review, April 1970, p. 7.

308. H.A. Wassenbergh, op. cit. supra, note 274, pp. xiii and 19.

309. Ibid, pp. 168-169.

310. Laurence Doty, "New Routes Challenge Old Concepts," Aviation Week and Space Technology, October 20, 1969, p. 27.

311. "Viewpoint - Elephantine problems," op. cit. supra, note 161, p. 1266.

312. Sheikh Najib Alamuddin, op. cit. supra, note 152, pp. 85-88.

313. M. Kraiem, IATA in the 1970s, December 1967. p. 24.

314. Per A. Norlin, "World Airline Cooperation: Yesterday - Today - Tomorrow," IATA Amsterdam Symposium, October, 1969, pp. 5-6.

315. Ibid, p. 57; see also J.M. Ramsden, "IATA in Amsterdam," Flight International, October 30, 1969, pp. 655-656.

316. W. Berchtold, IATA Amsterdam Symposium, October, 1969, p. 7.

317. J.M. Ramsden, op. cit. supra, note 315, p. 656.

318. Flight International, March 30, 1967, p. 472.

319. "An Interciew with Sheikh Najib Alamuddin," op. cit. supra, note 263, p. 728.

320. Wayne G. Parrish, "Merger," Airline Management and Marketing Including American Aviation, November 1969, p. 34.

321. Time, op. cit. supra, note 187, p. 47.

322. Airline Management and Marketing Including American Aviation, op. cit. supra, note 209, p. 32.

323. Flight International, op. cit. supra, note 12, p. 764.

324. "Viewpoint," op. cit. supra, note 189, p. 678.

325. "Into The Seventies," op. cit. supra, note 172, p.11.

326. British Air Transport in the Seventies, Report of the Committee of Inquiry into Civil Air Transport (London: Her Majesty's Stationery Office, May, 1969), p. 61.

327. Ibid., p. 62.

328. Ibid. p. 66.

329. Ibid.

330. Ibid.

331. Ibid.

332. Ibid, p. 67.

333. Ibid, pp. 67-68.

334. Ibid, pp. 68-69.

335. Ibid, p. 70.

336. Ibid, p. 74.

337. Ibid, p. 75.

338. Ibid.

339. Ibid, p. 78.

340. Alan H. Stratford, op. cit. supra, note 69, p. 30.

341. Ibid.

342. Ibid.

343. For comprehensive information on cooperative agreements and arrangements concluded in the air transport field between governments and/or airlines, see ICAO Circular 84-AT/14.

344. For a comprehensive discussion on the market sharing agreements, see Stephen Wheatcroft, The Economics of European Air Transport (Manchester University Press, 1956, pp. 249-268. See also ICAO Circular 28-AT/4; Lemoine, Traité de Droit Aérien 107 (1947); Bin Cheng, The Law of International Air Transport (London: 1962), p. 279, and, Michel Pourcelet, "The International Element in Air Transport," 33-J. ArirL. & Com. 77 (1967).

For the legal status of Pools, see Lemoine in "Les Pools dans l'Aviation Commerciale," Espaces (April, 1946), p. 15, cited in ICAO - Circular 28-AT/14, p. 78, where it is stated: "A pool does not constitute a merger since strictly speaking it does not mean merging operations; moreover, one of its purposes is, if not to allocate profits, at least to allocate revenue. Neither it is in any way a partnership, since there is no joint contribution of capital, and each of the parties works for his own account, bearing the losses and keeping the profits severally. Thus, it is evident that a pool is a commercial agreement, without a special legal status and as such, it is governed by the general law of contracts."

345. Stephen Wheatcroft, op. cit. supra, note 344. pp. 259-260; see also ICAO - Circular 28-AT/14, p. 161.

346. E.A.G. Verploeg, The Road Towards a European Common Air Market (Utrecht: Uitgeverij Kemink en Zn., N.V., 1963), pp. 78-79.

347. Alan H. Stratford, op. cit. supra, note 69, p. 32.

348. Mahlon R. Streaszheim, op. cit. supra, note 1, p. 60.

349. See supra note 346.

350. The DC-8 pool, for example, involving, Alitalia, Japan Air Lines, KLM, PAA, SAS and Swissair covers 25 stations in which these carriers land DC-8s. KLM, with operations at 16 of these stations, had to keep spare parts at only six. KLM estimated the average cost per station of spares for the DC-8 at $87,000, as contrasted with $31,000 for the DC-7C. See "Airlines Commercial Agreements, Parts and Consortiums," Aviation Report Supplement No, 141, (London: Aviation Studies International, Ltd., August, 1964), pp. 17-18.

351. Alan H. Stratford, op. cit. supra, note 69, p.32.

352. "BOAC Reports on Savings from Spares Pooling," International Aviation, supplement to Aviation Daily, Vol. 141 (August 6, 1952), p. 95.

353. Stanford Research Institute, Air Transport Development and Coordination in Latin America: A Study of Economic Factors (SRI for the Organization of American States, 1961), pp. 33-43.

354. Stephen Wheatcroft, op. cit. supra, note 4, p. 105.

355. Alan H. Stratford, op. cit. supra, note 69, p. 32.

356. Stephen Wheatcroft, op. cit. supra, note 4, pp. 105-106.

357. Ibid, p. 106.

358. Flight International, January 18, 1968, p. 83.

359. Ibid.

360. SAS Annual Report 1966-67, op. cit. supra, note 217, p. 4.

361. Flight International, op. cit. supra, note 358, p. 83.

362. Mahlon R. Straszheim, op. cit. supra, note 1, pp. 61-62.

363. Stephen Wheatcroft, op. cit. supra, note 4, p. 106.

364. Stanford Research Institute, op. cit. supra, note 353, pp. 36-37.

365. Stephen Wheatcroft, op. cit. supra, note 4, p.106.

366. Mahlon R. Straszheim, op. cit. supra, note 1, p. 62.

367. Ibid, pp. 62-63.

368. Ibid, p. 63.

369. This organization is known as the Committee of Purchasers of Aviation Materials. See Stephen Wheatcroft, op. cit. supra, note 4, p. 106.

370. Mahlon R. Straszheim, op. cit. supra, note 1, p. 63.

371. "In readiness for the Boeing 747," Interavia, XXIII (December, 1968), 1501. See also "Signs of Stress?" op. cit. supra, note 151, p. 705, and, Flight International, November 7, 1968, p. 735.

372. "In readiness for the Boeing 747," op. cit. supra, note 371, p. 1501.

373. Ibid.

374. Ibid.

375. Ibid.

376. At one time, however, it was reported that Iberia was interested in joining the KSSU (then KSS) Consortium for the operation and maintenance of its 3 B-747s. See Flight International, December 5, 1968, p. 925, and, Interavia, XXIII (December, 1968), 1469.

377. "In readiness for the Boeing 747," op. cit. supra, note 371, p. 1501.

378. "Europe's 747 Club," Flight International, (January 23, 1969), p. 24.

379. Information supplied to the writer by Mr. N.J. Nederlof, Head Legal Affairs Bureau, KLM during writer's visit to the KLM headquarters in July 1970.

380. "Europe's 747 Club," op. cit. supra, note 378, p. 124.

381. Ibid. The first example of this joint evaluation was the selection of DC-10-30 tri-jet for all KSSU partners. See "KSSU's evaluation of the tri-jets," op. cit. supra, note 39, pp. 1666-1668.

382. "Europe's 747 Club," op. cit. supra, note 378, p. 124.

383. "In readiness for the Boeing 747," op. cit. supra, note 371, p. 1501.

384. Ibid.

385. "Jumbo Co-Op," Flight International, December 21, 1967, p. 1022. On TWA/Eastern Club, see also Flight International, May 2, 1968, p. 662, and Interavia, XXIII (January, 1968), 19.

386. Ibid.

387. Flight International, January 9, 1969, p. 50.

388. "Antipodean 747 Group," Flight International, February 19, 1970, pp. 256-257.

389. Aviation Week and Space Technology, op. cit. supra, note 53, p. 25.

390. Flight International, March 5, 1970, p. 325.

391. Ibid, May 25, 1967, p. 827.

392. "Air Arab Consortium," Flight International, February 5, 1970, p. 178.

393. Ibid. See also Flight International, op. cit. supra, note 21, p. 191.

394. "Air Arab Consortium," op. cit. supra, note 392, p. 178.

395. Ibid.

396. Ibid.

397. "An Interview with Sheikh Najib Alamuddin, op. cit. supra, note 263, p. 728.

398. The Montreal Star, April 23, 1970. See also The Gazette, April 24, 1970.

399. Flight International, August 13, 1970, p. 229.

400. Ibid.

401. Ibid.

402. James P. Woolsey, op. cit. supra, note 203, p. 51.

403. R.E.G. Davies, op. cit. supra, note 2, p. 511.

404. Ibid, pp. 511-512.

405. Laurence Doty, "Merger Rumours Spurred by New Aircraft," Aviation Week and Space Technology, December 25, 1967, p. 32.

406. Ibid.

407. Aviation Week and Space Technology, July 1, 1963, p. 38.

408. Ibid, May 27, 1963, p. 46.

409. Laurence Doty, op. cit. supra, note 405, p. 32.

410. Stephen Wheatcroft, op. cit. supra, note 4, p. 111.

427. Wayne W. Parrish, op. cit. supra, note 320, p. 35.

428. Flight International, July 4, 1968, p. 6.

429. The New York Times, op. cit. supra, note 232. See also "Troubles at Pan Am," op. cit. supra, note 285, p. 92. It has been reported that Pan Am executives have held informal talks with American, Eastern, Delta and Continental. See "Ready or Not, Here Comes Jumbo," op. cit. supra, note 177, p. 44.

430. Paul E. Stieger, "Struggling U.S. Airlines want to fly united," The Montreal Star, October 14, 1969, p. 17. Hall admits that Eastern is "studying every other U.S. carrier" as a possible merger partner. See "Ready or Not, Here Comes Jumbo," op. cit. supra, note 177, p. 44.

431. Airline Management and Marketing Including American Aviation, op. cit. supra, note 209. p. 33.

432. "Ready or Not, Here Comes Jumbo," op. cit. supra, note 177, p. 44.

433. Flight International, March 12, 1970, p. 366 and 368-374.

434. Aviation Week and Space Technology, August 10, 1970, p. 32. Recently, Caledonian Airways paid $16.8 million for BUA. Merger has approval of the Government. See Aviation Week and Space Technology, October 26, 1970, p. 23. See also The Economist, October 24, 1970, p. 75.

435. On BUA's financial problems, Mr. Roy Mason, President of the Board of Trade, commented: "We can all see, however, the problem that faces an independent airline like British United... But how, in the days of stiff international competition, of cheap travel, of bigger planes like the jumbo, and expensive supersonics like Concorde, can these independents stay in the big league? The recent Edwards Report urged the independents to get together and form a bigger and stronger unit... Instead BUA has concluded that it cannot compete alone in the international league - that raising

411. "Ready or Not, Here Comes Jumbo," op. cit. supra, note 177, p. 44.

412. "Northeast Meets Northwest," Newsweek, November 24, 1969, pp. 73-74.

413. Aviation Week and Space Technology, October 20, 1969, p. 47.

414. Wayne W. Parrish, op. cit. supra, note 320, p.34.

415. Ibid.

416. "Northeast Meets Northwest," op. cit. supra, note 412, p. 73. On Northeast/Northwest merger, see also, Flight International, November 20, 1969; Interavia, XXIII (December 1968), 1861; Air Transport World, December 1969, p. 9, and, Aviation Week and Space Technology, January 19, 1970, p. 31.

417. Flight International, op. cit. supra, note 399, p. 229.

418. Aviation Week and Space Technology, January 26, 1970, p. 41; see also Time, February 2, 1970.

419. Flight International, March 26, 1970, p. 470; see also Flight International, July 11, 1968, p. 47.

420. Interavia, op. cit. supra, note 385, p. 19.

421. Flight International, op. cit. supra, note 419, p. 509.

422. "Merged Alaskan Carriers Record Increased Revenues," American Aviation, May 12, 1969, p. 61.

423. Ibid.

424. Aviation Week and Space Technology, March 23, 1970, p. 32.

425. Ibid, July 20, 1970, p. 27. See also Aviation Week and Space Technology, June 29, 1970, p. 33.

426. Air Transport World, April, 1970, p. 9.

L 80 million for new aircraft without guarantees is just not on." See "BOAC to Buy British United Airways," Flight International, March 12, 1970, p. 369.

436. "Towards a British Aeroflot," Flight International, March 12, 1970, p. 365.

437. Arthur Reed, "Proposed airline group may get State routes, "The Times Business News, July 22, 1970, p. 17.

438. Interavia, XXV (March, 1970), 225. See also "The Airlines and the Boeing 747," Interavia, XXIII (July, 1968), 857-858.

439. Flight International, January 29, 1970, p. 138.

440. World Airline Record (6th ed.: Chicago: Roadcap and Associates, 1965), p. 273.

441. Flight International, March 13, 1969, p. 389.

442. Ibid, p. 397.

443. Ibid, May 15, 1969, p. 787.

444. Ibid, March 23, 1967, p. 431.

445. Ibid, December 26, 1968, p. 1052. See also Flight International, November 7, 1968, p. 727.

446. Flight International, op. cit. supra, note 419, p. 471.

447. Ibid.

448. Interavia, op. cit. supra, note 438, p. 225. See also Topflight, May 1, 1970, p. 6.

449. Ibid.

450. Interavia, XXII, (November, 1967), 1703.

451. R.E.G. Davies, op. cit. supra, note 2, p. 513.

452. According to second census of Pakistan in 1961, the population was assessed at 93.8 million. In 1967-68, the Government estimated that the population had increased to 121.76 million. See Pakistan Basic Facts 1967-68 (7th ed., Islamabad: Ministry of Finance), p. 10.

453. Bern Keating, "Pakistan - Problems of a Two-part land," National Geographic, January, 1967, p. 9.

454. See supra note 452.

455. Iran Almanac and Book of Facts 1969, (8th ed., Teheran: Echo of Iran,) p. 475.

456. Encyclopaedia Britannica, XXII (Chicago: 1964), 588.

457. Second Five Year Development Plan (Ankara: State Planning Organisation, 1969), p. 60.

458. Ibid.

459. For a comprehensive discussion on the family planning problem in the region, see RCD Seminar on Family Planning (Karachi: Government of Pakistan, 1966).

460. "Iran: A Welcome for Capitalists," Time, May 25, 1970, p. 65. Iran's non-oil exports are expected to rise at an annual rate of 35-40 per cent for a number of years. See Kayhan International, January 21, 1970.

461. Iran Almanac and Book of Facts 1969, op. cit. supra, note 455, p. 890.

462. See supra note 460.

463. See Iran Almanac and Book of Facts 1969, op. cit. supra, note 455, pp. 629-630. According to official statistics 280,905 tourists visited Iran in 1968. During 1968, 130,871 persons, 46.2 per cent of all tourists, entered Iran by air. See Tourist Statistics of Iran 1968 (Teheran: Planning and Research Department - Section of Statistics Publication No. 3), pp. 2-3.

464. Second Five Year Development Plan, op. cit. supra, note 457, p. 75. See also Strategy and Objectives of the Second Five Year Development Plan (1968-1972), (State Planning Organization, July 1967), p. 4, and, Summary of the Second Five-Year Development Plan of Turkey, (Ankara: Economic Research Department), pp. 1-2.

465. Tunay Akoglu, "Development of Tourism," Regional Cooperation for Development Fourth Anniversary Publication (Teheran: RCD Secretariat, July 1968), p. 100. This 17-page article gives an excellent account of tourism in Turkey and also provides valuable references on this subject.

466. Summary of the Second Five-Year Development Plan of Turkey, op. cit. supra, note 464, p. 17.

467. Ibid. See also Second Five Year Development Plan, op. cit. supra, note 457, pp. 637-639.

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469. Pakistan Economic Survey 1968-69 (Islamabad: Ministry of Finance), p. 9. See also The Mid-Plan Review of the Third Five Year Plan (Planning Commission, Government of Pakistan, April, 1968),p. 1.

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CHAPTER IV

TRANS-NATIONAL CO-OPERATION IN AIR TRANSPORT: JOINT AIRLINES AND CONSORTIA

1. Historical Development of Trans-National Co-operation in Air Transport.

The first multi-national air transport enterprise was the Compagnie Franco-Roumaine de Navigation Aérienne, (later known as CIDNA), which was established in 1920 as a corporation of French nationality. CIDNA operated services on the route Paris-Bucharest via Prague, Vienna, Budapest and Belgrade. The countries served on this route (France, Romania, Hungary, Czechoslovakia and Austria) subscribed to its capital either by holding shares in the company, by contributions in kind (such as the provision of fuel), or otherwise by granting subsidies. The crew and personnel of CIDNA was drawn from the different nationalities of the countries it served.[1]

The birth of the German-Russian airline Deruluft in 1921[2] came in a climate of secret collaboration between the two countries.[3] From the German point of view, such collaboration was a necessary military and political step, dic-

tated by the need to circumvent the harsh terms of the Treaty of Versailles. Contemporaneous with the creation of Deruluft was co-operation in the establishment of German industrial military air centres in Russia, the most significant of which was an aircraft plant established in Moscow in 1922, accomplished by a secret military agreement.[4]

Deruluft was established by agreement between the Soviet Council of People's Commissars and a group of German airlines that later amalgamated into Lufthansa. Each of the two parties made equal contributions to its capital.[5] The joint airline was subsidized by Aeroflot (the General Directorate of Civil Aviation in the U.S.S.R.) and the German Deutsche Lufthansa.[6] Though its headquarters were in Berlin, it had two managers, one stationed in Berlin and the other in Moscow. Each country had equal representation on the board of directors and the personnel was also shared on a fifty-fifty basis.[7] Deruluft operated services on the Berlin-Moscow route during the years 1922-1937[8] with Danzig-Koenigsberg-Kaunas (in Lithuania) and Velikije Luki (later Smolensk) (in the U.S.S.R.) as intermediary points. It also provided services on the route Danzig-Koenigsberg-Riga (in Latvia) - Tallin (in Estonia) - Leningrad.[9]

Political differences and frictions between the two countries resulted in the suspension of the operations of Deruluft on March 31,1937. Operations were, however, resumed

upon the conclusion of a non-aggression pact between the two countries in 1937, this time by Lufthansa and Aeroflot, operating under a pooling arrangement. These operations finally ceased by the outbreak of war between Germany and Russia in 1941.[10]

The race between German and American interests to start the first regular service in China was won by the Germans (by a few months) and a joint enterprise, the Chinesische-Deutsche Luftverkehrgesellschaft (or, as it was more commonly known, the Eurasia Aviation Corporation) was established on February 21, 1930. The Chinese government held two-thirds of the nominal capital, and Deutsche Luft Hansa provided technical assistance and equipment.[11]

Eurasia was part of the German plan to reach the Far East by a route which depended upon access through Russian territory: via Irkutsk to Mukden, capital of Manchouria, whence Eurasia would have provided the service to Shangai via Tienstin and Nanking. Owing to political difficulties, however, this aim was never achieved. Eurasia concentrated, therefore, on building up a network within China, using German aircraft and crews.[12]

On July 8, 1930, shortly after the formation of Eurasia, the Chinese Government, with a 55% interest, organised the China National Aviation Corporation (C.N.A.C.)

jointly with an American corporation. The American shareholding was represented by China Airways Federal, a company which succeeded the Aviation Exploration Corporation, controlled by North American Aviation. In March 1933, the 45% American interest was acquired by Pan American Airways.[13]

Another joint enterprise in China was the Sino-Soviet Aviation Corporation, which was formed in 1939 to provide a short-cut route to China from Central Russia. Each country held a 50% shareholding, with the Russians providing flight personnel. The company became known as Homiata, after the two main termini, Alma Ata and Homi.[14] Homiata eventually was absorbed into the routes of Russia's Aeroflot.[15]

In 1941, the Chinese government took over Lufthansa's interest in Eurasia and, in March 1943, finally replaced it by forming the Central Air Transport Corporation (C.A.T.C.).[16]

In the case of C.N.A.C., the Chinese Air Force took over its operations on June 18, 1945, but with an intensification of fighting in the Chinese civil war many aircraft were lost, and the Communist victories ensured that C.N.A.C. was doomed.[17]

Great Britain, Australia and New Zealand, cooperating as members of the British Commonwealth, established two significant multi-national airlines. With respect to the first of

these enterprises, in September 1936, a conference of representatives of the United Kingdom, Australia, and New Zealand met at Wellington (N.Z.) to discuss the establishment of a Tasman air service under the joint control of the three governments.[18] Negotiations dragged on for several years and, finally, on April 10, 1940, the three governments drew the Memorandum and Articles of Association of the joint air transport company, known as Tasman Empire Airways Limited. The Memorandum included, inter alia, the following object:

> "(b) to conclude and give effect to an agreement with the Government of the United Kingdom, the Commonwealth of Australia and the Dominion of New Zealand for the carriage of passengers, mail and freight between Australia and New Zealand; ..."[19]

However, it seems that the word "agreement" in object (b) was loosely applied and might therefore mean the conclusion of a binding contract; a fact that becomes evident when it is realized that the company was registered in New Zealand, under the Companies Act of 1933.[20] The agreement envisaged in object (b) of the Memorandum was reached on December 16, 1941 and, according to its terms, the company was authorised to provide air services between Australia and New Zealand, subject to the stipulation that frequencies, time-tables and rates had to be approved by the three govern-

ments.[21] The agreement provided for the settlement by arbitration of any dispute that might arise between any one or the other of the parties.[22]

The company's paid-up capital at the time of its incorporation amounted to 250,004 shares of £ 1 each. Through successive increases, the fully paid-up capital reached £ 750,000 by March 1949.[23] Contributions to the share capital were: B.O.A.C. 38%, the Government of New Zealand 20%, Union Airways of New Zealand (later taken over by the Government of New Zealand in 1947) 19%, and Qantas Empire Airways Limited 23%. These proportions underwent changes in 1948, becoming B.O.A.C. 20% (£ 150,000), the Government of New Zealand 50% (£ 375,000) and Qantas Empire Airways Limited 30% (£ 225,000).[24] In addition, the joint airline was subsidized by the three governments, in return for which it carried mail free of charge.[25] However, in 1946, subsidization came to an end and the company began to receive payment for the carriage of mail.

Services were inaugurated on April 30, 1940 between Auckland (New Zealand) and Sydney (Australia), starting with a single weekly flight,[26] and increasing to nine frequencies by the end of World War II.[27] In the first eleven years, Tasman Empire Airways Limited showed a gross profit of L 140,990, bought new aircraft in 1949, and established a

reserve fund of L 175,000.[28]

According to its Articles of Association, the board of directors was to consist of not more than six and not less than three members, the quorum for its meeting being at least three.[29] Voting by pool in General Meetings was on the basis of one vote for each shareholder.[30] All the company's aircraft were registered in New Zealand.[31]

The Agreement of December 16, 1941, between the three Governments and Tasman Empire Airways, purported to establish an inter-governmental body named the "Tasman Air Commission" to discharge the responsibility on behalf of the three governments with respect to the joint airline.[32] It consisted of three members, each appointed by his government,[33] with its business premises located in New Zealand. However, not before February 23, 1945, was the Commission empowered to carry out its assigned functions, as outlined in the "Instrument of Authorization to the Tasman Air Commission" signed by the three governments. The Commission's functions included, inter alia:

> "(1) to supervise the execution of the Agreement between the three Governments and the operating company and for that purpose to negotiate such matters and conduct and order such periodical and special investigations into the finance, administration and operation of the service, and call for such request for the operating company as may be required

> by any of the three Governments or deemed necessary by the Commission. It shall report to the three Governments;...
>
> (3) to call for the performance by the operating company of its duties under the Agreement;
>
> (4) to agree upon alternative or additional termini, to approve frequencies, time-tables, and rates;
>
> (5) to inspect the books of account and vouchers of the operating company."[34]

It is apparent that the joint airline was controlled by the three governments through the Commission. However, in 1946, the functions, powers and duties of the Commission were transferred to a subcommittee, called the Trans-Tasman Committee, of the South Pacific Air Transport Council (the members of which were the United Kingdom, Australia, New Zealand, Fiji and the Western Pacific High Commission."[35] In 1948, however, a new independent inter-governmental body known as Tasman Empire Airways Policy Committee was formed.[36]

Following an inter-governmental reorganization of Pacific routes in 1954, British Government withdrew from the Tasman Empire Airways Limited, and Australia took over BOAC's 20% interest in TEAL, making it an equal partner with New Zealand in the company.[37] In May 1961, New Zealand bought Australia's 50% interest in TEAL for L N.Z. 811,400, and thus acquired complete ownership of the company.[38]

The other effort at Commonwealth cooperation materialized when the British Commonwealth Pacific Airways was formed jointly by the United Kingdom, Australia and New Zealand in 1946.[39] Negotiations among the three governments were held in Montreal in 1944, London in 1945, and Wellington in 1946.[40] The joint airline was intended to operate between Australia and New Zealand on the one hand, and the West Coast of North America on the other, in order to complete the British global air routes.[41]

Accordingly, on June 24, 1946, British Commonwealth Pacific Airlines Limited was registered at Sydney under the laws of Australia, with a share capital of L 1,000,000 subscribed by the three parties on the following basis: Australia 50%, New Zealand 30% and the United Kingdom 20%.[42]

Initially, it owned no aircraft, and the first services were operated by A.N.A. DC-4s under a charter arrangement, starting on September 15, 1946, once a fortnight. Until an air transport agreement with the United States was signed in February 1946, B.C.P.A. had to take San Francisco-bound passengers on to Vancouver, where they could pick up a regional connexion. Flights from New Zealand began on April 25, 1947.[43] The company began operations in 1948 with its own aircraft.[44]

In October 1953, the British Government decided to withdraw from participation in B.C.P.A. Accordingly, Qantas was awarded the trans-Pacific route on March 17, 1954 and B.C.P.A. was liquidated.[45]

The now defunct West African Airways Corporation was another instance of multi-national co-operation within the British Empire. H. M. King George VI signed an Order in Council setting up a Corporation to "develop efficient air transport services"in West Africa. This resulted in the organization, on May 15, 1946, of the West African Airways Corporation by the Governments of Gambia, Gold Coast (now Ghana), Nigeria and Sierra Leone.[46] Paid-up capital amounted to L 465,000.[47] The company was controlled by the West African Air Transport Authority, which seems to have been an inter-governmental body of these four territories. Deficits were borne by Nigeria and the Gold Coast.[48]

WAAC began operations in October 1946,[49] and, in September 1947, took over the Lagos-Kano route formerly operated by Nigerian Air Services.[50] Towards the end of 1946, services were extended to Freetown (Sierra Leone), Bathurst (Gambia), and Dakar, in addition to domestic networks in Nigeria and Gold Coast.[51] In April 1950, a trans-African route was inaugurated to Khartoun (Sudan), but was later suspended in August 1953.[52] International services began

in May 1957, with a service to London twice weekly by Argonauts and Stratocruisers flown under charter by BOAC.[53]

However, WAAC began to disintegrate in 1957 when Sierra Leone withdrew from the Corporation and formed its own national airline early in 1958.[54] Gold Coast which achieved independence on March 6, 1957,[55] and adopted the name Ghana, also established its own national airline, Ghana Airways, in July 1958.[56] Consequently, the Corporation ceased to exist in its old form on September 30, 1958.[57]

Yet, another instance of multi-national air transport collaboration between members of the British Commonwealth was the recently dissolved Central African Airways, whose failure stands in opposition to the positive achievements of the multi-national carriers formed by the French speaking African countries, and Kenya, Tanzania and Uganda.[58]

On June 1, 1946, legislation was enacted at Salisbury to create Central African Airways, owned jointly by the governments of Southern Rhodesia (50%), Northern Rhodesia (35%) and Nyasaland (15%).[59] Along with the joint airline, which was based in Salisbury (Southern Rhodesia), the Central African Air Services Act also set up a joint administrative authority known as the Central African Air Authority.[60]

On February 1, 1960, the ownership of CAA was transferred from the separate governments to the Central African

Federal Government, under the Central African Airways Corporation Act of 1960.[61] On December 4, 1963, the Governments of Southern Rhodesia, Northern Rhodesia and Nyasaland agreed to establish a new Central African Airways Corporation which was made responsible "for the performance of the functions now performed by the existing Corporation."[62]

In 1964, Northern Rhodesia and Nyasaland became independent and adopted the names Zambia and Malawi, respectively, which consequently led to the eventual dissolution of the Central African Federation on December 31, 1964.[63] Thus, after operating as the joint carrier of the three territories under their earlier status (1946-1953) and then under the federal system (1953-1964), CAA was prevailed to adopt its own structure to the new political set-up.[64] Under the provisions of the Salisbury Agreement of December 4, 1963, on January 1, 1964, CAA took the form of a tripartite company consisting of three national airlines, Air Rhodesia (Southern Rhodesia), Zambia Airways (Northern Rhodesia), and Air Malawi (Nyasaland), with the following status and operating arrangements. CAA remained as the parent company for the three subsidiaries. Its headquarters were kept in Salisbury; it was still the owner of the fleet, all the aircraft of which were registered in Southern Rhodesia.[65]

CAA was made responsible for the provision of air services between its member states,[66] with air services to certain African points being provided by BOAC.[67] CAA had subsidiary companies, wholly owned by it, in Rhodesia, Zambia and Malawi.[68] It was created by the 1963 Salisbury Agreement and also, pursuant to that agreement, by enacted law in each of its member states.[69] The CAA appeared to be incorporated in Rhodesia since Salisbury was its headquarters and thus might have been subject to Rhodesian law as regards its legal existence. Corporate legal personality was obvious from Section 4 of Annex A to the Salisbury Agreement, which declared:

> "There is hereby constituted jointly for the Territories a Corporation, to be known as the Central African Airways Corporation, which shall be a body corporate with a common seal and capable of suing and being sued and, subject to the provisions of this Order and any law, of doing all such acts as a body corporate may perform."

CAA had only one governing and managing body, described in the Salisbury Agreement as "the Corporation."[70] It consisted of a chairman, appointed by the ministerial body known as the "Higher Authority" (composed of one Minister from each of the three countries).[71] Rhodesia and Zambia each appointed two members, while Malawi appointed one member, all of whom were required to have business, technical

and administrative qualifications. The Commonwealth Development Corporation also appointed a member, pending repayment of its loan to CAA.[72] Members of the Corporation held office for three years, or any lesser period that was specified in the instrument of their appointment.[73] However, during their tenure, they could be removed by the Higher Authority for such reasons as, inter alia, failure to perform their functions,[74] or if their private interests conflicted with those of the Corporation.[75]

From the managerial and operational point of view, it may be pointed out that CAA had a subsidiary company wholly owned by it in each of the three member countries. Each of these companies was subject to, and governed by, the laws of the country in which it was incorporated.[76]

CAA, which was controlled by and subjected to the inter-governmental "Higher Authority,"[77] had a total capital amounting to L 1,476,650,[78] including the loan made to the former Corporation by the Commonwealth Development Corporation (which was guaranteed by the Federal Government of Rhodesia) and other loans by the former Federal Government. The ownership of CAA was held in the amounts and ratio of L 664,492.5 (45%) for each of the Governments of Rhodesia and Zambia, and L 147,665 (10%) for the Government of Malawi.[79] The guarantee by the Federal Government to the Commonwealth

Development Corporation of the loan made to CAA was replaced by guarantees by the governments of the three countries in the same ratio as their ownership of capital.[80] In the absence of an agreement to the contrary, subscriptions to any additional capital[81] and incurrement of profits and losses were borne by the three governments on the same basis.[82]

At the beginning of each financial year, CAA was required to submit to the Higher Authority for its information, a revenue and expenditure budget.[83] The annual budgets of the subsidiary companies were also required to be submitted for the approval of the Higher Authority.[84] At the close of each financial year, the Corporation was obligated to submit to the Higher Authority an annual report on its activities and those of its subsidiary companies, containing,inter alia, "the revenue and expenditure account and annual report of the auditor".[85] The appointment of auditors was subject to the approval of the Higher Authority.[86] By Section 10 of Annex B to the Salisbury Agreement, the borrowing powers of the Corporation were limited to borrowing by bank overdraft for temporary purposes.

By the Salisbury Agreement of 1963, CAA transferred the ownership of certain of its aircraft to its subsidiary companies in each of the three member countries,[87] with some of these aircraft required to be leased back to the Corpora-

tion.[88] It is deduced from the stipulations of the Agreement that the aircraft owned by each of the subsidiary companies were registered on the national register of the country in which the subsidiary company concerned was incorporated. However, the Agreement did not mention the manner in which the Corporation's aircraft were to be registered and the place of their registration.[89] Although some DC-3s and Beavers which were allocated to Zambia Airways and Air Malawy remained on the Southern Rhodesian register,[90] it is not known if this practice constituted a rule or an exception.

The crisis which eventually led to the dissolution of CAA did not arise until 1966, but it had been latent since the turn of 1964. The distribution among the three subsidiaries of the CAA fleet, with CAA playing the role of a holding company and exercising control over operation, did not give full satisfaction to Zambia and Malawi.[91]

Even before the crisis spread regionally, the domestic agreement no longer existed on certain points. One burning issue was the South African route operated by Air Rhodesia. Zambia and Malawi objected to the maintenance of this route, but CAA pointed out that it was the most profitable sector and its biggest market. Politics and economics were thus at loggerheads, and politics had

the last word with the internationalization of the problem.[92]

In January 1966, the three governments of East Africa informed Zambia and Malawi that they would have to break with the Southern Rhodesian airline if they did not wish to see an immediate ban on their services to Kenya and Tanzania.[93] Towards the end of 1966, the Zambian Government made it clear that they considered it necessary to ensure that the control of the Zambian national airline was vested in Zambia and that to this end, the Government would be requesting the Corporation to draw up a plan for the orderly dissolution of CAA and the establishment of an independent Zambian airline.[94] In mid-1967, the Zambian and Rhodesian Governments jointly announced a target date as soon as possible after August 31, 1967 for the dissolution of CAA.[95] At the end of the year 1967, the Corporation was finally dissolved.[96]

In Scandinavia, two multi-national air transport enterprises preceded the present SAS arrangements. Overseas Scandinavian Airlines (OSAS) and European Scandinavian Airlines (E-SAS). The first of these was a consortium very much similar in its structure to the present SAS consortium, being a joint venture of the three Scandinavian national airlines: Swedish International Airlines (SILA), Danish Airlines (DDL) and Norwegian Airlines (DNL). Capital contributions and aircraft registration were in the same proportion

as the present SAS, in the ratios of 3/7:2/7:2/7.[97] However, the OSAS seems to differ from its successor in that each parent company leased its aircraft to the Consortium for an agreement payment.[98] O-SAS operated its first service on September 17, 1946, from Stockholm to New York. Earlier, the agreement to form this consortium had been reached on August 1, 1946, following discussions in Oslo between the executives of the three national airlines. Two months after inauguration of its operations, OSAS linked Scandinavia to South America, with service to Montevideo via Lisbon, Dakar, Recife and Rio de Janeiro. This route later was extended to Buenos Aires and Santiago de Chile.[99]

In 1948, another arrangement was made in Scandinavia: E-SAS, whose sphere of activities was within Europe, the Near East and Africa,[100] and which also carried domestic traffic within the three Scandinavian countries,[101] Participants were the Swedish Aktiebolaget Aerotransport (ABA), and the two Danish and Norwegian airline companies members of OSAS.[102] Unlike the OSAS arrangement, each participant incurred its own expenses in operating its aircraft on an agreed quota system, but the revenues were pooled on the basis of the tonne-kilometres performed, regardless of traffic actually carried.[103] Thus, it was possible for the carrier with larger capacity to derive benefits from this

pooling arrangement at the expense of the other carriers.

While OSAS was a success, E-SAS was a failure, and sometimes a cause of friction.[104] After extensive negotiations, which also involved the three Governments, the new SAS Consortium succeeded to the assets, rights and liabilities of its two predecessors.[105]

2. The Existing Multi-National Airlines and Consortia

At present in the international airline industry, there are four multi-national airlines, (Air Afrique, EAA, MSA and SAS), as well as two significant multi-national operational consortia (ATLAS and KSSU). A comparative appraisal of these joint enterprises is intended to explain the nature and functioning of their organizational arrangements and legal status.

a) Air Afrique.

The Conference of Heads of 12 West African States and Governments, held at Brazzaville on December 15, 1960, formed a committee to work out practical measures of economic co-operation.[106] The committee meeting in Dakar in January 1961 proposed the creation of a permanent organ of Afro-Madagascar economic co-operation to be composed of 13 states.[107] On March 28, 1961, this proposal was approved by

the Conference of Heads of States at Yaounde (Cameroun), and the multi-national organization created was entitled L'Organisation Africaine et Malgache de Coopération.[108] It has its headquarters at Yaoude.[109]

Similarly, at the Conference held at Brazzaville on December 15, 1960, the 12 heads of states and governments present agreed in principle to a scheme for the creation of a common air transport company. They left it to the Survey Committee of Dakar to draft, in their final form, the various texts to be submitted to the next meeting at Yaounde.[110] In fact,the idea of a multi-national air transport company crystalized on October 26, 1960 at the first Conference of the West African states held at Abidjan. In that conference, it was agreed that the feasibility study of the establishment of a joint airline, in collaboration with Air France and UAT should be carried out. The outlines and schemes of the plan were then sent to each head of state on November 28,1960.[111]

On March 28, 1961, eleven of the West African states concluded at Yaounde a treaty regarding air transport in Africa.[112] In accordance with Article 1 of this treaty,the contracting states created an air transport company, referred to as "La Société Commune," for the operation of air traffic between their territories as well as beyond them. The treaty also contains a provision that each contracting state would

have an equal share of the capital of the Société.[113]

On the same day, namely March 28, 1961, the eleven West African States also concluded an agreement establishing the Statutes (Articles of Incorporation) of the aforementioned "Société Commune."[114] These statutes provided for the constitution of société par actions," that is a joint stock company, named "Air Afrique",[115] the object of the company being the "operation of scheduled, supplementary or special air transport of passengers, freight and mail".[116] The company was constituted for a period of 99 years subject to its anticipated dissolution or its extension provided for under the terms of its articles of association.[117]

On March 28, 1961, the two French companies, Air France and L'Union Aéromaritime de Transport, confirmed in a letter for the cognizance of the then eleven constituent states of Air Afrique that a special agreement would be concluded between them and the Corporation concerning the operation by it of the services which would be decided in agreement with those two French companies to meet the needs of long distance operation of the latter. The agreement would contain relevant terms and conditions including financial ones.[118]

In 1964, Togo adhered to the Treaty of Yaounde, becoming the twelfth participating state.[119] As flag car-

rier for twelve West African nations in one of the world's most unusual airline enterprises, Air Afrique is a clear example of a joint corporation, with its members being States, the privately-owned French airline company UTA, and the French investment group Caisse Dépots et Consignation.[120]

Initially, each of the eleven participating states contributed 6%, for a total of 66% of the ownership. UAT (which amalgamated in 1963 with another privately-owned French carrier TAI to constitute UTA) and Air France each subscribed to 17% to make up the remaining 34%.[121]

At present, ownership of the carrier is vested in 12 member nations, each having a 6% share of the company's stock. The remaining 28% is owned by a corporation consisting of Union de Transport Aérien (UTA) and a French investment group titled Caisse Dépots et Consignation.[122]

The Treaty of Yaounde prescribed that contracting states may commit to the joint Corporation (Société commune) the operation of the domestic services within their territory. The terms and conditions of this operation would form the subject of a protocol agreement between the contracting states and the joint Corporation.[123] Nonetheless, each contracting state reserves the right to designate one or more undertakings to operate its domestic air transport services. In this event, the State shall take whatever measure neces-

sary to ensure that the activity of its domestic carrier is co-ordinated with that of the joint Corporation.[124] The national domestic carriers may even operate regional services if authorized to do so, after consultation with the Committee of Ministers.[125] The Treaty further provides that the contracting states designate the joint Corporation as the instrument chosen by each of them for exercising their rights in respect of international traffic and air transport rights.[126]

The Treaty of Yaounde constitutes an inter-governmental body known as the Committee of Ministers.[127] It is composed of Ministers responsible for civil and commercial aviation in the contracting states or their representatives and is established to function as a medium for discussing their "common policy, prospects for the development of air transport and programmes and, in a general manner, all questions relating to civil and commercial aviation."[128] The Treaty further appears to emphasize as an object of the Committee collaboration and general co-ordination of the civil aviation policies of the contracting states. It stipulates, inter alia, that "the contracting states undertake to adopt for the purpose of negotiating air traffic rights within the framework of inter-governmental agreements, a position in co-ordination with that of the other

contracting states, due account being taken of the operation and interests of the joint Corporation . . ." To this effect, it requires that each contracting state should submit to the Committee for its opinion any air traffic draft agreement to be concluded by that state.[129] It may also make recommendations for achieving uniformity of laws and regulations, and of the positions of contracting states towards international conventions relating to civil aviation.[130] In this context, however, it may be stressed that the Committee appears to act as an advisory body, for Article 10 of the Yaounde Treaty declares that each contracting state "shall endeavour" to take into the "highest consideration" the Committee's opinion so as to avoid concluding inter-governmental agreements that may be prejudicial to the interests of Air Afrique. The Committee is required to meet at least once a year either on its own initiative or at the request of one-third of the contracting states. It is presided over by the representative of the government of the contracting state in which it meets, and the said state provides the secretariat for the Committee.[131]

The Articles of Incorporation of Air Afrique prescribe its constitution, powers, duties, and functions. The joint Corporation has two important administrative organs: the board of directors, and the general meeting of shareholders (or, sometimes the extraordinary general meeting).

The board administers the company.[132] Representation on it is proportionate to the shareholdings of each participant, except for member states, which, in every case, shall have two seats each.[133] The ordinary general meeting of the shareholders observes this principle when it appoints the members of the board for a period of four years, who may be removed at any time by the party who nominated them, or by the board for lack of efficiency.[134] The board elects from among its members a chairman who holds office for the duration of his membership, and who may thereafter be re-elected.[135] He may be removed at any time by a majority vote of the board.[136] Decisions of the board are arrived at by majority vote,[137] with the chairman having a casting vote only on a second equality of votes.[138] From the vast power it enjoys,[139] the board would appear as the supreme organ of the joint Corporation, were it not for the general powers and supervisory authority of the general meeting. In addition to those powers ascribed to it in the Articles of Incorporation, which are in no way exhaustive, the board is entitled to exercise any powers not assigned to any other organ of Air Afrique.[140] To mention but a few:

> (1) The Board shall represent the Corporation in its dealings with Governments, public and private organizations, trading bodies and in general all third parties;

> (2) The Board shall appoint and dismiss where necessary all trustees, managers, representatives, agents and employees of the Corporation; determine their duties, their conditions of service, their retirement and their salaries; . . .
>
> (3) The Board shall submit to an extraordinary general meeting all amendments to these Articles of Incorporation.[141]

Management of the day-to-day affairs of the joint Corporation has been entrusted to the chairman of the board, who now shoulders the dual responsibility of the chairman and general manager.[142] The chairman may, however, request the board to appoint a general manager to assist him in discharging his managerial functions.[143] Thus the board, through its chairman, may become involved in the management of Air Afrique.

In the general meetings of the Corporation, all shareholders are entitled to vote according to the size of their holding,[144] and here, unlike in the board, there is no special voting privilege for member states.[145] General meetings are usually held on an annual basis[146] and under certain conditions proxy voting is permissible.[147] A minimum of two-thirds of the shares is required to be represented before the general meeting can proceed to business, and only on a second failure to obtain that quorum will the meeting be deemed lawful.[148]

The general meeting has an ex-officio president, who is the chairman of the board.[149] Decisions are by majority, with the president having a casting vote.[150]

The general meeting has the power and authority to deal with any matters relating to the Corporation - for example:

> (1) To appoint the members of the Board of Directors;
>
> (3) To amend the Articles of Incorporation.
>
> (5) To declare the dissolution of the Corporation and appoint the liquidators.
>
> (6) To declare the extension of the period fixed for the duration of the Corporation.[151]

An extraordinary general meeting may be called by shareholders representing a minimum of fifty per cent of the shares to deal exclusively with matters relating to checking holdings in kind, increasing the capital, or amending the objects of the Corporation.[152] Its decisions are by a two-thirds majority, except in the case of an increase in capital due to the admission of a new state, when unanimous agreement is required.[153]

Imam observes that Air Afrique, as a mixed enterprise of public and private financing, has peculiar provisions dictated by the desire of the parties to maintain a balance

between the shares and the rights resulting therefrom.[154] The authorised capital of the company is fixed at 500 million francs C.F.A., divided into 50,000 shares of 10,000 francs C.F.A. each.[155] The twelve participating states of Air Afrique hold 36,000 shares (72%), divided equally among them; and the remaining 14,000 shares (28%) are held by UTA, the French airline, and the French investment group, Caisse Dépots et Consignation.[156] Any changes in shareholdings, whether caused by increase or reduction of capital shall in no circumstance prejudice the principle of the equal participation of the member states, nor in any way modify the relation between the participation of the states and that of other shareholders.[157] Only one fourth of the capital of the corporation is paid up, and demand for payment of the balance is at the discretion of the board of directors and subject to the conditions decided upon by them.[158]

Admission of a new state or states to the joint Corporation will necessarily involve changes in capital shareholdings. Thus, a state may be admitted to membership through either surrender of shares by the private companies, or cession of shares of a member state or the private companies (provided the equality of states is preserved and the private shares are not thereby reduced below those of a state), or by increase

of capital, or through the distribution of the shares of a withdrawing state.[159] These are the only legitimate means for the transfer of both states' shares and those of the private companies. In the case of transfer of shares by the private companies, the unanimous consent of the board of directors must be secured.[160] Togo was admitted to membership in 1964 on the basis of surrender of share by the private companies.

The capital of the company may be increased on one or more occasions, either by contributions in kind or in money, or by incorporating all available reserves. Capital increases shall be decided upon or authorized by a general meeting of the shareholders acting in accordance with the conditions laid down in Article 36 of the Articles of Incorporation.[161]

In addition to the rights attached to shares, there are also obligations and duties cast upon shareholders, the most striking of which is:

> The ownership of a share shall establish full acceptance of the Articles of Incorporation and of the decisions of the general meetings of the Corporation by the shareholder.[162]

This would appear to be a legal technique employed to bind UTA and the French investment group, as parties to the Air Afrique enterprise, to the provisions of the constitutive instrument.

Air Afrique's board of directors is subject to the control of the general meeting of shareholders, including the powers of the meeting to scrutinize the financial aspects of the Corporation's business. Thus, at the close of each financial year, the board is required to make an inventory, prepare a profit and loss account and a balance sheet; and present them to the general meeting together with its report on the corporation's business during that year.[163] The auditors are likewise required to submit their own report directly to the meeting.[164] The Articles of Incorporation provide for the creation of a reserve fund out of the profits, which fund should not exceed 10 per cent of the authorized capital (except where the general meeting decides, upon motion by the board, to establish an extraordinary reserve fund).[165] The remainder of the profits (if any) and also any losses are to be divided among the shareholders in proportion to their shares,[166] with member states enjoying a privileged position:

> Shareholder states may agree among themselves on different distribution of profits accruing to them, or of the loss they may be called upon to make good, as the case may be. They may to this effect, call a special meeting whose powers shall be restricted to the distribution among members of the profits or losses, but which shall have no say in the management of the Corporation.[167]

The legal structure of Air Afrique largely resembles a true international body corporate. Its personal law is contained primarily in the Treaty of Yaounde and in the Articles of Incorporation annexed to that Treaty:

> This treaty and its annexes, including the Articles of Incorporation of the joint Corporation (Société Commune), shall determine the legal terms of existence and operation granted to the Corporation by the Contracting States by departing, if need be, from the present or future provisions of their national laws.[168]

Thus, the Treaty including the Articles of Incorporation contains the supreme law governing the joint Corporation. The Treaty endows the Corporation with "the fullest legal capacity recognized by the laws of contracting states in the case of bodies corporate. . ."[169] This legal capacity seems to be only analogous in character to the corporate municipal capacity usually recognized by the laws of the participant states. Such provision will not subject the Corporation to the municipal laws of all or any of the contracting states as regards the grant of legal personality. The provision thus operates only to the extent of defining the corporation with the more familiar types of municipally incorporated bodies. Accordingly, the legal personality of Air Afrique is solely granted by an international treaty concluded between subjects of international law, which have even stipulated for

deviations from the rules of their municipal laws.[170]

On the other hand, it seems as though Air Afrique does not have any nationality, but is only "deemed as possessing the nationality of each contracting State, both in respect of said States and in respect of other States."[171] Imam observes that such grant of fictitious multiple nationalities, vis-à-vis a third state not party to the joint enterprise, would seem artificial and of no help in determining which law governs the corporation.[172] Such provision may be superfluous,[173] since the corporation is primarily governed by the Treaty and the Articles of Incorporation.[174]

Article 1 of the Articles of Incorporation provides:

> A joint Corporation under the name of "Air Afrique" is hereby constituted and governed by:
>
> (1) The international treaty signed on the twenty-eighth day of March 1961 and by the present articles of incorporation attached thereto.
>
> (2) Residuarily and only in so far as they are compatible with the provisions of the treaty and the articles of Incorporation by the principles pertaining to the laws of the signatory States of this treaty.

Reference to the legal systems of the contracting states in Article 1 relates only to the total principles of those legal systems of all the participant states, which

principles may only apply to the joint Corporation in the absence of express or implied provision in the Treaty and only if they are not contradictory to its provisions.[175] The application by way of residue of the vague notion of the "principles" of the municipal laws of the participant states, however, may not occur, or may be rarely applied. Such application of municipal law does not negate the international character of the corporation. International corporations may have municipal laws partly applied to them, as for example, for certain of their functions and activities. The test should be whether the corporation will remain predominantly of an international character. Air Afrique is not, however, incorporated in any of its member states, and its constitutive instrument does not purport to deem it as if incorporated in all the member states. Hence, the Anglo-Saxon Common Law - and likewise the Soviet rule of private international law by which the place of incorporation "governs the existence of a corporation and . . . determines the nature and extent of its powers. . ."[176] would not apply to the joint Corporation.

Moreover, Air Afrique appears to be artificially domiciled in all the signatory states of the Treaty of Yaounde, its Articles of Incorporation providing:

> The Corporation shall have an establishment having the attributes of a head office in the Capital of every State signatory to this treaty... .[177]

Imam opines that such a provision may have been provided with the aim of avoiding the location of its centre of activities so as to ensure that the joint Corporation is not to be governed by the municipal law of its head office.[178] The above provision admits, by necessary implication, that the corporation does not and cannot practically have more than one head office.[179] By such artificially supposed head offices, the corporation would not thereby acquire twelve domiciles in the capitals of its participant states. In the opinion of C. Wilford Jenks, in the absence of a special relationship, an international cooperation would not be governed by the law of the place where it happens to have its seat.[180] It thus appears that, for legal purposes, the various head offices of Air Afrique would not affect the issue as to whether it is an international corporation.[181]

With respect to the nature of Air Afrique, the preamble of the Treaty of Yaounde states:

> Whereas articles 77 and 79 of the Convention on International Civil Aviation signed in Chicago on 7 December 1944 aiming at the setting up by two or more States of joint operating organizations or international operating agencies and the participation of the States in these organizations and agencies. . .

In the Tokyo Conference on Air Law (1963), the representatives of Congo (Brazzaville) and Senegal, on discussion of the question as to how the Tokyo Convention would apply in the case of aircraft operated by international operating agencies as contemplated by Article 77 of the Chicago Convention, indicated that Air Afrique is specifically an international operating agency whose aircraft might be in future registered on other than a national basis. They, therefore, proposed that the International Civil Aviation Organization's Council be empowered to determine, if necessary, the manner in which the provisions of Tokyo Convention should apply to aircraft so registered.[182]

Similarly, the Union Africaine et Malgache de Coopération Economique,[183] acting on behalf of Air Afrique, requested the International Civil Aviation Organization in 1964 to have a study made of the problems relating to nationality and registration of aircraft of international operating agencies.[184]

If the many nationalities, that the Air Afrique is deemed to possess, are discarded and the corporation is considered to have no nationality, then Air Afrique may well be considered a true international company.[185]

It may be inferred from the first sentence of Article 7 of the Yaounde Treaty that the aircraft of Air Afrique

belong to the joint Corporation and not to any of its constituent states. The relevant part of this sentence reads: "Failing the possibility of joint registration, each aircraft belonging to the joint Corporation. . ."

Regarding the registration of these aircraft, Article 7 contemplates joint registration of aircraft, as seen from the quotation above, and that, in case such registration is not possible, the aircraft of Air Afrique would be "registered in one of the States." According to the Article, "The States shall reach agreement concerning the apportionment among themselves of the registration of the aircraft belonging to the joint Corporation (Société commune), it being specified that the aircraft may be used freely and indiscriminately to perform the Corporation's services, whatever their registration."

The provision for an alternative method of registration was due to the fact that, as partly inferred from the Article,[186] it was contemplated that joint registration of aircraft depends, under Article 77 of the Chicago Convention, on the approval (or determination) of the Council of the International Civil Aviation Organization, whose determination was not released at the time Air Afrique was under formation. This explains the above-mentioned request made to the International Civil Aviation Organization of behalf of Air Afrique.[187]

Thus, the aircraft of Air Afrique were not registered on a joint register. However, all these aircraft are registered in the Ivory Coast, a constituent member of the joint enterprise, and bear Ivory Coast nationality marks.[188] Indeed, as Article 17 of the Chicago Convention prescribes, aircraft have the nationality of the place in which they are registered.

Under the Articles of Incorporation of Air Afrique, modifications in the enterprise through statutory amendment may be undertaken by the extraordinary general meeting, and can be effected by a two-thirds majority of the votes present and represented.[189] Modifications through withdrawal of members are permissible only on six months' notice,[190] while new participants may be admitted only with the unanimous consent of contracting states.[191]

In the territories of its member states, the joint Corporation is exempt from all taxes and fees, except those for services rendered.[192] The parties to the Treaty of Yaounde agreed to authorize and facilitate the transfer of funds by their joint Corporation.[193]

Air Afrique's Articles of Incorporation have detailed provisions for the anticipated liquidation of the enterprise.[194]

b) East African Airways Corporation.

The East African Airways Corporation (EAAC) was first established by the East African (Air Transport) Order in Council 1945.[195] This order also created the East African Air Authority, consisting of the Governors of the East African territories and the British Resident of Zanzibar, with powers to regulate commercial air services. The Authority appointed the Board of Directors of the Corporation and the Board reported to the Authority under the Order. The functions of the East African Air Authority were transferred to the East African High Commission when it was established in 1947.[196]

On November 1, 1945, BOAC began operations on behalf of EAAC,[197] which was formally incorporated on January 1, 1946.[198] Ownership was divided between Kenya (68%), Uganda (23%), Tanganyika (9%) and Zanzibar (0.7%).[199] The first services in the name of EAAC started on April 3, 1946.[200] In its first ten years, it developed local and regional international air services. In 1957, with aircraft leased (subsequently purchased) from BOAC, it commenced international air services to U.K., Pakistan and India. In 1969, Comet aircraft were purchased and entered service to be replaced in 1966/67 by Super VC 10 aircraft.[201]

The initial capital for EAAC was L 50,000, which in 1949 was increased to L 221,500.[202] The initial and subsequent capital for the Corporation was provided by the territorial Governments and Zanzibar. It consisted of loans and overdraft guarantees. No equity capital was contributed.[203]

Under the Commission, losses were shared amongst the territories on an agreed formula.[204] This formula has not been used for some time as EAAC has been profitable since 1955.[205]

There have been no new infusions of capital by the partner Governments over and above the loans and permanent guarantees described above. The practice has been followed of the Corporation itself arranging the finance for the purchase of new aircraft. The territorial Governments and later the Partner States jointly and severally guaranteed the repayment of some of these loans.[206]

With the establishment of the East African Common Services Organization (EACSO) on December 9, 1961 to replace the East African High Commission, EAAC was placed under it. Broadly speaking, EACSO was a politicized version of the High Commission with, in the field of civil aviation, powers and functions similar to those of the East African Community,[207]

but its relation with EAAC were substantially identical to those between the Commission and EAAC. The sole alteration was to repeal the East African (Air Transport) Order in Council and substitute new constitutive legistation, the East African Airways Corporation Act, 1963.[208] The main change in this legislation was to authorise the appointment of some of the members of the board by the member states.

The EACSO has, since December 1, 1967, been superseded by the East African Community, and EAAC has been reconstituted by the Treaty for East African Cooperation, signed by the Governments of the Three East African Countries of Kenya, Uganda and Tanzania, referred to in the Treaty as the Partner States, and the legislation made under it.[209]

According to the Treaty, the headquarters of EAAC must be at Nairobi, Kenya.[210] Future development should so far as possible be sited in Uganda and Tanzania with first priority being given to development in Uganda.[211] A partner state may require the Corporation to provide air services within its boundaries but, in that case, the Corporation is entitled to be compensated for any loss which it suffers by virtue of that requirement.[212]

The Corporation and its servants enjoy certain immunities. Persons employed in the Corporation have immunity

from civil process in respect of acts performed by them in their official capacity and are accorded such immunities from immigration restrictions or alien restrictions as the East African Authority[213] determines.[214] The Corporation is exempt from income tax and stamp duty.[215] In fact, the arrangements under which the East African Airways Corporation now exists makes it nature a subject of an interesting survey. It is intended below to discuss further the nature of this organization as far as that nature could reflect on its legal status.

The East African Airways Corporation is reconstituted, specifically, by Article 43 of the Treaty for East African Cooperation. This Treaty establishes inter alia the East African Community.[216] The Community comprises a number of Institutions including corporations like East African Airways established under it. The most important Institutions, however, are those for exercising the executive (the East African Authority and the Councils) and the legislative (the East African Legislative Assembly) powers conferred by the Treaty on the Community, for each of them has carefully defined powers over the Corporation and its operations. Each Partner State undertakes to take all steps within its power to secure the enactment and continuation of such legislation as is necessary to give effect to the Treaty and, in particular,

to confer on the Community the legal capacity and personality required for the performance of its functions and to confer upon Acts of the Community the force of law within its territory.[217]

East African Airways is one of the Institutions of the Community[218] and, as such, is required to perform the functions and act within the limits of the powers conferred upon it by the Treaty or any other law.[219] Furthermore, it is obliged "on behalf of the states and in accordance with the Treaty and the laws of the Community" to administer the service specified in relation to it in Part B[220] of Annex IX of the Treaty and take over the corresponding service administered by the East African Common Service Organization[221] - its predecessor of the same name.

The establishment and constitution (the equivalent of the memorandum and articles of association of a company) is provided for EAAC in part in the Treaty and in part in the East African Airways Corporation Act, 1967. These define its powers and duties and its relation to the other Institutions of the Community and the Partner States of the Community.

In common with the other corporations, EAAC is enjoined to conduct its business according to commercial prin-

ciples and to perform its functions in such a manner as to secure that, taking one year with another, its revenue is not less than sufficient to meet its outgoings which are properly chargeable to revenue account and the East African Authority is empowered to fix a target percentage annual return on net fixed assets.[222]

In addition, the Corporation is under a duty to have regard to its revenues in the Partner States as a whole and not to its revenues in any particular Partner State,[223] to regulate the distribution of its non-physical investments to ensure an equitable contribution to the foreign exchange resources of each of the Partner States,[224] and its purchases so as to ensure an equitable distribution of the benefits thereof in the Partner States,[225] taking into account inter alia the scale of its operation in each.

There is a board of directors for the Corporation "responsible for its policy control and management."[226] It comprises ten directors, appointed directly or indirectly by the East African Authority and two appointed by each Partner State. Those appointed directly by the Authority are the Chairman and two other members. The Director General who is appointed to that office by the Authority[227] is a member ex officio.[228] The Board appoints the staff other than the Director General.[229] The Corporation is required

to submit accounts and a report annually to the Communications Council which must table them in the East African Legislative Assembly.[230]

The relationship between the Director General and the Board and between these and the other Institutions of the Community and their respective powers are defined.[231] Broadly speaking, the Director General is responsible for the day to day management of the Airline and the submission of programmes to the Board.[232] The Board is charged with responsibility for major policy matters and major programmes of a capital nature and is obliged to submit certain matters to the Communications Council.[233] The Communications Council receives information and may give advice and directions in respect thereof and directions of a general nature, control tariffs charged by the Corporation within the Partner States, approves international tariff proposals, annual and five-year programmes, major alteration in salaries or conditions of service, major capital expenditures, and gives directions concerning agreements with, or the interests of, a foreign country. Finally, it reports to the East African Authority.[234] The East African Authority is invested with responsibility for the general direction and control of the Corporation and in particular may give directions of a general

nature to the Communications Council and to the Board as to any of the Corporation's functions which appear to affect the public interest, and determines matters referred to it by Council or Board. Finally, it resolves differences of certain types between the Board and the Council.[235]

A striking feature of the East African Airways is its resemblance to a statutory public corporation. Its powers and duties are similar. It has a board of directors. It reports normally to the executive government and the executive exercises certain controls over the corporation, but these are, on the whole, the normal range than an executive government enjoys over public corporations. Even one of the major factors which distinguishes a public corporation from a department of the executive government, namely that the corporation appoints it own staff, is present.[236]

On the other hand, and most significantly, it is established by a treaty and an Act made under the treaty. The Treaty vests legislative authority over certain matters including civil aviation in the East African Legislative Assembly, an institution of the Community.[237] Bills passed by the Assembly become Acts of the Community when assented to by the Heads of the Partner States[238] and as already noted the Partner States are obliged under the Treaty to enact laws

to give effect within their territories to Acts of the Community.[239] The Assembly is the body in which EAAC's accounts and reports are tabled and is the source of part of the rules regulating the internal operation of the Corporation. As will be seen, it is also the source of law which regulated generally EAAC as an airline engaging in civil aviation activities in East Africa.[240]

The East African Authority has been referred to as having powers in relation to EAAC. This is another Institution of the Community established by Article 46 of the Treaty as the principal executive authority of the Community. It comprises the Heads of the Partner States. It is responsible for, and has the general direction and control of, the performance of the executive functions of the Community. It is assisted in the performance of these functions by a series of Councils and by the East African Ministers all of which are subject to its direction and control.[241] If a member records an objection to a proposal submitted for decision, the Authority may not proceed with the proposal.[242]

The East African Ministers are three in number, one nominated by each Partner State, but all are appointed by the Authority.[243] The East African Ministers are permanently stationed at the headquarters of the Community and are responsible for the day to day exercise of the executive power of

the Authority. They make decisions on matters lying within the scope of the powers delegated to them by the Authority.[244] With respect to EAAC, they sift the proposals coming from it before submission to the Communications Council and they are members of that Council.[245] Their most important specific function in relation to EAAC is their responsibility, with the assistance of representatives of EAAC and such other persons as may be appropriate, to negotiate bilateral air service agreements on behalf of the Partner States and to conduct such negotiations in accordance with the criteria laid down by the Communications Ministerial Committee of the Common Services Organization and any amendment of such criteria which may be made by the Communications Council.[246]

The Communications Council, an institution of the Community, consists of the three East African Ministers, together with the three other Ministers, one from each Partner State, who are responsible for communications in their respective States. It is a forum for consultation on communications matters and exercises the functions conferred upon it by the Treaty.[247] Its function in relation to EAAC have already been described.[248] The East African Director of Civil Aviation comes under its supervision as do all the other activities of the Community relating to communications.

It is thus, de facto, the principal executive authority of the Community responsible for communications in both their internal and international aspects. It is, of course, subject to the Authority. When business relating to a corporation is being considered, the chairman of the Board and the Director General of that Corporation are entitled to attend and speak.[249] If a member of the Council records an objection to a proposal submitted for a decision, the proposal has to be submitted to the Authority for decision; if a decision taken by the Council is contrary to a proposal submitted by the Board of Directors of a Corporation, the Board may refer the question at issue through the East African Ministers to the Authority for a decision and no action may be taken on the proposal while it is under consideration by the Authority.[250]

These are the principal Institutions of the Community which exercise authority over EAAC. Although all are comprised of representatives of the Partner States, they are established by the Treaty and exercise authority by virtue of it. It is true, however, that the Community exercises its functions on behalf of the Partner States through its appropriate institutions (EAAC is one)[251] and the Corporations administer their services on behalf of the Partner States,[252] but they have come into existence by virtue of the Treaty and

their respective powers, functions, duties and obligations arise from or are imposed by the Treaty.

The financial arrangements under which EAAC operates are of significance. Although EAAC is bound to conduct business according to commercial principles, it is not under any obligation to pay profits to any Partner State of Community. It may, as has already been described, be required to meet a financial target.[253] But no provision is made for payment of any kind to the Partner States or the Community. In the event, however, that EAAC requires financial assistance, provision is made for the appropriation of the amounts required from the General Fund of the Community. Basically, the General Fund of the Community comprises various taxes collected by the Community - income, company, excise, and customs taxes are the principal ones. A portion of these has to be paid to the Partner States, the residue is retained by the Community for the purpose of financing its activities. While EAAC has not since 1956 required subsidies, as an institution of the Community, it would be lawful for the East African Legislative Assembly to make appropriations for it from thart part of the General Fund that to which the Community is entitled under the Treaty.[254] Thus, EAAC would not receive financial subventions through the Partner States, but

from the Community. In this very vital aspect, institutions created by the Treaty are empowered to service EAAC.

The safety aspects of EAAC operations are regulated by an Institution of the Community, the East African Directorate of Civil Aviation, under authority of legislation made by the predecessor of the Community, the East African Common Services Organization; these laws remain effective and can be enacted de novo or amended by the Community in pursuance of its legislative power in relation to Civil Aviation.[255]

Among the services administered by the Community on behalf of the Partner States is the East African Directorate of Civil Aviation.[256] Substantially, that Directorate is the agency which the Authority exercises control over the safety and operational aspects of Civil Aviation. The power of the Authority to control civil aviation stems from the East African Civil Aviation Act, 1964.[257] This Act invests the Authority, inter alia, with the general duty of organizing, carrying out and encouraging measures for the development of civil aviation and for the promotion of safety and efficiency in the use of civil aircraft.[258] The Act empowers the Authority to make regulations on about twenty subjects, e.g. to make provision for the registration and marking of aircraft

in the States or any of them, and with respect to licences for personnel and aerodromes, etc.[259] The Act and the regulations made under it apply to all aircraft (other than State aircraft) whilst over or in East Africa and all East African aircraft and the crew and other persons on board thereof wherever they may be.[260] An East African aircraft is one which is registered in any of the member States.[261]

In pursuance of these powers, the Authority made the East African Air Navigation Regulations, 1965.[262] The range and scope of these is equivalent to that of the United Kingdom Air Navigation Order and the regulations made under it. By and large, most of the powers conferred by the regulations are vested in the Director (now the Director General)[263] of Civil Aviation. An aircraft may not fly unless it is registered, among other places, in one of the Partner States.[264] The Director is the authority for registration in the East African countries.[265] The registration marks for the member States are specified.[266] The application for registration of an aircraft must contain information sufficient for the Director to determine whether it should be registered in one member State or another member State.[267] The Director is required by implication to maintain a register for each Partner State.[268] With respect to licences of various kinds

and certificates of airworthiness, no distinctions as to member States appear to be made.

EAAC is subject, therefore, to a single aviation authority and a single aviation safety law both arising out of the Treaty. In the safety laws the only distinction made, based on the separate identities of the member States, is aircraft registration. But the separate registration marks for the aircraft of each of the countries derive from a law made under the Treaty and not from the separate and direct actions of each of the Partner States.

EAAC, in order to operate air services for reward on a scheduled or non-scheduled basis, requires an air service licence from the East African Civil Aviation Board. The Board, established by the East African Civil Aviation Act[269] and comprising members appointed by the Partner States and ex officio members from the Community,[270] licences, by virtue of the East African Licencing of Air Services Regulations, 1965,[271] air services between places in East Africa, between places within an East African country and between places in East Africa and places outside thereof.[272] Here again a body established under legislation under the Treaty is the only authority responsible for licencing EAAC's air services. There is no licencing legislation by the Partner

States and in any event, it would violate the Treaty to enact such legislation.

Industrial disputes involving servants of the EAAC are placed under the jurisdiction of an East African Industrial Court established by the Treaty. It derives its powers from the laws relating to the settlement of industrial disputes in force in the member State where the employee is. Such powers are to be exercised in accordance with the principles laid down by the Authority.[273]

From the above, it may be concluded that EAAC is not subject to any national law, but is rather subject to an international legislation. In the International Civil Aviation Organization, it was once concluded[274] that the "body contemplated in the last sentence of Article 77 has an international character and is not constituted under the national law of any particular state . . ." Thus, should this definition be upheld, EAAC may well be considered as an international operating agency. Further, it is apparent from Section 3 of The East African Airways Corporation Act, 1967, that the Corporation is endowed with full legal personality:

> 3. There shall be established a Corporation to be known as the East African Airways Corporation. . . with perpetual succession and a common seal

> and shall have power to sue and be sued in its corporate name and to acquire, hold and dispose of movable and immovable property for the purposes of the Corporation.

The registration of aircraft of EAAC is done according to a certain formula. An equal number of each type of aircraft is registered in each of the Partner States, or in other words the aircraft of EAAC by types are registered one-third in each Partner State.[275]

Since the aircraft of EAAC are nationally registered, then no problem as such will occur with respect to the application of the provisions of the Chicago Convention containing the rights, privileges and obligations to such aircraft. An aircraft of the Corporation, in accordance with Article 17 of the Convention, will have the nationality of the Partner State where it is registered,which state is bound by the obligations and is entitled to the rights and privileges of the national state under the Convention.

The nature of EAAC has caused some diversion from the ordinary concepts of bilateral air transport agreements. For example, as noted above, bilateral air service agreements are not negotiated by a Partner State, but by "the East African Ministers" on behalf of the Partner States. This clearly marks a deviation from the ordinary concepts of

negotiations of bilateral agreements.

Another incident of deviation resulting from the nature of the Corporation is noticed with respect to the "substantial ownership and effective control" clause usually insisted upon by bilateral air agreements and which requires that the airline to be designated for exercising the traffic rights under the agreement must be substantially owned by the other contracting state or by its nationals.

The Agreement between Kenya and France of July 28, 1964, while providing for such clause in Articles 3 and 4, however, later in Article 5, restricted that requirement. In this Article, it is provided:

> The provisions of the present Agreement relating to substantial ownership and effective control shall not apply to or in relation with the designated airlines of the Government of Kenya or any airline designated by that Government to enjoy the rights specified in Paragraph (3) of Article 2 of the present Agreement if and so long as the airline or airlines are effectively controlled by the countries comprising East Africa. 276

Of course, the provision refers to East African Airways Corporation.

Similarly, there is the following example of deviation with respect to the ordinary practice regarding bilateral agreements that the routes to be operated by both contracting must begin from points situated in the territory of the party

whose airline will operate the route. Section 11 of the schedule to the Agreement between Kenya and Ethiopia, numerating the air routes to be operated by the airline designated by Kenya, begins with "Points in East Africa". Article 1 of the Agreement defines this term as meaning Kenya, Tanzania and Uganda.[277]

c) Malaysia-Singapore Airlines Limited.

Malaysia-Singapore Airline was established in Singapore in 1937 under the name, Malayan Airways. The Company was founded by Straits Steamship Company Limited of Singapore, and Ocean Steamship Company Limited of Liverpool, with the participation of Imperial Airways.[278] Registration of the company, which, inter alia, was required "to establish and carry on in the Straits, Settlements, Malay States (Federated and Unfederated), . . . and elsewhere the business of an aerial transport company",[279] was effected on October 21.[280]

Malayan Airways made its first commercial flight on April 2, 1947,[281] and commenced scheduled operations with Airspeed Consuls on May 1, 1947.[282] In 1948, BOAC acquired a minority (10%) holding in the company.[283] By the end of its next twn years of growth, Malayan Airways was rapidly expanding its domestic routes and breaking into the regional air travel market.[284] During 1957, the Company's capital

was increased substantially (from S $5,000,000[285] to S $20,000,000)[286] with most of the additional capital being subscribed by BOAC and Qantas. BOAC and Qantas both acquired a 30% shareholding, with the governments of Malaya, Singapore and Borneo holding 5% each. The remainder of the company's stock was owned by Sarawak and State of Brunei governments and a few private investors.[287]

In December 1962, Malayan Airways moved smoothly with Comet 4s into the jet age and, less than six months later, in May 1963, F-27 Friendships went into operations on certain domestic routes.[288] On August 1, 1968, two Boeing 707-320Bs were delivered, and later the company obtained delivery of its five Boeing 737-100 twin-jet transports which progressively replaced the Comets from late August to mid-November, 1969.[289] The carrier, which is already operating to Hong Kong, Taipei, Bangkok, Manila, Djakarta, Sydney and Tokyo, plans to introduce new routes through western Europe to London and to the U.S. West Coast via Manila and Honolulu.[290] Growing at a pace reflecting the expanding economic boom extending over much of the Pacific basin, MSA has been pushing progressively into the black over the past several years.[291] It has done this despite the fact that its two major stockholders, the governments of Malaysia and Singapore, have politically

uneasy relations at best and almost diametrically opposed concepts of what the airline's primary mission should be.[292]

With the formation on September 16, 1963, of the new state of Malaysia through the amalgamation of the existing states of the Federation of Malaya and the States of Sabah (formerly North Borneo), Sarawak and Singapore into one independent and sovereign nation,[293] Malayan Airways Limited changed its name to Malaysian Airways Limited on November 27, 1963.[264]

In April 1965, Malaysian Airways Limited merged with Borneo Airways Limited, adding to its domestic routes.[295]

Then, on August 9, 1965, two years after the establishment of Malaysia, Singapore, for a number of reasons - ethnic, financial, national outlook as well as the resources and ambitions of the political leaders of Malaya and Singapore - ceased to be a State of Malaysia and became an independent and sovereign state separate from and independent of Malaysia. The two nations - Singapore, primarily a reflection of a Chinese culture with an international outlook because of its port facilities, and Malaysia, primarily an inward-looking culture - did not weld.[296] However, while separating, they agreed to "cooperate in economic affairs for their mutual benefit and interest."[297] Thus, primarily for economic reasons, the two agreed to continue support of a single inter-

national airline, along with the neighbouring independent republic of Brunei.[298] As such, MSA is a unique multi-national enterprise in which the economic considerations have clearly overwhelmed the political strains; and the resulting prosperity of the carrier has amply demonstrated the wisdom of a joint operation motivated mainly by economic reasons.

Subsequent to the decision of maintaining a joint airline, in 1966, the governments of Malaysia and Singapore acquired joint majority control of the company.[299] On December 30, 1966, the company adopted the present name of Malaysia-Singapore Airlines Limited.[300]

Notwithstanding its joint multi-national ownership and its status as a mixed enterprise combining both public and private capital, the Malaysia-Singapore Airlines is a limited liability company[301] incorporated in the Republic of Singapore.[302] By virtue of its being a Singapurian registered company, the Malaysia-Singapore Airlines, as a body corporate, is existing and operating under the national laws of Singapore.[303] Besides being subjected to the provisions of the Singapore Companies Act, 1967, the company is governed by its Memorandum[304] and Articles of Association.[305]

The Memorandum of Association declares that the registered office of the company will be situated in Singapore;[306]

it also enumerates the great many[307] and various objects for which the company is established.[308] Some of the more noteworthy objects of the company are:

> (a) To establish and carry on. . . the business of an aerial transport company. . .
>
> (b) To manufacture, repair, buy, sell, and deal in. . ., aeroplanes,. . . of all descriptions, and all component parts. . . thereof; to provide and erect aerodromes, landing stations, buildings and sheds;. . .
>
> d) To carry on. . . the business of making, building or manufacturing, purchasing, hiring or otherwise acquiring all kinds of aircraft,. . . motors, motor vans or wagons, motor cars, motor carriages, motor wheels, motor cycles, motor omnibuses, road vehicles or autocars, locomotives and engines. . ., rolling stock, railway carriages, . . . cycles. . ., carts, trucks, vehicles and other conveyances of all kinds,. . . also ships or boats,. . .
>
> h) To construct, carry out, maintain, improve, manage, work, control, and superintend any roads, ways, tramways, railways, bridges,. . ., watercourses,. . ., wharves, . . ., factories, warehouses, shops and other works. . .
>
> (k) To enter into contracts, agreements and arrangements with any other company. . .
>
> (l) To erect, construct, lay down, enlarge, alter and maintain buildings, works and machinery. . .
>
> (m) To carry on any other business. . .
>
> (n) To acquire, undertake and carry on the whole or any part of the business, property, and liabilities of any person, firm or company. . .

(o) To enter into any arrangements with any Government or authorities, . . ., that may seem conducive to the company's objects. . .

(q) To enter into partnership or into any arrangement for sharing profits, union of interests, cooperation, joint adventure, reciprocal concession, . . . with any person or company, or with any employees of the company, . . . And to lend money to, guarantee the contracts of, or otherwise assist any such company. . .

(s) To promote any company. . .

(u) Generally to purchase, take on lease or exchange, hire or otherwise acquire, any real or personal property and any rights or privileges. . .

(y) To borrow or raise or secure the payment of money. . .

(AA) To purchase with a view to closing or re-selling or otherwise dealing with . . . any business. . . which may be deemed likely to injure by competition or otherwise any business. . . which the company is authorised to carry on.

(CC) To draw, make, accept, endorse, discount, execute and issue promissory notes, bills of lading, warrants, debentures and other negotiable and transferable instruments.

(DD) To sell or dispose of the undertaking of the company, or any part thereof, . . ., and to improve, manage, develop, sell, exchange, lease, mortgage, dispose of. . ., or otherwise deal with all or any part of the property or rights of the company.

(GG) To obtain any Ordinance, Provisional Order or Act of Parliament for enabling the company to carry any of its objects into effect. . .

> (HH) To establish, grant and take up agencies. . ., and to do all such other things as the company may seem conducive to the carrying on of the company's business,. . .
>
> (KK) To amalgamate with any other company having objects. . . similar to those of this company.[309]

The Articles of Association of the company contain a number of important restrictive clauses purporting to keep the company free of foreign control and ownership.[310] For instance, the company is barred from entering into any combination, amalgamation or other arrangement which will have the effect of transferring the management or control of the company to any foreigner or foreign corporation under foreign control.[311] Within the purview of the Articles of Association, a foreigner means a person who is not an "entitled person".[311] The Articles define an entitled person as a person who is a British subject within the meaning of the British Nationality Act, 1948, or a British protected person or a citizen of Singapore or the Federation of Malaya or is a company incorporated in Singapore, North Borneo or Sarawak, the Federation of Malaya, the State of Brunei or any part of the British Commonwealth.[312] According to the Articles, a foreign corporation means a corporation which is not both established under and subject to the laws of some part of the British

Commonwealth and having its principal place of business and seat of control in some part thereof.[313] Further, a corporation under foreign control includes:

> (1) A corporation of which the majority of the directors or persons occupying the position of directors, by whatever name called, are foreigners.
>
> (2) A corporation in which shares conferring a majority of votes are held by foreigners or by foreign corporations or by persons or corporations who hold directly or indirectly for foreigners or foreign corporations.
>
> (3) A corporation which is by any other means, whether of a like or of a different character in fact under the control of foreigners or foreign corporation.
>
> (4) A corporation the executive whereof is a "foreign corporation" or a "corporation under foreign control" within the meaning of the respective definitions of those expressions contained in the Articles of the company.[314]

Similarly, it is provided that only an entitled person can assume office as a Director, General Manager, Secretary or Auditor of the company.[315] It is further provided that only an entitled person can "become or remain a member of the company".[316] Moreover, no corporation, which is either a foreign corporation or a corporation under foreign control, can become or remain a member of the company, and no shares of the company can be held in trust for or in any way

under the control of any foreigner or foreign corporation or corporation under foreign control.[317] Another prohibitive clause restricts the company from purchasing its own shares.[318]

As a further measure to exclude foreign ownership in the company, every instrument of transfer requires a declaration by the transferee stating that he is an entitled person, and that the transferee will not hold all or any of the shares under transfer in trust for or in any way under the control of any foreigner or foreign corporation or corporation under foreign control.[319] Where the transfer is to a corporation, a similar declaration by the manager or secretary or some other principal officer of that corporation is required.[320] In addition, the Directors, who may refuse to register any transfer of shares without assigning any reason for such refusal,[321] are bound to decline the registration of any transfer of shares, where they have ground for believing that such transfer is proposed to be made to a foreigner or a foreign corporation or a corporation under foreign control, or to a person or corporation who will hold the same in trust for or under the control of a foreigner or a foreign corporation or a corporation under foreign control.[322] Further, if in the written opinion of a majority of the Directors, there is reason to believe that any share in the company is held by

or in trust for or in any way under the control of a foreigner or a foreign corporation or a corporation under foreign control, the Directors are required to call on the holder of such share to prove to their satisfaction that the share in question is not so held, and unless within three months thereafter such proof is given, the Directors may serve such holder with a requisition in writing to transfer such share to some properly qualified person approved by them, and unless a transfer of such share is duly made and delivered to the company within two months after the service of such requisition, the Directors "shall sell the share" at the market price to a properly qualified person approved by them.[323]

The control of the company and of the business of the company vests in the Directors, who may exercise all such powers and do all such acts and things as may be exercised or done by the company.[324] The Board of Directors of the company consists of a Chairman and not more than fifteen other Directors. Pursuant to the above, the Directors are appointed as follows:

Straits Steamship Co. Ltd., and
Ocean Steam Ship Co. Ltd., jointly. . . . . one

British Overseas Airways Corporation. . . . . two

Qantas Empire Airways Ltd . . . . . two

Government of Malaysia	a maximum of four
Government of Singapore.	a maximum of four
Government of Brunei	one
Board of Directors	one.[325]

All Directors are appointed by notice in writing served on the company, and the respective appointers are also entitled in the same manner to remove from office any Director appointed by them respectively and to appoint a Director in place of any person so removed or otherwise ceasing to be a Director after having been so appointed.[326] It is not necessary for a Director to be a shareholder of the company[327] and, further, with the exception of appointment as Auditor, a Director may hold any office of profit under the company.[328] Moreover, a Director may even enter into a contract with the company, either as a vendor, purchaser or otherwise, and may also, irrespective of his interest, vote as a Director in respect of a contract in which he may be interested as a Director, officer or shareholder of another company, provided that the nature of his interest must be disclosed by a general notice to the other Directors.[329] Furthermore, a Director may be or become a Director of any subsidiary company or in which it may be interested as a vendor, shareholder or other-

wise on such terms and conditions as the other Directors may approve.[330]

A Director is empowered to appoint in writing any person approved by the Board to be his substitute, and such substitute as an Alternate Director is entitled to attend Board meetings and can exercise all the powers and duties of the Director appointing him.[331] Any Alternate Director automatically vacates office if and when the appointing Director vacates his office or revokes the appointment as substitute.[332] Every Alternate Director acting as a substitute is deemed to be an officer of the company, and is alone responsible to the company and is not deemed to be the agent for the Director appointing him.[333]

The office of a Director is ipso facto vacated:

> (a) If he becomes bankrupt or insolvent or suspend payment or compound with his creditors.
>
> (b) If he be found lunatic or become of unsound mind.
>
> (c) If he be absent from the meetings of the Directors during a period of six calendar months without special leave of absence from the Directors by resolution duly recorded.
>
> (d) If by notice in writing to the company he resigns his office.[334]

As the executive organ of the company, the Board of Directors may meet for the dispatch of business, adjourn or

otherwise regulate their meetings and proceedings. Ten Directors including all Directors appointed by the Governments of Singapore and Malaysia or their Alternates constitute the quorum. Decisions are taken by simple majority except in cases where (a) a unanimous vote is required according to the Articles of Association or (b) under any special agreement providing for the mandatory concurrence of all Directors appointed by the Governments of Malaysia and Singapore or their Alternates.[335] A resolution in writing assented to by a majority of Directors is deemed as valid and effectual as if it is passed at a meeting, provided that the assenting Directors include all the Directors appointed by the Governments of Malaysia and Singapore.[336] A Board meeting may be summoned by two Directors at any time, and, similarly, the Secretary may convene a Board meeting upon the request of the Chairman or any two Directors.[337]

The Board has a Chairman appointed by nomination by the Governments of Singapore and Malaysia alternately, provided that the person nominated by one government is acceptable to the other. The Chairman is appointed for a term of three years and is eligible for re-appointment.[338] The Chairman presides over any Board meeting at which he is present, and if at any meeting he is not present within five minutes after the time appointed for holding the same, the Directors present

may choose one of their number to be Chairman of that meeting.[339]

As the highest governing body of the company, the Board of Directors has vast powers. The Directors may from time to time appoint one of their body as Managing Director for such period and upon such terms as they may think fit. His powers are also defined by the Board. The Managing Director ceases to be Managing Director if he ceases to hold the office of Director.[340] The Board from time to time may also appoint a General Manager, and at any time, may establish any office, or agency for managing any of the affairs of the company, and may appoint any persons to be managers, secretaries or agents of the company on such terms and conditions that it may deem fit. The Board is also empowered to remove any person so appointed and may annul or vary any delegation of its authority.[341] The many powers of the Board include, inter alia, the power to provide, destroy and substitute the common seal of the company; to grant Powers of Attorney to any person or persons;[342] to appoint Solicitors to prosecute or defend any proceedings by or against the company;[343] to draw, make, accept or endorse any cheques, bills of exchange, promissory notes or other negotiable instruments;[344] to sign receipts for money payable to the company;[345] to cause

to be kept proper books of accounts;[346] to lay before the company in general meeting a profit and loss account and balance sheet;[347] to submit to the company at the ordinary meeting a report as to the state and condition of the company;[348] to cause minutes to be duly entered in books provided for the purpose; to borrow or raise from time to time such sums of money as considered necessary for the company;[349] to secure or provide for the payment of any moneys to be borrowed or raised by a mortgage of or charge upon all or any part of the undertaking or property of the company;[350] to give security for the payment of any moneys payable by the company;[351] to cause a proper register to be kept of all mortgages and charges specifically affecting the property of the company;[352] to set apart any such portion of profits as they think fit as a reserve fund;[353] to set apart any such portion of profits as they think fit as a depreciation fund;[354] and to convene an extraordinary meeting of the company.[355]

The authorised share capital of Malaysia-Singapore Airlines is S $100,000,000 divided into 10,000,000 shares of S $10 each.[356] As on 21st May, 1969, the issued share capital of the company was S $85 million, and the share capital structure was as under:

Shareholders	Number of Shares	Percentage Shareholding
Government of Malaysia	3,508,020	41.27
Government of Sabah	64,370	0.76
Government of Sarawak	64,370	0.76
Government of Singapore	3,636,760	42.79
Government of Brunei	396,560	4.66
BOAC	347,060	4.08
Qantas	347,060	4.08
Straits Steamship	50,000	0.59
Ocean Steam Ship	50,000	0.59
Public	35,000	0.42
	8,500,000	100%[357]

The company is authorised to increase its capital by special resolution by the creation of new shares of such amount as may be deemed expedient.[358] The new shares are allotted and issued in accordance with the directives of the company at the meeting which sanctions such issue, and in the absence of any such directives, as the Directors may think expedient. No such new shares can, however, be offered or disposed of to a foreigner, foreign corporation, or a corporation under foreign control whether a member of the company or not.[359] The new shares are issued upon such terms and con-

ditions as the resolution creating them may direct, and in the absence of any such direction, such shares are deemed as ordinary shares.[360]

The company may likewise by special resolution reduce its capital by paying off capital or cancelling capital which has been lost or is unrepresented by available assets, or reducing the liability on the shares or otherwise as may be expedient, and capital may be paid off upon the footing that it may be called up again or otherwise, and the company may also subdivide or consolidate its shares or any of them.[361]

Further, the company may by special resolution enter into partnership or amalgamate with any other company having similar objects, or promote any subsidiary for such purpose.[362]

The company has borrowing powers; but under these powers, the company is prohibited to borrow from a foreigner, foreign corporation or corporation under foreign control, whether a member of the company or not.[363]

The company has a reserve fund, determined by the Board, to meet contingencies or for the liquidation of any debentures, debts or other liabilities of the company. The fund is administered by the Directors in their "absolute discretion."[364] Similarly, the Board determines a depreciation fund, out of the profits before recommending any dividend,

applicable at the discretion of the Directors for providing against any depreciation in the investments of the company or for rebuilding, restoring, replacing or for altering any part of the buildings, works, plants, machinery or other property of the company.[365] The responsibility for investing out of these funds has been vested in the Directors.[366]

The company is required to hold general meetings once at least in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and at such place as may be determined by the Directors. Such general meetings are called "ordinary meetings" and all other meetings of the company are deemed as "extraordinary meetings".[367] An extraordinary meeting may be convened anytime by the Directors. In addition, shareholders of not less than one-tenth of the issued capital of the company upon which all calls and other sums then due have been paid can require the Directors to convene an extraordinary meeting.[368]

The Articles of the company provide that no business can be transacted at any general meeting unless the quorum requisite is present,[369] and further provide that for all purposes there shall be a quorum for a general meeting if and only if all Directors or their Alternates representing the Governments of Malaysia and Singapore are present.[370] The

Chairman of the Directors presides over every general meeting or if there be no such Chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding such meeting or he is not willing to act, the Directors present choose one of their number to be Chairman, or if all the Directors present decline to take the chair, then the members present may choose one of the members entitled to vote to be a Chairman.[371] If within half an hour from the time appointed for the meeting, a quorum is not present, the meeting is adjourned to such time and place as the Chairman may determine, provided however that in case of a meeting convened on requisition of members, the meeting is adjourned until the 14th day thereafter and is held at the same time and place and if a quorum, as required by provisions mentioned hereinabove is not present at such adjourned meeting within half an hour from the time appointed for the adjourned meeting, then six persons present in person as shareholders or as proxies or as representatives of a corporation or as Directors representing any of the Governments constitute a quorum provided that at least two such persons present are Directors or their Alternates representing the Government of Malaysia and at least two are Directors or their Alternates representing the Government of Singapore.[372]

Every question submitted to a meeting is decided in the first instance by a show of hands and in the case of an equality of votes,the Chairman, both on show of hands and at the poll, has a casting vote in addition to the vote or votes to which he may be entitled as a member providing that no question can be decided altering the status quo unless it has the concurrence of all the Directors or their Alternates representing the Governments of Malaysia and Singapore.[373] At any general meeting, unless a poll is demanded, a declaration by the Chairman that a resolution has been carried is the conclusive evidence of the passing of a resolution.[374] A poll may, however, be demanded on any question by the Chairman or by any shareholder present in person or by proxy or other representatives and entitled to vote.[375] On a show of hands, every member present in person in a meeting has one vote and upon a poll, every member present in person or by proxy has one vote for every share held by him. Any corporation which is a member of the company or any of the Governments may authorise an entitled person to act as its representative at any meeting of the company, and the person so authorised is entitled to exercise the same powers on behalf of the corporation or Government which he represents as that corporation or Government could exercise

if it were an individual member of the company.[376] When two or more persons are jointly entitled to shares, any one of such persons may vote at any meeting, either personally or by proxy, in respect thereof as if he were solely entitled thereto; and where more than one of such joint holders are present, either personally or by proxy, the member whose name stands first on the register as one of the holders of such shares, and no other, is entitled to vote in respect of the same. Several executors and administrators of a deceased member are deemed to be the joint holders.[377] In any meeting of the company, votes may be given personally or by proxy. The instrument appointing a proxy is required to be in print or in writing, under the hand of the appointer or his duly constituted attorney, or if such appointer is a corporation, under its common seal or the hand or seal of its attorney. No person can be appointed a proxy who is not a member of the company or otherwise entitled to attend and vote. A corporation or any of the Governments may, however, appoint as its proxy an entitled person who is not a member of the company.[378]

The company in general meeting may declare a dividend to be paid to the members according to their rights and interests in the profits, but no larger dividend can be

declared than is recommended by the Board.[379] The Directors may also declare and pay an interim dividend to the members, if it appears to be probable, having regard to the state of the accounts, that all payments which require to be paid before the dividends to the shareholders will be duly provided for out of the income of the year.[390] The Articles specifically declare that no dividend can be paid except out of profits.[381]

The company in general meeting is also empowered to pass a resolution to capitalise any part of the undivided profits of the company standing to the credit of any of the company's reserve funds or to the credit of the profit and loss account. The Directors of the company are authorised to supervise any such capitalization of reserves.[382] They also cause to be kept proper books of accounts with respect to (a) all sums of money received and expended by the company; (b) all sales and purchases of goods by the company; and (c) the assets and liabilities of the company. The books and accounts are normally maintained at the registered office of the company and are at all times open to inspection by the Directors.[383] The Directors further determine whether and to what extent and under what conditions or regulations the accounts and books of the company shall be open to the inspec-

tion of the members.[384] At the ordinary meeting in every year, the Directors lay before the"company in general meeting" a profit and loss account and balance sheet made up to a date not earlier than the date of the meeting by more than nine months.[385] Every such balance sheet is required to be accompanied by a report of the Directors as to the financial state and condition of the company, and as to the amount which they recommend to be paid out of the profits by way of dividends or bonus to the members, and the amount, if any, which they propose to carry to the reserve fund. The balance sheet is required to be signed on behalf of the Board by two Directors, and should also have attached to it the Auditor's report.[386]

Once at least in every year, the accounts of the company are examined and the correctness of profit and loss account and balance sheet is ascertained by one or more Auditor or Auditors,[387] who are appointed at each ordinary meeting and hold office until the next ordinary meeting.[388] Their appointment, remuneration, rights, and duties, are regulated by the Singapore Companies Act, 1967.[389]

With regard to the registration of aircraft of Malaysia-Singapore Airlines, it is done according to a certain formula under which as far as possible an equal number of each

type of aircraft is registered in Singapore and Malaysia. Of the current fleet,out of 8 Fokker Friendship F-27 aircraft, four each are registered with Malaysia and Singapore. Of the 3 DC-3s, one is registered in Singapore and two are registered in Malaysia. Similarly, out of the three Britten Norman Islanders, one aircraft bears Singapurian registration and the other two have Malaysian registration. Three out of the five Boeing 737-112 belonging to MSA are registered in Malaysia and the remaining two aircraft are registered in Singapore. The airline has 3 Boeing 707-312Bs, and two out of them have Singapurian registration,while the third aircraft bears Malaysian registration.[390] Accordingly, out of a total fleet of 22 aircraft, 10 and 12 aircraft have Singapurian and Malaysian registration respectively, and by virtue of Article 17 of the Chicago Convention, they have the nationality of Singapore and Malaysia, in view of their national registration.

The Articles of Association of Malaysia-Singapore Airlines are silent with respect to the national representation in terms of employment of the company, but of the approximately 4,000 employees, 30% are Singapurians, and 33% are Malaysians. The remainder are foreigners, principally citizens of Australia and Britain. Within the Malaysian-Singapurian context, however, the majority of the better-paying managerial, tech-

nical and service positions are held by the latter.[391]

Since the Malaysian-Singapore Airlines is a Singapurian registered company, it can be wound up in accordance with the provisions of the Singapore Companies Act,1967. The Articles of the company contain detailed provisions relating to the valuation and distribution of assets, proceeds of sale by liquidator, and the liquidator's power of sale.[392]

d) Scandinavian Airlines System.

The creation of Scandinavian Airlines System (SAS), which has been called "The United Nation of the Air,"[393] has represented an experiment without parallel in international airline co-operation. It has enabled Norway, Sweden and Denmark to show their flags on the aircraft of a powerful, respected and profitable global carrier - something that would have been doubtful had each country decided to go it alone.[394]

The idea of a Scandinavian airline grouping is older even then SAS. As far back as 1938, discussions were held between the representatives of the constituent countries, when the possibilities of a transatlantic service were explored. By 1940, talks with PAA had taken place on the subject of co-operation, but the World War II ended these plans.[395]

Apart from the war, there was another difficulty. The then Swedish Government was not entirely in favour of an airline consortium. As a major provider of capital, it felt that it could not grant sufficient funds with which to underwrite the operation over the early years of such an ambitious project.[396] Efforts to form one Scandinavian airline, however, continued with Sweden as the focus for the negotiations.[397]

Although SAS, as an entity, has long been taken for granted, the early days produced political, technical, commercial and legal complications, which took patience and time to resolve. It was not until 1951 that a final agreement eventually was signed.[398] The first concrete step in this direction was, however, taken in Oslo on August 1,1946, when the Norwegian national airline (DNL), the Danish national airline (DDL) and the Swedish national airline (SILA) entered into a consortium agreement for the operation of intercontinental air services.[399] "The various Scandinavian national companies had a keen realization of the fact that they could further their interests to greater advantage by acting in concert than they could hope to do acting separately."[400]

Between the parties, the consortium was called OSAS (Overseas Scandinavian Airlines System), though its scheduled air services to North and South America were operated under the name and style of "SAS".[401]

The consortium agreement called for contributions of capital and equipment to OSAS in the proportions of 3 (SILA), 2 (DNL), and 2 (DDL). The operations were to be conducted for joint profit; rights and obligations, together with profits and losses, were to be shared between the three parent companies, according to their respective interests in OSAS.[402]

The Board of Directors of OSAS consisted of two Danes, two Norwegians and two Swedes. Operations were directed from Stockholm, and the aircraft were chartered from the participating airlines in a joint traffic programme confined to intercontinental routes. European routes were still operated by the individual national carriers on a competitive basis.[403]

In 1949, the national airlines of the three Scandinavian countries were also able to arrive at a consortium agreement to govern services on routes in Europe, the Near East and Africa.[404] The Swedish participant in this new consortium, internally named ESAS (European Scandinavian Airlines System),[405] was ABA (A.B. Aerotransport), a company that had operated in Europe since before the war, and not SILA.[406] In contrast to the OSAS, the ESAS was in reality a pooling arrangement whereby each constituent airline operated its own share of a previously agreed traffic programme arranged so as to divide tonne-kilometres performed in the proportions of 3, 2 and 2, as nearly as possible.[407] All

revenues went into a pool which was divided between the participating airlines in proportion to traffic actually carried. Joint traffic and ticket offices were established in foreign cities. The administration of the pool's activities were vested in a Board of Directors which consisted of the same persons elected as members of the Board of OSAS,[408] while each constituent airline continued to function as a separate entity operating its agreed share of the international routes together with its own domestic services. Each carrier assumed its own operating costs except for joint sales and administrative expenses.[409]

The form of this second arrangement was probably influenced by the pre-war history of operations on at least one of the routes involved, coupled with a familiarity with cooperative arrangements which were in force during that period.[410] The chief advantages of the arrangement were the elimination of excessive competition on a number of routes and the savings resulting from the consolidation of ticket offices together with other activities abroad.[411]

Yet, the arrangement gave rise to a number of problems.[412]

> Revenues and expenses from total aggregate operations had to be allocated first between the ESAS and the OSAS enterprises and the various internal services before the remainder could be allocated between the

> four national companies - two Swedish and one each Danish and Norwegian - according to the different formulae under the two agreements. Numerous inter-company billings were required, and these often gave rise to differences of opinion. Moreover, the national companies had sufficient financial reverses of varying severity which made their capacity to participate in the consortium to the fullest extent somewhat uncertain.[413]

As the financial condition of the participating carriers steadily deteriorated, the Norwegians in September 1949 gave notice to the other two parties to terminate the ESAS agreement.[414]

Consequently, in 1950, negotiations between the three participating companies were initiated to obviate these difficulties. These negotiations resulted in a comprehensive agreement which brought into existence the present Scandinavian Airlines System (SAS).[415]

SAS replaced both OSAS and ESAS and has since been running the services previously operated by the national airlines of the Scandinavian countries. However, the proportions of ABA (3), DDL (2) and DNL (2) of the assets of the consortium are still kept by these airlines.[416] It is appropriate to mention here that the new project of SAS involved, inter alia, "the expenditure of a considerable amount of money. This necessitated an increase of the capital of the three mother companies, and the money had to be supplied in part, by

the three states. For that reason, the consent of even the Parliament of the three states had to be obtained.[417]

Activities of SAS under the Agreement cover all"commercial air traffic, and other business in connection therewith,"[418] and are "governed by sound business considerations, practice and policy."[419] The parties are bound to refrain from engaging directly or indirectly in any activity in competition with SAS.[420] Each party has the right under the Agreement, on request of its government, to require the Consortium to operate, on conditions to be agreed, domestic services which are not considered "acceptable from a sound business viewpoint."[421] Business activities of the Consortium are required to be allocated in a reasonable way between the three participating countries.[422]

After the conclusion of SAS Agreement, still "there remained much to be done in the way of governmental measures to bring the situation thereunder properly within the framework of the different national laws, regulations and operating concessions."[423] This work continued throughout most of the year 1951 and was completed by the signatures of certain agreements such as The Agreement Regarding Cooperation in the field of Civil Aviation between the Governments of Sweden, Norway and Denmark, of October 1951.[424]

While the SAS Agreement contains no express provision with respect to the legal character of the Consortium, no inference can be drawn from the word "consortium". As a matter of fact, the term consortium has no precise meaning in the Swedish, Norwegian or Danish law. it is neither defined by statute nor by any decision of the courts.[425] Professor Bradley, however, defines SAS consortium as a combination of certain legal persons in a partnership in which they have merged all their activities under a single governing body.[426] Bahr describes SAS consortium as having "something in common with a joint stock company or a co-operative society, namely that it is governed by a board of directors."[427] He further explains that the consortium is similar to partnerships under French and German law, the criteria being the unlimited liability of the partners.[428] It can, however, be distinguished from the Swedish partnership "handelsbolag" since the SAS consortium is not registered in any of the three constituting countries.[429]

Imam contends that in establishing the SAS, the parties to the 1951 Agreement had no intention of altering the similar legal character of OSAS, as stipulated in Article 2 of the Consortium Agreement of August 1, 1946:

> The consortium - as such - is not a separate legal person, but shall

> externally to the public and internally to the staff appear as one unit . . .[430]

Similarly, ESAS had been declared not to possess corporate legal personality.[431]

In essence, SAS is an enterprise of the three constituting companies carried on their joint account.[432] The Agreement stipulates that the parties shall be jointly and severally liable to third parties as regards the activities of the consortium,[433] and further provides for a system of sharing of profits and losses by the three companies according to the ratios of their subscription to the capital of the enterprise.[434] From these characteristics, SAS may be regarded as a partnership (in the Common Law concept of the three Scandinavian airline companies, though it lacks registration usually required by the laws of Sweden.[435]

ICAO Circular 30-AT/5[436] describes the enterprise as resembling an ordinary company as far as it concerns operation and management.[437] This enterprise differs from the more familiar forms of corporations in that the former has no governmental charter conferring legal personality.[438] A further difference, according to the Circular, is that the property of the consortium is not completely vested in it. Real estate in the three Scandinavian countries is retained by the parties and placed at the disposal of the Consortium on a lease basis.[439]

Though aircraft and equipment are registered internally between the parties as owned by the Consortium,[440] they are placed at the disposal of the enterprise "in a manner that makes it possible to withdraw the same in case of national emergency."[441] It will be noted that the legal title of aircraft, for purposes of registration, is retained by the separate parties. In this respect, it is stipulated that each type of aircraft shall be allocated for registration approximately in the ratio of 3, 2 and 2 for Sweden, Norway and Denmark respectively.[442] Furthermore, as stated in the Circular, the maintenance and technical ground services retain, for reasons of national defence, a certain degree of independence.[443]

SAS is considered radically different from the ordinary form of partnership "in that the individual partners are not active in the direct control of the day-to-day activities of the Consortium."[444]

According to the ICAO Circular, the Consortium should not be identified with any of the more familiar forms of commercial undertaking; it is a "creature of the particular arrangement out of which it grew."[445] The amount of specialized government action such as the previously mentioned Agreement of 20 December 1951, that was found necessary to bring SAS into existence is "a further ground for not trying to

apply any standard label."[446] The Consortium is exempt from taxation in all of the three Scandinavian countries.[447]

To Nelson, SAS is a partnership of the three present companies.[448] Wossenberg characterises SAS as a "consortium or syndicate without juridical personality."[449] According to Pourcelet, SAS is not "an international exploitation partnership because the national structures remain intact, although every plane carries the same insignia. It is rather a multinational with an appropriate juridical entity, but which clashes with the principle of nationality, in order to comply with the stature of an international partnership."[450] In the opinion of Sundberg, SAS possesses legal personality.[451] This view is based perhaps on the assumption that Sweden is the domicile of SAS since its headquarters are situated in Stockholm. Even that may be questioned, however, on the ground that the question of locating the headquarters is left to the decision of the board of directors.[452]

Imam argues that SAS cannot be regarded as a company, since it has not been incorporated in any of the three countries. Likewise, it is not an international company, subject to international law, since it is the product of a contractual relationship between private corporate bodies. On the other hand, in many instances the rights and liabilities of SAS relate to the three parent companies rather than to the Consortium itself: for instance, the designation of each

company by its government as its chosen instrument in bilateral air transport agreements.[453] It is also evident that the Consortium has no nationality - a fact admitted by the legal department of SAS,[454] which believes that the Consortium is domiciled in the three Scandinavian countries.[455] Imam thus concludes that SAS can be closely assimilated to partnerships as understood in English law, although the Consortium may not answer the particular legal requirements of a partnership in each Scandinavian country as regards such procedural matters as the requirement of registration of the firm.[456]

With regard to the place of SAS in the pattern of international cooperation and the question whether it represents any form of international company, Mr. Justice Bahr places SAS "in the capacity of its own between pools and international companies."[457] According to him, the Consortium Agreement goes much further than a pooling arrangement since the parties have renounced all independent activities as air carriers for the period of validity of the agreement. "On the other hand, the Consortium, being subject to national laws,[458] is not an international company."[459]

It has already been noted that the SAS Consortium has to a large extent the characteristics of a company, as regards its management and operation.[460] The highest governing body

in its organizational arrangements is its Board of Directors, which may be compared with the general meeting of the shareholders of a company,[461] and amalgamates the functions of that meeting and those of the board of directors of such company. Unlike the general meeting of a company, however, the representation of the SAS partners on the Board of Directors is not made according to the ratios of their shareholding in the enterprise.[462] Furthermore, the identity of each participating company is preserved by the requirement that a minimum of three members of the board of each parent company constitute a quorum.[463]

The SAS Board of Directors consists of eighteen members, six appointed by each of the three constituting companies,[464] and the representation of each parent company is on a fifty-fifty basis between Governments and private shareholders.[465] The offices of the elected Chairman, the First Vice Chairman and the Second Vice Chairman, alternate on a yearly basis among the three companies;[466] those three officers, with three other members, each appointed by his own company, constitute the Executive Committee.[467] Each party also appoints a deputy, chosen from the membership of the Board, to serve for its member of the Executive, should such member be unable to attend the meetings of the Executive Committee.[468] The Board may meet whenever the Chairman so

decides or a Board member or the General Manager so requests. The Board must, however, meet "at least once every quarter," and must alternate its meeting places among the three Scandinavian countries.[469] The Board meetings are conducted by the Chairman or, in his absence, by the First Vice Chairman, and in his absence, by the Second Vice Chairman.[470] A quorum is formed with at least three members from each of the parties present,[471] and decisions are taken by majority vote.[472] The Chairman, however, has a casting vote in case the voting is equal.[473]

As the executive organ responsible for managing "the affairs of the Consortium," the Board of Directors of SAS has great powers, including inter alia, the power to scrutinise the yearly budget for the Consortium, yearly accounts and traffic programme;[474] to make rules for the Executive Committee and to prescribe its authority,[475] to appoint the General Manager, and Managers, if any, and higher officials, as well as determine their salaries;[476] and to determine the location of the head office and of branches.[477] The creation of the Board of Directors with such wide powers resulted from a recommendation of the "Little Committee " (in August 1949), which envisioned in it a superior organizational structure that would tend to improve the then deteriorating financial condition of SAS caused mainly by the existence of its five

organizations, the three parent companies, ABA, DDL and DNL, and the two joint organizations, ESAS and OSAS.[478] The Committee believed that:

> . . . through a radical change of the joint organization considerable reduction of expenditure is possible. . . The proposal put forward for consideration by the Committee proposes the entire SAS Consortium to be governed as one concern on joint account and risk under one Board and one Managing Director.[479]

The day-to-day management of the Consortium is entrusted to the General Manager who is the "chief executive officer of the Consortium," and has the "same powers and duties as are normally held by a general manager of a company."[480] The powers and authority of the General Manager are prescribed by the Board.[481] Nelson, however, believes that according to Swedish law (which may apply by reason of Stockholm being the headquarters of the Consortium), the General Manager is in an even stronger position in relation to the Board of Directors.[482] The General Manager and any other Managers are appointed by the Board from among persons other than members of any Board of Directors of the three parent companies.[483] He is subordinate to the Board in appointing higher officials, as well as flight personnel and other officials. His task is to be undertaken with the primary aim of achieving a rational and efficient organiza-

tion, but an equitable proportion among the three Scandinavian nationalities must be maintained to the extent practicable.[484]

It has been noted that in the SAS Consortium, the relationship between the three parent companies as regards joint ownership of property and the sharing of profits and losses are in the ratio of 3/7 ABA (Sweden), 2/7 DDL (Denmark) and 2/7 DNL (Norway).[485] The Board of Directors decides upon the distribution of profits, or upon any assessment necessary for making good any losses.[486] At the time of its formation, the Consortium's capital was fixed at 157 1/2 million Swedish Kroner,[487] a major part of the initial capital representing the value of aircraft.[488] To this total (equivalent to approximately $39,350,000) ABA, DDL and DNL subscribed $13,050,000, $5,285,000 and $4,200,000, respectively.[489] At a later stage, however, due to increase of capital, ABA, DDL and DNL contributed 90 million, 60 million and 60 million Swedish Kroners, respectively.[490] The new Consortium succeeded the former (with its two divisions of OSAS and ESAS) to all assets and liabilities, aircraft and physical assets except realty, and cash required to balance the subscription to the capital by each participating company.[491] Realty was to be leased by the Consortium from its owners, whether they be one of the participants or

a third party.[492] ABA's buildings are used as the headquarters and as the maintenance base in Stockholm.[492]

The fiscal year of the Consortium is from October 1st till September 30th.[493] At the end of each financial year, a statement of the accounts of that year, together with the Auditors' report thereon, is placed before the Board which reviews the report and approves the accounts.[494] In connection with the closing of accounts, the Board may, "from a sound business viewpoint," make provision for "reserves to cover special risks."[495] The Consortium has six Auditors. Each party appoints two of these Auditors from the Auditors who have been elected at that party's general shareholders' meeting for auditing the party's own accounts. Among themselves, the Auditors appoint a Chairman for one year, with the office of the Chairman alternating between the parties.[496]

Under the SAS Consortium Agreement, the participants are deemed as joint owners of all assets of the Consortium, including aircraft but excluding real estate located in the Scandinavian countries.[497] The Agreement qualifies this statement with respect to aircraft and its legistration, as follows:

> It is agreed that, notwithstanding the provisions of sub-paragraph 1 (b) of this paragraph 4, the ownership of each aircraft is retained by the party registered and

> recorded as owner thereof in accordance with the provisions of paragraph 6, but all aircraft shall internally between the parties be regarded as owned by the Consortium, which later shall, with regard to third parties, exercise any and all powers appertaining to ownership of aircraft, including without limiting the generality thereof, the power to control, use, charter and lease such aircraft as well as to dispose of same by sale or otherwise.[498]

According to Imam, the parent companies retain the aircraft on behalf of the Consortium in a manner analogous to a trust relationship in English law, though "it cannot be a real trust relationship since there is no clear intention to create a trust."[499] Bahr explains the reason for limiting the ownership of aircraft to operate only between the parties, and providding that "ownership of each aircraft is retained by the party registered and recorded as owner thereof."[500] Norway insisted on the inclusion of para. 4(3) of the Agreement since its national law required that aircraft registered in its territory should be owned by nationals.[501]

The provisions of the SAS Agreement relating to the manner in which the aircraft of the Consortium are registered require that:

> Aircraft contributed by the parties to the Consortium as capital, in connection with its formation, as well as aircraft later

> acquired by the Consortium, shall be registered, within each type of aircraft, by approximately 3/7 of each type of aircraft in ABA's name in Sweden, by approximately 2/7 in DDL's name in Denmark, and by approximately 2/7 in DNL's name in Norway, without this having any other effects on rights and liabilities under this Agreement. Deviation from this allocation principle can be made should practical reasons so require, as for instance, if certain types are solely or mainly used withon one party's national area. At the time of the formation of the Consortium, the allocation between the parties for registration purposes shall be so specified in the Appendix hereto.[502]

This mode of registration avoids multiple registration of aircraft which is barred by Article 18 of the Chicago Convention.[503] Article 19 of the Convention leaves it to the contracting states to decide the basis on which they register aircraft in their territory,[504] and hence no problem arises in this respect regarding the possibility of registration of aircraft of transnational airlines on a national basis. National laws which incorporate the genuine link principle can be amended.

The aircraft of SAS being registered in the national registers of the three Scandinavian countries respectively, each aircraft is marked with the nationality and registration marks of its Scandinavian State of registry, in accordance with Articles 17 and 20 of the Chicago Convention. In

addition to these marks, all SAS aircraft carry the SAS emblem.[505]

Since the SAS aircraft are nationally registered, then no problem appears to arise with regards to rendering applicable to these aircraft such provisions as those of the Chicago Convention attaching the rights and obligations thereunder to the state of registry. For example, with respect to certification of airworthiness, the concerned certificates are issued in the case of SAS by the competent authority of the state of registry as required by Article 31 of the Chicago Convention,[506] and in accordance with Article 33 thereof, the parties are obliged to recognize as valid these certificates.[507]

Regarding the licencing of the crew, Article 32 of the Chicago Convention requires that the crew be provided with certificates of competency and licences issued or rendered valid by the registering state. Article 33, mentioned above, also requires contracting states to recognize such certificates or licences, subject to the qualification of standards. In the case of SAS, the flight personnel have to get their certificates of competence from the authorities of the State of their nationality, but these certificates are validated for the service, also, in SAS aircraft regis-

tered in the other two states issuing a special document called the "insertion card". Thus, a certificate of a Danish pilot is declared valid by the Swedish and Norwegian civil aviation authorities for use in Swedish and Norwegian registered aircraft.[508] Thus, Article 32 of the Convention is observed in that the certificates of competence are "rendered valid" by the state in which the aircraft is registered and the other contracting states have no option under Article 33 thereof but to recognize the certificates.[509]

Also, in conformity with Article 30 (a) of the Convention, the SAS aircraft carrying radio transmitting apparatus are provided with the necessary licence to install and operate such apparatus, issued by the appropriate authorities of the Scandinavian state of registry. In Norway, for instance, the authority empowered to issue such licences is the Telegraph Authority.[510] As regards the special licencing of the operators of the radio transmitting apparatus required by Article 30 (b), such operators serving on board SAS aircraft are given certificates issued by the appropriate authority of the state of which they are nationals. However, for service in aircraft registered in the other two Scandinavian states, these certificates are "recognized", as in the case of licences of the crew, by the authorities of the two states.[511]

It is important to examine whether the peculiar legal construction of SAS, including the mode of registration of its aircraft, has affected its ability to obtain operating rights in other states. Of course, in order to operate international air transport services, SAS requires traffic rights, in particular the fifth freedom, to be able to operate for commercial purposes in foreign countries. Since such a situation is not covered by the Chicago Convention, bilateral air transport agreements with the governments of foreign countries have to be concluded. Those bilateral agreements naturally involve exchange of rights and the sovereignty of the states concerned. Hence, the agreements have to be secured not by SAS or its parent companies, but by the governments of the three Scandinavian countries. The legal framework of SAS and the manner of registration of its aircraft, calls for the negotiation of three bilateral agreements, instead of one, with each foreign country. One of the agreements would be negotiated by the Norwegian Government, another by the Danish and a third by the Swedish Government and this, of course, would involve "setting many wheels in motion."[512] However, one of the parties negotiate the agreement as a constituent of and an agent for the Consortium,[513] and a clause to this effect, called the "SAS clause", is incorporated in the agreement.

The "SAS clause" is generally as follows:

> A joint airline, constituted in accordance with the provisions of Chapter XVI of the Convention on International Civil Aviation, and designated by one of the contracting parties, shall be deemed to meet the requirements referred to in the paragraph concerning the substantial ownership and effective control of the designated airlines if all of the states participating in such joint airline have been granted the rights to operate the route or routes in question under separate Agreements with the other contracting party, and provided that the joint airline is an operating agency composed of individual airlines and that either contracting party or its nationals are vested with substantial ownership and effective control of one of such airlines.

As is mentioned in some writings,[514] this approach helps also to solve the question of substantial ownership and effective control of aircraft. In actual practice, third parties have shown a greater willingness to grant concessions to SAS than they might have shown to any one of its members, since the possibility of having to deal later with the other two did not exist. This is because that "through SAS, three countries are negotiating in concert vis-à-vis the outside world."[515] The tendency has also been "to regard the Scandinavian countries as a single territory for the purpose of granting traffic rights, with the result that fifth freedom rights have sometimes been obtained where this might otherwise have been impossible."[516]

The SAS Consortium Agreement has detailed provisions relating to the withdrawal of one of the parties from the consortium under certain circumstances, the liquidation of the Consortium and the arbitration among the parties.[517] The Agreement, for example, provides for the expulsion of a member who is unable to fulfil his obligations,[518] or whose financial situation is weakened to the extent of affecting the relations of the enterprise with third parties.[519] Similarly, a party which is not in a position to comply with a majority decision to increase or to reduce the capital of the Consortium is entitled to withdraw.[520] In such cases, the enterprise would become modified as to its assets and participants, but the remaining members may continue to carry on its activities under the same name and may resume the application of their constitutive instrument.[521]

Any disputes between the constituting parties of SAS, regarding the interpretation or application of the Consortium Agreement cannot be made the subject of any law suit, but shall be "referred to arbitration for final and conclusive decision".[522] In case the parties cannot agree on the appointment of one or several arbitrators, it shall be decided by an Arbitral Tribunal consisting of one arbitrator appointed by the President of Hojesteret in Denmark, and one by the

Justitiarius of Hoyesteret in Norway and one by the President of Hogsta Domstolen in Sweden.[523] The Arbitral Tribunal elects its own Chairman and settles its own rules of procedure, including inter alia which national rules shall apply. The Tribunal is required to give its award "in such a form that it can be executed against the losing party in accordance with its national law."[524]

In case of Consortium's liquidation for reasons other than "the withdrawal of one of the parties from the Consortium under certain circumstances,"[525] a final settlement between the parties is required on the basis of their respective shares in the Consortium. In this respect, a special agreement is further required between the parties with regard to the continued use of the name and insignia Scandinavian Airlines System (SAS). Failing such an agreement, the decisions in this connection shall be made in accordance with the provisions relating to arbitration in the Consortium Agreement.[525]

The SAS Agreement is valid and "binding on the parties to and including the 30th of September 1975," and the parties have undertaken that not later than one year before the said expiration the parties would commence negotiations for continued cooperation.[527]

e) ATLAS Consortium.

Essentially, the ATLAS Consortium is an engineering, maintenance and operations pool and not a "consortium" in the sense as the word is used to describe the SAS; even the ATLAS arrangement itself describes the organization under the name "ATLAS Group".[528] The fact that the word consortium is used loosely to describe organizations ranging from those resembling and operating like a body corporate to various kinds of pools having limited scope and purpose can best be explained by the absence of any comprehensive statutory or judicial definition of the word consortium. Hence, the more popular reference to the ATLAS arrangement as a consortium, as well as to its sister European organization KSSU, is actually a misnomer. But since the ATLAS and the KSSU arrangements are pioneering and comprehensive multinational engineering and operations groupings, and since their establishment, primarily dictated by the economic pressures of the bigger and more expensive jetliners, demonstrates an ever increasing emphasis in the international airline industry on greater multilateral collaboration, and the very fact that the word consortium has no internationally agreed definition, seem to have influenced the popular description of these groups as consortia. Nevertheless and notwithstanding the fact that both these arrangements are devoid of any

independent legal personality and, as such, fall far short of the desirable and ultimate goal of a European "Air Union",[529] their emergence, in the wake of the mammoth Beoing 747, represents a limited triumph of the economic considerations over the more traditional and invariably more powerful nationalistic rivalries which, in the past, have often beclouded the future of many a promising multi-national joint ventures. It may be hoped that in the years to come, these and other such regional groupings, which will eventually emerge, will tend to rationalize the development of international air transport into fewer, better organised and commercially more viable units.

The ATLAS arrangement is one of the working groups of the Montparnasse Committee which was "called into existence by the demands of the 747, to enable the smaller airlines to support the operation of this aircraft efficiently and economically."[530] The Committee, which is probably "the most significant first effect of the presence of the Boeing 747 on the air transport industry[2], was formed in Paris in June 1967.[531] The main purpose of the Committee "is to standardize on future equipment and to provide more economic methods of introducing, operating and maintaining new aircraft", and since it has "no executive power", it acts as

"a clearing house for the exchange of information."[532] As a result of studies and recommendations made by the Committee, Air France, Alitalia, Deutsche Lufthansa and Sabena who are founder members of that Committee, have associated themselves "very closely under the name 'ATLAS GROUP' in the fields of Engineering, Maintenance and Operations of their B-747, in order to operate these aircraft in the best technical and economical conditions."[533] This cooperation,which has "the approval of their Boards of Administration and Governmental authorities"[534] and "essentially aims at economical purposes,"[535] is governed by "total mutual confidence, understanding and broadmindedness."[536]

The legal charter of this multi-carrier cooperation is the Protocol of an Agreement between Air France, Alitalia, Deutsche Lufthansa and Sabena for technical cooperation in the operation of their B-747, signed in Paris, on 14th March 1969. The Protocol which spelled out the fundamental general[537] and application principles[538] of this cooperative venture, was subsequently supplemented by the signing in Paris on 10th October 1969 of a comprehensive Production Agreement for the overhaul and maintenance of B-747 aircraft.[539]

The ATLAS Group is "based on a non-profit organization and an equitable sharing of the costs,"[540] and its objec-

tives, inter alia, include:

> 1. The savings for all the parties on the cost of overhaul of their B-747 aircraft, by optimum standardization of the aircraft and by distribution and specialization of the work to be performed.[541]
>
> 2. The optimization of the investments in buildings, facilities, spare parts, stocks, general functions and in production costs.[542]

Part I of the Protocol enumerates basic principles which form the basis for the ATLAS cooperation and which were adopted by the Montparnasse Committee during its third session.[543] The cooperation implies as equitable as possible sharing of costs and activities in the fields of operations, engineering, maintenance and overhaul of airframes, engines and equipment.[544] This cooperation requires the acceptance of tasks by any given member, in the general interest, based on cooperative and equitable forms of sharing the costs. Airlines which are "providers" bear the necessary investments, and the corresponding amortizations are borne by other partners in proportion to the services actually rendered to them.[545] The ATLAS partners are committed to achieving and maintaining the standardization of their aircraft for the entire period of the agreements relevant to the cooperation decided on; exceptions are only possible by unanimous consent.[546] Further, agreements signed under the

ATLAS arrangements are binding on the parties for the lifetime of their B-747, as long as at least two partners are still operating them within the group, on the understanding that, subject to unanimous concordance of the parties, it will be possible to amend them yearly when the coordinated maintenance and major overhaul programmes are being drafted in relation to technical and economical developments.[547]

In the event of a further cooperative arrangement being developed, either between the ATLAS partners or including others as well, for a new type of aircraft, the parties are bound to grant a first refusal right to their previous partners for the tasks related to airframes, engines and equipment overhaul, if they have not been in charge of them for the B-747.[548] Obviously, this provision has been incorporated with a view to ensure an equitable distribution of work between the parties. To facilitate maximum economies in the maintenance and overhaul, the parties are obliged to freely exchange all available information and data relevant to this arrangement.[549] The parties have also agreed that in accordance with a formula which will have to be worked out later on, the acceptance of third party work by each partner should result in a reasonable bonus for the airline providing the services[550] and in a cost reduction for all partners of the group.[551]

The ATLAS Group membership is open to other airlines provided that they are unanimously accepted by all existing members and that they do not question in any way any of the "essential conclusions" already adopted.[552] However, the B-747 aircraft of affiliated companies, being technically integrated in a partner's fleet, shall be included in the group upon notice given by the parent airline.[553] Apart from the full membership of the group, the Protocol also provides for the limited participation of additional airlines in part of the activities encompassed in the ATLAS arrangement subject to their being unanimously accepted by the parties. Any use of common facilities and services by such airlines is, however, considered third party work.[554]

Part II of the Protocol describes the application principles. Of these, the scope of activities is divided into production and operations. According to the allocation of work agreed to by the partners, Air France will undertake the major overhaul of airframes and associated systems,[555] and Deutsche Lufthansa will perform the overhaul of engines (or engine modules) and essential components pertinent to the basic engine.[556] Alitalia and Sabena have been assigned the overhaul of certain main accessories as defined and specified in Exhibit 3 and Exhibit 4 of the ATLAS Production Agreement, respectively.[557] Since this allocation of work

may not seem equitable and fair, therefore, the parties have agreed that to wipe out any disparity of workload among partners, as long as the cooperation extends to the B-747 only, certain activities relating to existing aircraft fleets shall be transferred from certain airlines to others, on a compensation basis. This, of course, will be according to specific agreements.[558] Moreover, Lufthansa has agreed to place the first 747 simulator, installed in Frankfurt, at the disposal of its ATLAS partners.[559] There is a report that possibly a second simulator to be installed in Frankfurt by Lufthansa will also be for common use. Iberia of Spain, not an ATLAS member, will also make use of them.[560]

The partners have agreed to undertake specialized studies to develop the programming of tasks to be performed by them, and these will be incorporated in the multilateral agreements concluded subsequent to the Protocol.[561] To achieve the optimum fleet utilization during the five months peak season, the partners have also agreed that airframe major overhauls, for passenger and cargo versions, respectively, will be performed during the off-season periods corresponding to these types of aircraft.[562] Apart from the routine major overhauls, any possible major modifications, repairs or conversions of the airframe, as well as the engines, which may be imposed by the manufacturers or otherwise become necessary,

will be the subject of special agreements, depending on the capacity which the respective airlines in charge of these overhauls can make available.[563] The conditions and means to be applied for the execution of major overhauls are left to the determination of the "Production" Sub-Committee in the form of multilateral agreements, and subject to the approval of the partners.[564] The partners have further agreed that the consequences of production delays caused by strikes and cases of "force majeure" will be borne jointly by the group.[565] Like the major overhauls, the conditions and means of utilization of the simulators are left to the determination of the "Operations" Sub-Committee in the form of a multilateral contract and, of course, subject to the approval of the partners.[566]

Implicitly, and rightly so, the Protocol foresees the possibility of a dispute or disputes between the partners and requires their settlement through arbitration by an arbitral tribunal similar to that set forth in paragraph VII of IATA Resolution No. 850.[567] The Protocol further foresees the possible extension of the cooperation and provides that the partner will give each other preferential treatment in other fields such as operations, ground handling and spare parts support at outstations.[568]

Pursuant to the abovementioned fundamental principles of cooperation, comprehensive rules of cooperation relating to the maintenance and overhaul of B-747 aircraft are spelled out in the ATLAS Production Agreement. The Agreement defines overhaul as "major maintenance operations including minor modifications of the airframe, the engines or the components, performed by the Central Agency, consisted mainly in dismantling, cleaning, inspecting, repairing, reworking, reassembling and testing, resulting in a complete renewal of life."[569] A central agency means a party "considered in its function of performing a task entrusted to it by all the other parties, by centralizing in its technical facilities a given type of work, as opposed to the performance of that given type of work by each party individually,"[570] and a customer is a party "considered in its role of entrusting a task to a central agency."[571]

Within the ATLAS Group, the highest decision-making authority is the Corporate Centralized Management, consisting of the ATLAS Management Committee and the various Sub-Committees, assuming direction, coordination and control of the group. The organization and coordination of production is based on the principle of decentralized production units in charge of performing specialized tasks (central agencies).[572]

The tasks allocated to the various central agencies have already been specified, and their respective activities are detailed in Exhibits Nos. 1, 2, 3 and 4 of the ATLAS Production Agreement.[573]

The process of decision-making on production policies initiates at the Production Sub-Committee level, and there the decisions require a unanimous agreement. Failing agreement, at this level, the matter is referred to the ATLAS Management Committee which may take a majority decision "after due consideration of all the reasons why unanimity had not been reached at the Production Sub-Committee."[574] The decisions of the Production Sub-Committee and/or the Management Committee are final and binding on all parties.[575] The decisions on methods and procedures, however, are taken unanimously by the relevant Working Group, and failing unanimity at this level, the matter is transferred to the Production Sub-Committee which may take a majority decision "after due consideration of all the reasons why unanimity had not been reached at the Working Group level."[576] When endorsed by the Production Sub-Committee, the Working Groups decisions are final and binding on all parties.[577] The composition of these decision-making organs is not specified in the Production Agreement, but their tasks in relation to production are

described in the document "General Organization for the Operation of B-747's."[578]

Articles 4 and 5 of the Agreement describe the duties of the central agencies and the customers. The many duties of the central agencies include, inter alia, the duty to overhaul, modify and repair the B-747 airplanes belonging to the customers in their workshops, in the same physical and technical conditions and with the same care for quality and economy which they would observe for their own airplanes and/or components;[579] to perform these tasks with skill, quality and economy;[580] to provide at their plant the necessary hangars, shops, equipment, spare parts, tools and facilities at the lowest possible cost permitting the performance of the tasks entrusted to them;[581] to perform all work in accordance with the instructions recommended and/or published by the manufacturers;[582] to provide engineering and administration for all the work performed at its facilities for the customers;[583] to make long-term and short-term planning proposals taking into account the specific needs of each party;[584] to incorporate minor modifications and repairs at its own discretion, and to accept special items of work only after negotiations with the customer;[585] to provide, handle, and store all the spare parts required to perform

their production commitments;[586] to provide "adequate technical assistance" to the customers";[587] and to be responsible towards their own airworthiness authorities for compliance with quality control requirements and for issuance of the appropriate certificates.[588] The central agencies act as "sole representatives of the ATLAS parties towards the manufacturers," with regards to their centralized and system engineering functions. In particular, they are required to obtain from both the suppliers and the manufacturers the best possible warranties for all parties on behalf of all ATLAS members and are also required to handle all warranty claims.[589]

The customers too have many duties including, inter alia, the duty to entrust the central agencies with the overhaul, modifications, repairs and special work on their B-747;[590] to comply with the recommendations of and to cooperate with the system engineering of the central agencies;[591] to provide the central agencies with all pertinent data required for the latters' planning proposals and to comply with the planning schedules agreed upon;[592] to refrain from incorporating on their initiative any change or modification affecting the standardization;[593] not to circulate within the ATLAS System engines, components and/or spare parts belonging

to third parties, unless an unanimous agreement has been reached;[594] not to make any excessive call on assistance from the central agencies;[595] and to handle its certification matters with its own airworthiness authorities.[596]

With a view to facilitate the joint maintenance and overhaul, and also to benefit from the economies of scale, the ATLAS partners have agreed to "constitute" a pool of communalized spare material which can be utilized by any one party whichever the original owner may be."[597] For this pool, each party will purchase and own a number of spare engines which will be delivered to and administered by the central agency in charge of their overhaul. In addition, the central agencies will, each according to its activities, purchase, own and administer a stock of components and parts. These spare engines, components and parts, as well as those sent by the customers constitute the communalized spare material pool.[598] The investments for communalized engines owned by a party is borne by that party. The investments for communalized components and parts is, however, borne by the respective central agency. The corresponding costs are shared by the parties according to the rules laid down in Exhibit 5 of the ATLAS Production Agreement.[599] The aircraft sent for overhaul or modifications to the central agencies remain the

property of the customers and cannot be used by other customers, excepting when there exists a formal lease agreement between the parties. Moreover, any engine, component or part assembled to an aircraft is reputed to be the property of the party owning the aircraft.[600]

The ATLAS Group is a multi-carrier cooperative arrangement and to ensure its success, its creators have, as far as possible, stressed the desirability of a fair and equitable distribution of work and costs between the partners. A significant financial provision of the ATLAS Agreement requires that the sharing of all the expenses incurred by each party for the community, between all the parties, must be as equitable as possible,and further, that no party will make a profit to the detriment of the other parties.[601] The parties are also committed to define and agree upon a common method of sharing the costs. The rules for financing, calculation of prices and costs, escalation of prices, methods of costs sharing, invoicing and payments are given in detail in Exhibit No. 5 to the Production Agreement.[602] The budget is defined as the instrument for presenting the forecast expenditures of the central agencies to which the parties are required to participate.[603] Each central agency has to prepare its budget in U.S. dollars (IATA rate) accord-

ing to the common presentation agreed upon and defined in the ATLAS Procedure Manual.[604] The budget is prepared by each central agency for the next year, together with a forecast for the following two years and is presented to the budgeting and cost control coordination group.[605] Each central agency is required to establish its budget early enough for presentation to the budgeting coordination group before September 15th of each year.[606] The settlement of accounts between the parties is cleared through the IATA Clearing House.[607]

To further ensure an equitable relationship between the parties, each party is entitled to be compensated with an amount of work equivalent to the amount which it has entrusted to the other parties. The unavoidable unbalances will be compensated within reasonable limits with activities related to equipment other than B-747 equipment. Compensation will be made after the first budgeting period, and the balances will be computed once a year.[608]

To maximise their cooperation, the parties are bound to grant each other preferential assistance at outside stations to the greatest possible extent, and to enter into consultations for any activity which it might appear profitable to handle in common. They are also committed to consult

each other regarding the common problems at the B-747 line stations, and to adopt common policies vis-à-vis the IATP.[609]

The Agreement allows central agencies to accept contractual third party work provided always that a prior reference is made to the Production Sub-Committee where unanimous agreement is required. However, the central agencies are authorized to undertake purely temporary third party work without prior reference to the Production Sub-Committee. In both cases, third party activities should appear in the yearly accounts and with regards contractual third party activities, in the budget presentation. Another qualification for the third party work is that it should be profitable for all parties.[610]

In the event that a central agency is technically unable to perform "a part of the work ordered by a customer", it may subcontract such work to another party, the manufacture or an outside subcontractor.[611] Implicitly, therefore, the subcontracting of the whole task assigned to a central agency is ruled out. A party subcontracting for a central agency will have to perform the whole work in its own workshop.[612]

The customer provides the aircrew, the equipment and fuel for the ferrying of the aircraft to and from the central agency and also performs the flight tests subsequent to overhaul or repair at the central agency. As regards the flight tests, the technical crew is provided by the central agency. The central agency is further obliged "to assume all tasks associated with the transportation of the engines "to and from the customers bases and, when necessary, between the bases of the customers. Components and parts are shipped on board the aircraft of the parties. For the transportation from the customers to the central agencies, all the tasks associated with the shipment are assumed by the customers and, similarly, for the transportation from the central agencies to the customers, the central agencies assume all the tasks required for the shipment.[613]

The customers are authorised to have resident representation to insure the quality control of the work performed by the central agencies, and in this respect the central agencies are obliged to provide adequate office space, telephone and telex facilities to such representatives.[614]

All parties to the ATLAS Agreement have renounced any form of recourse against each other for any damage to the aircraft, engines, components and parts owned by them, arising out of or in any way connected with the performance

of the ATLAS Agreement. The central agencies, the customers, their employees, servants and agents, in the scope of their respective tasks, are not liable to the other parties for damages sustained by, or claims lodged against them, in connection with, or resulting from, the rendering of services or the furnishing of goods pursuant to the ATLAS Agreement. Further, the customers are bound to indemnify and hold each of the central agencies free and harmless from and against any liability towards third parties in the event of such liability arising from or connected with the operation or use of the aircraft. However, nothing under the Agreement affects the mutual liability of the contracting parties in case of damages or claims or liabilities which have no connection with the performance of services under this Agreement. Such liability will be subject to rules set out in any other agreement existing between the central agencies and the customers, or, in the absence of such rules, to the applicable law.[614]

As a natural consequence of the mutual exclusion of liability, the parties to the ATLAS Group have agreed to maintain insurance policies covering their property referred to in, or used in the performance of, the ATLAS Agreement. In such policies, each party names the other parties as co-insureds and the underwriters of the said policies waive any

rights of recourse against the parties so coinsured. The parties have also agreed to maintain insurance coverage for comprehensive general legal liability, aircraft third party legal liability, passenger legal liability and the Workman's Compensation liability.[615] For the aircraft third party legal liability and passenger legal liability, a minimum combined cover of 75,000,000 U.S. dollars is provided.[616] In spite of the comprehensive insurance provisions provided therein, the Agreement is curiously silent on the coverage against war and hijacking.

"For all communications and information" between the parties, the ATLAS Agreement prescribes the use of the English language.[617]

The ATLAS arrangement has no fixed life; it is "binding upon each party for the time during which it operates Boeing 747 aircraft and as long as at least two parties operate such aircraft."[618] Any party wishing to withdraw its B-747 fleet from operation is required to give notice of its intention at least five years in advance. Obviously, this provision tends to discourage the withdrawal of the partners and to give solidarity and continuance to the arrangements. The Agreement, however, further stipulates that after termination of its B-747 operation, the withdrawing party shall not discontinue its role as central agency

as long as
~~until~~ the ATLAS Agreement is in force.[619] As such, it would be seen that withdrawal has virtually been made impossible. At the time of termination of the ATLAS Agreement, the accounts shall be written up and the financial balance shall be shared between the parties according to the rules set forth in Exhibit No. 5 to the Agreement.[620]

Amendments to the ATLAS Agreement and/or its exhibits can only be made after they have been "examined" by the Production Sub-Committee and endorsed by the ATLAS Management Committee.[621] To facilitate any amentments to the Agreement and also to ensure harmonious cooperation between the partners, the Production Sub-Committee is required to establish and enforce all common methods and procedures, and in this respect to prepare a Procedure Manual for distribution to the parties. Any one party is entitled to propose modifications to the Procedure Manual or to Exhibits Nos. 1, 2, 3, 4 and 5 of the Agreement. In the event that such modifications are not agreed to unanimously, any party may refer the matter to the ATLAS Management Committee for decision.[622]

f) KSSU Consortium.

The KSSU technical and operational consortium, the second working group of the already described Montparnasse Committee, and often considered as a more "tightly knit

group"[623] than the ATLAS Consortium, may be regarded as the fruition of attempts that started as early as in the DC-4 days in the 1940's. At that time, SAS first advanced its thesis that identical cockpits would bring technical as well as financial advantages for customer airlines.[624]

Some ten years later, the theory was to prove itself correct after Swissair and SAS had agreed on the same cockpits for the DC-8, DC-9, Caravelle and Coronado jet fleets.[625] The basis of the long-term cooperation between Swissair and SAS was the "main agreement" concluded in 1958, which may really be regarded as the corner-stone of the later, wider and more significant KSSU collaboration. Essentially, the "main agreement" covered the maintenance and overhaul of aircraft, technical cooperation and division of work between the two partners. A prerequisite to such a division of work was, at that time, the standardisation of DC-8s and caravelles. When KLM, which has, since 1963, been overhauling Swissair's DC-8 fan engines, resolved to buy DC-9s, the Dutch carrier entrusted Swissair with the overhaul of its DC-9 power-plants. This decision linked KLM with the cooperation arrangement between Swissair and SAS.[626]

Around the beginning of 1967, the three airlines compared their findings in the B-747 evaluation which at that

time was gathering impetus. From then on, they started to coordinate their evaluations with the aim of minimizing specification differences. Towards the end of 1967, it was clear that agreement on a joint specification could be reached. On this basis, the three carriers worked out further agreements for joint maintenance of the existing fleet and their B-747 aircraft. The then KSS (KLM, Swissair and SAS) Letter of Understanding was signed in May, 1968, and the final agreement was concluded in January, 1969.[627]

To ratify the membership of the French carrier UTA which, since the end of 1968, had been collaborating with the KSS group, KLM, Swissair, SAS and UTA concluded a "main contract" on 18 February, 1970.[628] This agreement, formally styled "KSSU Frame Agreement", superseded the KSS Frame Agreement dated January 13, 1969, which latter agreement contained substantially the same provisions for the original partners.[629] Since the involvement of UTA, the arrangement is known as KSSU (KLM, Swissair, SAS and UTA) Group. Subsequent to the conclusion of KSSU Frame Agreement, a Memo of Understanding was also signed by the parties on February 18, 1970. The Frame Agreement, the Memo of Understanding, the KSSU Overhaul and Maintenance Agreement as Supplement No. 1A to the Frame Agreement and the KLM/SAS/SWR Boeing 747 Flight Simulator Agreement as Supplement No. 2A to the Frame

Agreement constitute the legal charter of the KSSU cooperative undertakings.[630]

The KSSU Frame Agreement does not attempt to classify the multilateral collaboration as a consortium, pool, or even as a group; it describes the arrangements as "certain co-operative undertakings".[631] The assigned objectives of these cooperative undertakings are "the most efficient use and maintenance of certain aircraft", "the most efficient use of the relative overhaul and maintenance facilities", and "to coordinate in the most economic way "the operational and technical activities of the KSSU partners.[632] To achieve these goals, and further to integrate their fleet "in the most efficient and economic way" and also to enable any of their aircraft to "be operated by any party's crews", the parties have agreed that their Boeing 747 and Douglas DC-10 aircraft, or any developed version thereof, would, throughout the term of the Frame Agreement, be and remain standardized, with possible exceptions for basic differences that are a consequence of the development of these aircraft.[633] This provision would also apply to any future type of aircraft which two or more of the parties might select in common and acquire for their operation.[634] To ensure and facilitate fleet standardization, each party in its dealings with manufacturers and suppliers is required to "take care of" the

interests of the other parties; to keep them informed, and to obtain their views and desires.[635] Further, to maximise the fleet standardisation, the parties are committed to "closely cooperate in the evaluation and specification of future types of flight equipment and endeavour to come to an agreement on common selection of such equipment."[636] In the event of a new aircraft becoming available in which at least two of the parties express an interest, the evaluation parameters and findings will be exchanged between all parties as early as possible. Studies of such new aircraft will be based on standards jointly established by the parties.[637]

The scope of technical and operational services and activities under the KSSU Agreement, inter alia, allows the parties to "perform for each other overhaul and/or maintenance services upon certain flight equipment."[638] Presently, the overhaul work is divided between the parties as follows:

KLM	Boeing 747 airframe	on behalf of SAS and Swissair
	General Electric engines[639]	on behalf of SAS, Swissair and UTA;
SAS	JT9D engines[640]	on behalf of KLM and Swissair
Swissair	DC-10 airframe	on behalf of KLM, SAS and UTA
	DC-9 airframe	on behalf of KLM;

and UTA will perform certain services to be specified later.[641] According to the KSSU Memo of Understanding, however, UTA will take care of certain DC-10 component overhaul and repair for KLM's SAS' and Swissair's aircraft of said type. Further, UTA is also made responsible to take care of the Auxiliary Power Unit (APU) of KLM's, SAS' and Swissair's Boeing 747 and DC-10 aircraft and of Swissair's DC-9 aircraft.[642]

The parties are also obliged to cooperate closely in specifying and procuring spares and equipment for their 747s and the DC-10s.[643] In addition, the parties are committed to explore all possibilities of further cooperation in the technical and operational fields and especially:

a) exchange of flying personnel;

b) pooling and/or exchange of aircraft, spares and equipment;

c) mutual use of facilities;

d) training of personnel.[644]

Further, the building for a $3 million Boeing 747 simulator is under construction at Schiphol Airport, Amsterdam, which will be co-owned by KLM, SAS and Swissair.[645] Operating costs and depreciation of the 747 simulator and the building will be borne by the three companies in accordance with the use of the equipment for training purposes by each company concerned.[646]

The Agreement contains certain basic principles governing services rendered by one party to another party. The first of these obligates the parties to develop equipment, staff to perform services with most up-to-date standards.[647] The second guiding principle provides that the technical services should be performed at fixed prices or fixed manhour rates for labour, less possible quantity discounts and at average net purchase price, or reasonably comparable price, plus handling charges for the material, the aim being that the price for the work done should be comparable to the price for similar work done elsewhere at normal market price.[648] Thirdly, all other services should be performed at comparable market price or, if so agreed, at cost price.[649]

Other guiding principles, inter alia, provide that the terms and conditions to govern the services and activities under the KSSU Agreement would be provided in separate agreements, designated as Supplements to the Frame Agreement and upon execution forming an integral part thereof,[650] and further that to examine the accounts for services rendered by the other parties under the Agreement, each party has the right to have the books and documents of the other parties audited by an independent chartered accountant.[651]

The Agreement makes it absolutely clear that the KSSU cooperation is independent of any other existing cooperation arrangement between the parties; Article 4 of the KSSU Agreement lays down that any existing agreement between any two of the parties (such as SAS-Swissair technical cooperation in respect of DC-8s, Caravelles and Coronados) shall remain in effect and shall not be affected by the KSSU Agreement.

In the event of any force majeure and similar events, a party to the KSSU arrangements is not required to perform its obligations to the extent that it is prevented from doing so due to causes beyond its control.[652] Additionally, the Agreement is liable to termination at any time upon occurrence of war involving any of the parties, bankruptcy of any party, nationalization or confiscation of a party, or of substantially all of its assets, serious breach of the obligations of the KSSU Agreement, caused by a member of the executive staff of another party, or any similar event, if such occurrence materially and adversely affects the basic intent of the KSSU Agreement.[653] Upon such termination, the parties are required, "to the fullest extent possible", to establish reasonable arrangements for the liquidation of the KSSU undertakings, taking into consideration a possible continuation and adjustment of the cooperation between the parties not affected by

the cause leading to the termination of the Frame Agreement.[654] For such termination, each party may give a notice in writing to the other parties.[655] In the event of such termination, none of the parties would be under any further obligation or liability to any of the other parties by reason of such cancellation, unless such cancellation is due to serious breach of the obligations of the KSSU Agreement, caused by a member of the executive staff of a party, in which case damages may be claimed for such breach.[656] A purely voluntary withdrawal is, however, not permitted under the KSSU Agreement.

Realistically, the Agreement envisions the possibility of difficulties cropping up in a multilateral arrangement like the KSSU, and provides that they be resolved, if necessary, by "adjustments" to the KSSU Agreement. Moreover, controversial questions may be submitted to independent experts by agreement between the parties.[657]

If at any time a party decides to discontinue entirely its operation of any aircraft, which is the subject of KSSU cooperation, it is required forthwith to inform all other parties. Where such discontinuation of operation can be expected to cause any of the other parties detrimental economic consequences, the parties concerned, upon the request of any of them, are bound to enter into discussion as early as possible to reach a reasonabls solution, possibly in the form

of compensation in money.[658] Should the parties fail to reach agreement to make adjustments to the Agreement, to refer controversial questions to experts or to reach a reasonable solution to enable a withdrawing party to stay within the group, the matter may be submitted to arbitration in accordance with Article 9 of the Agreement.[659]

The Agreement requires that any dispute or claim pertaining to the validity, effect, scope, meaning, interpretation or application of the Agreement or any of its Supplements shall be submitted for the arbitration, which may be instituted by any of the parties by notification to the other parties.[660] Subject to the agreement of the parties, the arbitral tribunal shall consist of a sole arbitrator. In the absence of such agreement, the arbitral tribunal shall be composed of three members. One of them, having legal qualifications, shall be appointed as chairman by the parties.[661] In the event that the arbitral tribunal has not been composed for lack of agreement between the parties, within 30 days or such extended term as the parties may then agree upon, the Director General of IATA is empowered to appoint the tribunal and its chairman upon application by any of the parties.[662]

The arbitral tribunal has complete autonomy and independence in determining its jurisdiction and seat, the

rules of procedure and the applicable law.[663] All decisions of the tribunal are by majority vote, unless it is composed of a sole arbitrator. Failing such majority, the opinion of the chairman constitutes the decision of the tribunal.[664] The award may direct the payment of money (including damages, but only if the applicable agreement so explicitly permits), order restrictive measures or the termination of obligations, or confirm the cancellation of the Frame Agreement. The tribunal or its chairman may,upon the request of a party or otherwise, order any interim measures to be adhered to by the parties pending final determination of the dispute.[665] The award will incorporate the reasons for the decision in writing and will also include concerning the allocation of costs and expenses of and incidental to the arbitration.[666] The award shall be "final and conclusive" and no appeal will lie against it. Judgement upon the award may be entered in any court having jurisdiction, or application may be made to any such court for judicial acceptance of the award and an order of enforcement,as the case may be.[667]

Apart from the matters which can be resolved by arbitration, there may be difficulties which may arise and cannot be settled between functional departments of the parties; they are referred to the parties' managements for decision.[668]

The official language of the KSSU Agreement is English and it is not known if the same is also the official language for communications between the parties. The Agreement and consequently the KSSU arrangements are effective as from January 1, 1970 through December 31, 1980.[669] The Agreement does not expressly contain a provision for further extension, but that should pose no difficulty if the parties wish to extend it.

At the conclusion of the KSSU Agreement, certain matters relating to distribution of work between the parties, pricing, financing and other subjects still had to be negotiated and agreed upon. In the event that such agreement is not reached by January 31, 1971, the KSSU Frame Agreement and the KSSU Memo of Understanding would automatically become null and void, unless the parties mutually agree to an extension of the said deadline.[670]

g) ALIA-PIA Consortium.

Following close collaboration in many areas in the recent years,[671] Alia (Royal Jordanian Airlines) and PIA (Pakistan International Airlines) have recently announced the formation of a joint airline-operating consortium, expected to become operational early next year.[672]

Much is neither published nor known about this latest bi-national cooperative joint venture, and it appears that for

the time being, the parties, for certain obvious reasons, are reluctant to discuss openly the details of this arrangement. In fact, it has been even asserted by some that "at present there is no written agreement in respect of this Consortium."[673] While refraining from commenting in any way on the authenticity of this assertion and even refraining from qualifying it in any manner, it may be submitted that the Consortium whose "permanent secretariat . . . is located at Amman", and which "held its first board meeting at the PIA head office on July 26"[674] must have been created by some sort of a formal legal charter.[675]

The details of the Consortium made public so far do not help much in appreciating the nature of its legal personality, if any, and its organizational and financial arrangements. The Consortium has been described as an example of "collaboration between two airlines without loss of individual identity" and a "cooperation and pooling of resources and know-how."[676] The words "without loss of individual identity" are significant and tend to suggest that the scope of this co-operation is limited to certain joint operations and does not extend to complete corporate merger, comprehensive integration of all operational, maintenance or overhaul activities and facilities, or the standardization or integration of their

fleets. Evidently, both Alia and PIA would maintain their existing corporate structures, as well as their existing operations; the Consortium's activities and operations being independent of and in addition to the said existing operations of PIA and Alia. This view is also reinforced by the fact that the Consortium's services would initially be operated by two Boeing 707s purchased by Alia and expected to be delivered early next year.[677]

The Consortium is said to have a Board and a permanent secretariat; it is expected to inaugurate regular operations to Europe and South East Asia. From these arrangements, it appears that the Consortium might in fact be a body corporate. This view gains strength from a recent report in Flight International that the intention is to make the Consortium in effect an airline in its own right, with its own name (yet to be chosen) and livery.[678] Presumably, the Consortium could be a consortium based on the SAS pattern and jointly owned under a certain ratio by Alia and PIA. Since the secretariat of the Consortium is located in Amman and no announcement of a Pakistan-Jordan air transport treaty has been made, another presumption could be that the Consortium is a Jordan registered company, notwithstanding its bi-national ownership or control.

The Board of the Consortium consists of a Chairman, two joint Managing Directors, an Executive Director and three other Directors. Mr. Bahjat Talhouni, Chairman of Alia, is the Chairman of the Consortium and the "Chief Executives" of the two constituent airlines are the joint Managing Directors. The Executive Director of the Consortium will be nominated by PIA and the other three directorships will be shared by the two airlines.[679] Nothing is so far known about the powers and proceedings of the Board.

The Board is reported to have held its first meeting in Karachi, Pakistan, which fact suggests that the Board may meet at the headquarters of either of the constituent airlines, that is, either in Karachi or Amman.

Besides the normal objective of the establishment of regular air transport services, another objective of the Consortium seems "to make joint investments in Pakistan and Jordan at locations with a potential of tourist attraction."[680]

Nothing is known about the registration and nationality of the aircraft owned or operated by the Consortium, but it seems likely that the two Boeing 707s ordered by Alia and scheduled to operate the Consortium's services would have Jordanian registration and nationality.

Similarly, nothing is known about the impact of the Consortium on the bilateral air transport agreements of Jordan and Pakistan, except that according to the Chairman of the Consortium, the existing traffic rights, as well as the rights obtained for the Consortium in future, could be used.[681]

3. The Proposed Multi-National Airlines and Consortium.

From time to time, a number of proposals for the establishment of multi-national airlines have been put forward in the recent years. Invariably, such proposals have been motivated by the economies of air transport, expecially in the jet age, and have recommended the formation of regional groupings as a means to achieve economically viable units. These proposals, some of which are of considerable merit, have, in many cases, undergone many phases of negotiation and planning. Although none of them has materialised so far, they deserve consideration to highlight the factors which promote the integration of air transport; to analyse the causes which retard the progress of such proposals; and also to examine the type of arrangements visualised therein.

a) Air Union.

The idea of Air Union, once described as "potentially, a profoundly important development in the structure of the airline industry,"[682] was born mainly out of the fear of overcapacity and intensified competition resulting from the introduction of jet aircraft, and the fear of not being able to finance the large investments needed for jet operations."[683] The object, of course, was to create a more favourable economic climate for airline operations in Western Europe.[684]

In Europe, where integration is considered more and more as "an economic and political necessity",[685] efforts to integrate civil air transport had been made long before the project became known as the Air Union. As early as 1951[686] three notable regional integration plans were presented and discussed by BONNEFOUS, SFORZA and VAN de KIEFT.[687] The first of these plans submitted to the Council of Europe, the Bonnefous Plan,[688] proposed the establishment of a European High Authority for European transport, including air transport, on the lines of the High Authority for Coal and Steel. Because of the special circumstances of the European operations and the fact that such air services constituted a segment of the intercontinental services, this

idea had to be dropped soon.[689] Then, on 3rd May, 1951, Count Sforza submitted a far-reaching plan for the unification of European aviation. The Sforza Plan provided for a "single air-space" for the whole of Europe and a Controlling Authority which would determine the part to be played by each state in European air transport, the criteria being size of population, geographical situation and land area.[690] The third of these plans, the Van de Kieft Plan, unveiled on November 26, 1951, recommended the setting up of a single European airline.[691]

In December, 1958, five leading European airline companies[692] initiated discussions with the object of forming a combination under the name of "Europair."[693] Since, in view of those taking part in these early discussions, the name Europair in this context sounded too exclusive, and had an almost aggressive ring, the name was almost immediately changed to "Air Union."[694] Air Union was envisaged as the common agency for the operation of the international air services of the partners, and, as such, was to be the sole carrier designated by the governments of the partners to operate their international services. To this end, those governments were to adopt a

common aviation policy and the agreement was to be concluded for a period of 99 years.[695] In fact, the initial agreement, subject to ratification by the governments concerned, was reached by the airlines in 1958.[696]

In April 1959, major difficulties arose over a number of points, such as the determination of the quota for each partner, the problem of cabotage traffic, etc., and one of the partners (KLM) decided to discontinue its participation in the talks.[697] However, on May 20, 1959, a co-operation agreement was signed by Air France, Alitalia, Lufthansa, and Sabena, under the new name of Air Union.[698] Air Union was to start its activities as from April 1, 1960.[699]

The Air Union project did not provide for a merging of the constituent companies: in substance, it was to be a pooling of the commercial resources of the four airlines, in which the partners would maintain their individual identity and their own flag.[700] Although it was intended to act primarily as a sales agency, it was clearly understood and intended that operations should be fully co-ordinated and that schedules should be integrated to produce the most attractive competitive services. No

plans were, however, made for integrating aircraft maintenance and overhaul.[701] It drew its original inspiration from the European Economic Community, but it was not officially an organ of the Common Market.[702] Admission to Air Union was open to all airlines, whether based in Europe or other Continents.[703] Notwithstanding the negotiations which have gone through many stages, the project still remains as far from realization as ever.

To begin with, the governments concerned approved the principles which constituted the basis of Air Union co-operation. However, in trying to work out these principles, the companies met with "insurmountable difficulties" and, at the end of 1960, it was apparent that the whole concept of Air Union had to be approached in a much more cautious manner.[704] Instead of an overall pooling of services, partial co-operation (chiefly in the technical and operational field, but gradually extending to the commercial field), including a better distribution of services, was felt to be the most practical way of eventually arriving at the more general co-operation initially conceived. Apart from the difficulties with

regard to the administrative, financial and commercial arrangements of Air Union, the political and legal implications were found to form a major obstacle. Moreover, in view of the U.S. aviation and anti-trust legislation, Air Union operations into the U.S.A. would not have been feasible under the existing bilateral air agreements between the Air Union countries and the U.S.A. The only possibility which it was thought could guarantee immunity from U.S. legislation was to establish Air Union as an Act of State of the four governments.[705]

Another major problem was the long delay in French ratification of the initial agreement caused almost certainly by the fear of loss of their national airlines' identity at a time when French "nationalistic tendencies" were fairly strong.[706] In October 1962, the French Government announced its approval of the project and it then seemed that the scheme would go rapidly ahead. Further delays occurred, however, and speculation is that the cause of these was the inacceptability of certain French conditions to the other members of Air Union. It is said that these conditions involved the establishment of a

political authority to control Air Union and also an insistence that its future aircraft should be, to the greatest possible extent, products of the Common Market, which, in effect, meant French aircraft. These conditions were resisted by other members; the second having been emphatically rejected by Alitalia when it chose to order, in 1963, an American supersonic aircraft in preference to the Anglo-French Concorde.[707]

By 1964, the Governmental authorities had found more and more to concern them in Air Union, with the result that the airlines were playing more or less the second fiddle. For instance, the role of the airlines in the 1964 government-level conferences at Brussels was limited to an advisory one, and this gradual transfer of initiative to governments has led to a perceptible change in the aims of Air Union. Originally, as stated, the airlines' aim was to set up a non-governmental association concerned mainly with improving operating conditions (coordination of time-tables, determination of traffic quotas, and joint procurement and maintenance of aircraft), leaving politics completely aside. The governments, on the other hand, looked upon Air Union as being essentially yet another instrument of their transport policy.[708]

In January, June and October of 1964, government delegates from Belgium, France, Italy, Luxembourg, The Netherlands and West Germany met in Brussels for discussion on the future of Air Union. Representatives from Alitalia, Air France, Lufthansa, Luxair and Sabena were also present in a consultative capacity. Three specialist working groups were set up at the first conference and prepared documentation for the following meetings.[709] During these negotiations, the participating states agreed on a draft international convention on Air Union between themselves and outside the institutional framework of the European Community.[710] However, many fundamental points of the convention had to be successfully resolved before it could be submitted to the national parliaments of the six countries for final approval and amendment.[711] To date, neither the draft convention nor the draft articles of association of Air Union have been published.[712]

Insurmountable differences, apparently motivated by nationalistic policies and the conflict of national economic interests, have frustrated the prolonged negotiations.[713] For instance, France was of the opinion that Air Union should be founded by the governments concerned,

so that it could become a kind of specialist organization within the European Common Market in much the same way that ICAO was a specialised agency of the United Nations. This inflexible solution would bar the way to the adhesion of further countries, and would suit the French very well, since they hoped that, in this way, they would be able to maintain the quota system originally envisaged for Air Union, which favoured Air France. Other countries - for instance West Germany - favoured a private association of airlines. In any case, they wanted to see complete liberalisation of air traffic in the Common Market. Holland was said to have favoured an organisation based on governmental and airline participation.[714]

Difference of opinion also existed in respect of the extent of governmental control over Air Union. While France advocated that Air Union should be subjected, through a joint body, to governmental control,[715] other members differed sharply as regards the powers of that body. The French proposed a body headed by a ministerial committee which would control trading and operating policies as well as the development plans of the constituent airlines.[716] Others held the view that the participating

airlines should have wide freedom of action.[717] During the 1964 negotiations in which all Common Market countries took part, discussions were held on the feasibility of establishing a relationship between the European Community and Air Union.[718]

Another apple of discord was the initial organizational structure of Air Union. Thus, while West Germany, The Netherlands and Italy conceived of technical co-operation as an initial step leading to the eventual goal of more wider co-operation and development of a common aviation policy, France and Belgium pressed for a system of comprehensively pooled operations from the beginning.[719]

"One of the main reasons why Air Union has never materialised"[720] is the difficult and delicate question of allocation of traffic quotas among the participating airlines. Under the 1959 agreement, the following quotas were envisaged: Air France 34%; Lufthansa 30%; Alitalia 26%; and Sabena 10%.[721] Comparable percentage of total traffic performance of the four airlines at that time were Air France 50%, Lufthansa and Sabena 17.5% each, and Alitalia 15%.[722] By the end of 1961, these figures had changed to Air France 52%, Lufthansa 19%, Alitalia

18%, and Sabena 11%.[723] The application of the 1959 quotas was conditional upon the total performance of the four airlines' traffic increasing to 2,400 million tonne-kilometres, which event was anticipated in 1972.[724]

In later years, however, Alitalia and Lufthansa showed a higher rate of traffic growth than Air France and KLM, and were reported to have demanded an increase in their proposed quotas.[725] Traffic results for 1964 appeared to support those demands, since in that year, Lufthansa recorded the remarkable increase of 28%, compared to increases of 7% and 7.3% for Air France and KLM respectively.[726] Alitalia also experienced a high rate of traffic growth and in the early sixties achieved load factors higher than the average for ICAO States' airlines.[727] The return of KLM and the participation of Luxair in 1964 further compounded the difficulty of fixing quotas, and it became obvious that the 1959 quota allocation required thorough revision.[728] The following table, reported in 1964, spells out the later quota proposals of the participating countries.[729]

QUOTA PROPOSALS BY

For:	Italy	France	Germany	Netherlands	Belgium
	%	%	%	%	%
Italy	26.33	23.00	22.75	22.00	24.00
France *	27.33	32.50	31.50	27.00	31.00
Germany	27.33	26.00	26.75	24.00	25.00
Benelux	19.01	18.00	19.00	27.00	20.00
	100.00	99.50+	100.00	100.00	100.00

According to a report in 1965, a considerable measure of agreement had been reached with respect to the upgrading of KLM's share, which was to be greater than those of Lufthansa and Alitalia, but still less than that of Air France.[730]

Another source of disagreement was whether Air France and Sabena services to former French and Belgian colonies in Africa should remain the preserve of the two airlines.[731] Finally, the difficult question of acquiring aircraft manufactured in the Common Market remained inconclusive.[732]

The only notable positive development was in March 1965, when the new Articles of Association (defining the

relationship among the airlines) and a new Convention (dealing with the role and relationship of governments) was drafted and submitted to the Common Market Governments.[733] No final agreement on these matters has yet been reached. In fact, as early as the end of 1964, it was realized that there was virtually no hope for a final agreement in the near future.[734] This is even true today.

However, it may be stressed that although nothing came out of this project, the existence of the Montparnasse Committee with its ATLAS and KSSU groups, reveals the continuity of airline thinking on these lines.[735] One can only hope that the ATLAS and KSSU technical consortium might eventually lead to the establishment of Air Union.

b) Commonwealth Caribbean Airline.

Another proposal for a multi-national regional air carrier suggests the integration of the two West Indian national flag carriers, British West Indian Airways and Air Jamaica, into a single airline to be known as the Commonwealth Caribbean Airline.[736]

The ball for this project was set rolling in September 1967, when the Prime Minister of Trinidad and

Tobago announced that his government had commissioned Trans World Airlines (TWA) to undertake a thorough organisational and operational study of BWIA (British West Indian Airways) with a view to implementing a proposal for the reorganisation, refinancing and expansion of BWIA, and the eventual establishment of a "broadly expanded, multinational Caribbean air carrier."[737] Subsequently in October 1967, at a Caribbean Summit Conference held in Barbados, it was agreed that there was a need for a regional air carrier and, accordingly, a Working Group was set up to study the necessary details.[738]

Inspired by these developments, Ian De V. Archer, a lawyer working with the Government of Barbados, put forward in March 1968, a detailed proposal for the establishment of a single Caribbean airline, and even went to the extent of suggesting a certain constitutional framework for the proposed airline.[739]

Archer pointed out that the principal advantages of having a single Commonwealth Caribbean Airline was economic.[740] Even before Archer, a West Indian economist, in a study of air transport in the Caribbean area, had stressed on the necessity of integrating small airlines of the area

in order to achieve large economies of scale.[741]

Because of the past history of political suspicion in the region, Archer advised that the Commonwealth Caribbean Airline (CCA) "should be the creature of an international agreement, and should not be constituted under any national or domestic law."[742] To enable the CCA to be considered a body subject to international law, it was further advised that the treaty should expressly endow it with international legal personality.[743] The member states were advised to confer on it legal capacity in their respective municipal systems[744] so as to permit it to sue and be sued, and to acquire real property in all the participating states.

Archer suggested that membership in the enterprise should initially be limited to the four independent states of the Commonwealth Caribbean. The reasons for excluding dependent territories were to avoid any "doubt as to the legal status of the proposed enterprise as a proper subject of international law"[745] and to avoid pressures for "inter-island 'social service' routes in the Eastern Caribbean,"[746] which were not looked upon favourably by

the Jamaican Government, the largest of the island units and the one having the most thriving tourist industry.[747] Obviously, the plans for integration could only succeed on the terms acceptable to the Jamaican Government.

Archer also recommended the exclusion of foreign investors from the proposed airline on the ground that they might exercise de facto control over the company by virtue of their ability "to be of some special assistance to the enterprise as, for example, in obtaining loans from foreign or international lending agencies."[748] He also pointed out that the proposed enterprise was not "likely to gain in efficiency or in harmony of relationships by having the local government or public or both share the control with a foreign operator."[749] He suggested that the capital for the airline should be provided by the four independent Caribbean states themselves or in conjunction with private local financers. He further suggested that, in time, the membership of the airline should be opened to any independent state in the Caribbean subject, of course, to the unanimous agreement of the constituent states.[750]

The objective of the proposed airline was "to operate international air services as opposed to regional

social services."[751] Since the ultimate control of the CCA would rest jointly with the four participating states, they would be deemed as the "owners" of the joint venture. Aircraft purchased by the enterprise would become the property of the CCA, and not that of the participating governments. With regard to third parties, therefore, the power to control and dispose of such property would be exercised by the enterprise and not by any of the governments concerned. The same would be the case with respect to any real estate acquired in the name of the enterprise.[752]

Archer proposed that "the overall management and superintendence of the airline should be vested in a Board of Directors and a Council of Ministers."[753] Subject to the overriding powers of the Council of Ministers, the Board would be responsible for the policies of the enterprise and for ensuring that these policies are implemented. In formulating its policies, the Board would give due consideration to sound business principles. It would appoint the General Manager and other officials; determine their salaries and conditions of employment; decide on matters relating to equipment, routes, property and insurance; and exercise any powers not assigned to any other body or to General Manager.[754]

Each participating state would be entitled to nominate one director, with an alternate, or, if preferred, two directors. The General Manager would also be, ex officio, a member of the Board. Their term of office would not be less than three years.[755]

The Council of Ministers would consist of the Ministers responsible for civil aviation matters in the four member states. The Council's main task would be to ensure that the purposes and principles of the constitutive agreement are adhered to. It would also appoint the Chairman of the Board of Directors from among the nominated members of the Board. The Chairman, naturally, would preside over the policy-making deliberations of the Board.[756]

The day-to-day management of the CCA would be in the hands of the General Manager, who, as the chief executive officer, would be responsible for the implementation of the policies of the Board.[757]

Archer suggested that the participating states/governments should be authorised to require the enterprise to provide air transport services in a national emergency. In addition, each government should have the authority to require the enterprise to operate a service

on a particular international route where such government's national interests and foreign relations require such service. Under these circumstances, the government concerned would undertake to compensate the CCA for any loss which may be incurred by reason of the provision of such service.[758]

Initially, the proposed airline would be financed in equal amount by the four participating governments. Aircraft and other property may be contributed by governments to the enterprise as capital; but, of course, the new enterprise would not be obliged to accept any equipment which it did not need.[759]

Distribution of profits would also be on an equal basis, and the amount to be distributed would be decided by the Board. The Board would also have powers to raise loans for the airline, if necessary.[760]

The activities of the CCA would be subject to a fair degree of public accountability, and in this respect, the Council of Ministers would be regarded as the watchdog of the public interest. To this end, the Board would be required to submit to the Council an annual report and statement of accounts which, after scrutiny by the Council,

should be laid in the Parliaments of the member states where they may be debated.[761]

So as to assist the rapid development of the enterprise, Archer proposed that it should be exempted from the payment of any taxes or customs duties.[762]

For the registration of CCA's aircraft, Archer suggested various formulae. These aircraft could be registered in one of the member states or registered, as far as possible, in equal number in all the four participating states. While noting that the ICAO Council had unanimously agreed that "without amendment to the Convention, its provisions can, by a determination of the Council, be made applicable to aircraft jointly registered, provided certain basic criteria are fulfilled,"[763] he even put forward the idea of joint registration for CCA's aircraft.[764]

As for the withdrawal and termination of membership, it was proposed that either the treaty should remain in force for a given number of years, or to permit members to withdraw after giving notice to the other members. Archer argued that if the members are to be allowed to withdraw, there should be a prohibition against the withdrawal of

any party before the expiration of at least ten years.[765] Such provisions, according to McDougal, Lasswell and Vlasic, tend to strengthen the enterprise considerably in its formative years.[766] However, where any party fails to fulfil its "more serious obligations under the agreement," the Board should be empowered to demand that such party withdraw from the enterprise. In the event of a member's withdrawal, the agreement shall remain in force as between the other parties.[767]

Archer proposed that any dispute regarding the interpretation or application of the treaty should not be made the subject of a law suit, but should instead be referred to arbitration for final decision. If there is a dispute between the enterprise and a state whose membership has been terminated, this should also be referred to an arbitral tribunal. It was suggested that arbitrators be selected from a list of names submitted by the Chief Justices of the participating states. Each party to a dispute would appoint one arbitrator and these two would then select the third who shall be the Chairman. If the two arbitrators are unable to agree on a third, the President of the International Court of Justice would make the appointment in his

absolute discretion. The tribunal would be required to decide all disputes in accordance with the juridical principles laid down in Article 38 of the Statute of the International Court of Justice.[768]

According to Archer, the proposed enterprise could be regarded as an international operating agency as contemplated by Article 77 of the Chicago Convention. In addition, it has many of the features of a supranational organisation, although it cannot be considered as a pure supranational organisation.[769]

c) Flota Aerea Latino-Americana (FALA).

Another attempt towards unification of air transport on regional basis was the proposal to create a joint Latin American airline, during the Latin American discussions of 1959-1960. The participants in the proposed enterprise were the national airlines of Colombia, Chile, Peru, Panama and Ecuador, as chosen by their governments.[770] The participant airlines could be publicly owned, privately owned, or of partly public and partly private ownership,[771] and admission would be limited exclusively to the airlines

of Latin American states.[772] According to the initial agreement reached at the Panama Conference (November 16, 1959),FALA would undertake the operation of all international air services of the participant states.[773] However, subsequently at the Santiago Conference (May 17-23, 1960), certain categories of international traffic were excluded from FALA's scope and earmarked for the national airlines.[774]

Proposals for the legal structure of FALA have undergone certain changes from time to time. Thus, while both the Panama Conference (1959) and the Santiago Conference (1960) recommended the creation of an international company, the Lima Conference of June 29 and July 2, 1960 put forward a draft agreement providing the additional alternative of a consortium, similar to the SAS.[775] Since the participant national carriers are only municipal corporate bodies, incompetent to create an international legal person, the participant states should take comprehensive measures to endow the proposed enterprise with corporate international legal personality. The Santiago Conference, however, had also in view the possibility of FALA being incorporated in one of the participant states.[776] In spite

of this, the proposed airline, like Air Afrique, would be deemed to have a domicile in each of its participant states.

The Lima Conference (1960) recommended that FALA's aircraft would be apportioned among the national registers according to the share-capital subscription of each participant airline.[777]

The organizational arrangements proposed for FALA have also undergone certain changes. Thus, according to the Panama Conference (1959), FALA would be governed by a board of directors composed of five members, each appointed by his national airline for a period of three years.[778] Decisions would require a four-fifths majority vote for approval.[779] The Lima Conference (1960), however, introduced the qualification that each participant airline would have proportional representation on the Board of Directors related to the amount of its registered stock.[780]

Since the early Latin American discussions, nothing substantial has emerged in respect of FALA. As at present

the project stands virtually shelved and forgotten. It is, however, probable that the impact of the wide-bodied jets and the coming SSTs may revive this project.

d) The International Arab Airways Corporation (IAAC).

Even before the advent of regular jet operations, the desirability of a World Arab Airline was felt. However, the attempts by the Arab countries to establish a multi-national airline in the Middle East have, for various reasons, not gone much further than certain vague contractual formalities and certain studies made in this respect. In fact, from 1961 to the end of 1969, the Arab airlines were hardly consulted about this project, despite the fact that the Lebanese delegation in the Arab Civil Aviation Council had tabled a proposal to this effect some five years ago.[781]

Among the most important difficulties which would face the implementation of the agreement for a World Arab Airline, are considerations of traffic rights, aircraft registration, crew and technical personnel licences, currency and capital transfers and, last but not least, the location of the head office and the management. In

their recent meetings in Cairo, the members of the Arab Air Carriers Organisation were in full agreement as to the graveness of these difficulties. Their recommendation as conveyed to the Arab Civil Aviation Council was that a World Arab Airline is not feasible at this stage; neither is it desirable. Instead, they have proposed to be given time to study other formulae which would allow them to undertake collective action and to go into joint operations.[782]

The creation of a Pan Arab Airline was first proposed during the fifth session of the Arab League Permanent Communications Committee held in Lebanon from 20 - 29 September 1955, when a recommendation for the preparation of a draft convention for the establishment of a such carrier was made.[783] In 1957, the Air Transport Sub-Committee of the Communications Committee of the League adopted a recommendation requesting member states to convene a conference to study the matter.[784] Pursuant to the above, a panel of experts began working on the project as from December 1957.[785]

As early as the Cairo Conference of 1959,[786] three possible legal structures were visualised for the proposed

joint enterprise: either the creation of a joint company to be registered and incorporated in one of the participant states, or the establishment of a consortium of Arab national airlines based on the pattern of SAS, or finally the formation of a truly international operating agency having a distinct and separate international legal personality and competent to assume obligations and enforce rights under existing international law.[787] The second and third alternatives were favoured, and further studies in that direction were undertaken during the Beirut Conference held between October 3 and 16, 1959.[788] As a result of the work of the Economic and Legal Sub-Committees of the Beirut Conference, two draft agreements were prepared. The first purported to establish an "international Arab air carrier" having limited liability,[789] independent legal personality, and having, in particular:

a) the right to enter into contracts;
b) the right to own movable and immovable property and to dispose of the same; and
c) the right to sue and be sued and to pursue all legal proceedings.[790]

The second draft contemplated the establishment of a consortium of Arab national airlines designated by their governments.[791]

A final agreement prepared by the panel of experts was approved by the Arab League Economic Council and was signed on April 17, 1961, at the end of the latter's meetings in Baghdad, by Jordan, U.A.R., Saudi Arabia, Iraq and Kuwait. Syria joined the agreement later on 27th February, 1964.[792] The Baghdad Agreement for the establishment of "The International Arab Airways Corporation" expressed a preference for a joint corporation instead of a consortium, although it did not expressly state that the proposed joint airline would have an international legal personality. Imam argued, and the writer is inclined to agree that, if a positive consensus exists, the omission to state expressly in the constitutive instrument that the joint airline shall be subject to the rules of international law with respect to its legal existence and functioning, would not necessarily leave the corporation to be governed only by municipal law.[793] Imam further observed that "unless it acquires the nationality of a State and becomes subject solely to its municipal law, the proposed IAAC may well evolve as a true international company."[794] This conclusion follows the trends of discussion as revealed in reports of the Cairo and Beirut Conference. On both occasions, there was an apparent

preference for an international company, rather than a consortium, and the suggestion to create a company incorporated under municipal law was dismissed.[795]

The proposed airline's primary objective is "to connect the Arab world with the outside world," and in this respect, to provide "services on long-range international routes, as well as on medium-range routes which fall on the long-range routes, and on any other routes that the corporation may acquire."[796] Its membership is open to every Arab state or country,[797] thereby implying that as regards the non-Arab states the membership is exclusive.

The Agreement makes provision for modifications in membership of the corporation, either by expulsion, withdrawal or admission.[798] After the first five years of its life, a member would be entitled to withdraw from the corporation on a year's notice.[799] The Agreement would be valid for fifty years and would be automatically renewable thereafter for a similar term unless two-thirds of the members decide otherwise.[800]

The Baghdad Agreement expressly states that the Corporation possesses the legal personality and the legal

capacity adequate to achieve its purposes and to perform its functions. As such, the corporation is entitled to enter into contracts, own moveable and immovable property and make disposition of the same, as well as to sue and be sued and to pursue all legal proceedings.[801] The liability of the members of the corporation is limited,[802] and the corporation is liable to third parties for all undertakings and obligations resulting from its activities.[803]

The proposed corporation is to be administered by a Board of Directors, which is the exclusive controlling organ for running the business of the corporation. It consists of one member or his alternate from each member country appointed by the government of that country.[804] The Board has a Chairman and a Vice-Chairman, whose offices rotate yearly in alphabetical order among its members.[805] Meetings of the Board are to be held on a quarter-yearly basis,[806] and would be lawfully convened upon the attendance of a simple majority of the members, provided that they represent at least two-thirds of the votes. However, on a second failure to attain the quorum, the meeting would be deemed lawful whatever the number attending and what-

ever the number of their percentage.[807] Each Board member has 5,000 votes allotted to him, and still further has one vote for each share held. Unless otherwise provided in the Agreement, decisions in the Board are taken by simple majority.[808] However, decision on the following matters would require a two-thirds majority of the total votes:

1.- approval of the establishment, cancellation or alteration of routes;

2.- approval or purchase and sale of aircraft;

3.- appointment of the General Manager and determination of his powers and salary;

4.- determination of the location of the headquarters of the corporation and of its workshops;

5.- approval of the general programme for equipment, purchases and insurance;

6.- investment of money and borrowing;

7.- determination of the percentage for distribution of profits;

9.- increase of members' quotas pursuant to the provisions of paragraph (2) of Article 9;

10.- dissolution of the corporation and its liquidation.[809]

The Board would enjoy "all the powers necessary for the administration of the corporation,"[810] which, inter alia, would include the power to approve the annual budget;[811] to appoint auditors;[812] to approve, alter or cancel the routes;[813] to approve the purchase and sale of aircraft;[814] to approve the procedures for the administration of the corporation and to frame the by-laws of the Board;[815] to make investments and to borrow money for the corporation;[816] to approve final accounts;[817] to conclude agreements with other companies;[818] and to dissolve the corporation.[819]

The day-to-day management of the corporation would be entrusted to a General Manager appointed by the Board; the Board would also delegate to him the necessary administrative and financial powers.[820]

The Baghdad Agreement fixes the capital of the proposed airline at L 17 million,[821] divided into 170,000

shares,[822] which would be subscribed in cash, except where the Board otherwise decides.[823] Although membership of the corporation is limited to Arab governments, they would be entitled to offer up to 49 per cent of their shares to their nationals - subject, however, to the proviso that no foreign capital would be allowed to participate, directly or indirectly.[824] It is anticipated that the shares allotted to a member state would not exceed twenty per cent of the capital.[825] According to the schedule annexed to the Baghdad Agreement, Iraq and the United Arab Republic would each subscribe up to twenty per cent, while Saudi Arabia and Kuwait could each be entitled to fifteen per cent. The increase or decrease of capital would take effect upon a two-thirds majority decision of the Board of Directors, except in the case of admission of a new member state where a simple majority would suffice.[826] Only one-fourth of the capital would be paid up upon entry into force of the Agreement, the balance being paid according to the decision of the Board.[827]

On the commencement of each financial year, the General Manager of the corporation would be required to present to the Board budget estimates for the coming year,

as well as the final accounts of the corporation for the preceding year, as certified by the auditors, and including a statement of any profits or losses.[828] The Board, in turn, would be required to submit to member governments, at the close of each financial year, a report on the activities of the corporation and its financial situation, together with the final accounts and balance of profits and losses, as well as the report of the auditors.[829] Decision on distribution of profits would have to be made by two-thirds majority of the Board,[830] which would be authorized to establish a general reserve fund through deduction of ten per cent of the net profits until the equivalent of fifty per cent of the capital is accumulated.[831]

According to the Baghdad Agreement, the Corporation would be exempted from taxes and fees on profits[832] and on capital property, whether moveable or immovable, in the territory of each member state, as well as from excise and customs duties on aeronautical equipment.[833] Further, it would not be subjected to the national restrictions on the transfer of money.[834]

The Baghdad Agreement leaves the question of registration of corporation's aircraft to the determination of

the Board, which decision has to be taken by a two-thirds majority and in conformity with the provisions of the Chicago Convention.[835]

The corporation would be liable for dissolution if the Board agreed to do so by a two-thirds majority.[836] Similarly the Board would, by a two-thirds majority of the total votes, adjudicate upon all disputes that may arise between the corporation and a member thereof, or between the members themselves, relating to the interpretation or application of the Agreement.[837] In the event of a dispute arising between the corporation and a member whose membership is terminated, or between the corporation and a member during the liquidation of the business of the corporation, the dispute would be referred to an arbitral tribunal consisting of three arbitrators, the corporation appointing one of them, the member party to the dispute appointing the second, and the third arbitrator being appointed by agreement between the first two. The decision of the tribunal, by majority vote, would be final and binding. Failing agreement between the two arbitrators on the appointment of the third, the President of the International Court of Juctice would be requested either to become the third

arbitrator or to appoint that third arbitrator without any objection being open to either of the two parties. Failing the constitution of such tribunal, the dispute would be referred to the International Court of Justice to adjudicate upon it, and its decision thereon would be binding.[838]

Political as well as economic differences in the Middle East have so far retarded the establishment of the International Arab Airways Corporation. The political differences relate to "monarchy vs. socialism, free enterprise vs. controlled economy. . . political fighting, government coups, border disputes and surging nationalism."[839] Notwithstanding that the Arab Communication Ministers in their Conference in Beirut from November 20 - 26, 1964, issued a resolution urging the Arab states to sign and ratify the Baghdad Agreement as soon as possible.[840] The said Agreement, however, has not yet come into force. It is worthwhile to mention in this respect that Article 50 of the Agreement stipulates that the Agreement would come into force one month after the deposit of ratification by the signatory states which possess not less than 60% of the total capital of the airline as specified in the Agreement. However, it remains to be seen if the introduction

of the wide-bodied jets and the anticipated introduction of the SSTs would create sufficient economic pressures in the Arab World to sink their various differences and take a fresh look at the concept of an International Arab Airways Corporation.

e) Air Maghreb.

Lately, there has been a clear trend towards general economic co-operation and integration in commerce and industry among the four Maghreb countries of Algeria, Libya, Morocco and Tunisia. A permanent secretariat and an advisory committee to the four Ministers of Economics were established as a result of the fourth annual Conference of the Maghreb Ministers of Economics, held in Algiers from February 8 - 12, 1966.[841]

A Maghreb transportation conference, held from October 6 - 9, 1965, recommended inter alia, the establishment of a Maghreb multi-national airline, and setting up of a permanent committee for each transport sector, including air transport, together with a "Maghreb Co-ordinating Committee of Transportation."[842] A preference for such a Maghreb, rather than general Arab, integration in air

transport was also indicated by the delegates of Tunisia and Morocco during the Conference of Arab Ministers of Transport held in Beirut from November 20 - 24, 1964.[843]

Another significant development towards the eventual integration of air transport in the Maghreb was the formation of the Maghreb Air Transport Committee instituted in accordance with the recommendation of the Maghreb Council of Ministers meeting in Algiers in February, 1966. The Committee which is presided, in rotation, by the civil aviation chiefs of the Maghreb countries, is based in Rabat, Morocco.[844] An important recommendation of this Committee was to further co-operation between the air transport companies existing in the Maghreb countries. In pursuance of this recommendation, the chiefs of the Maghreb air transport companies were meeting twice a year to devise ways and means of consolidating their efforts to bring about joint sales, standardisation of the fleets, common use of the equipment, and the establishment of Air Maghreb.[845]

To facilitate the creation of Air Maghreb, a study was jointly undertaken by the Maghreb Air Transport Committee and the existing airlines of the Maghreb countries.

This study considered the various legal and economic aspects of the project. During this study, it was considered whether Air Maghreb should be based on the pattern of Air Union, Air Afrique, or SAS, and it was generally agreed that the proposed joint airline should follow the SAS consortium pattern. It was further agreed that in the first instance, the Air Maghreb would be operating on the long-haul routes, but eventually it could operate the whole or part of the international network of the existing airlines of the Maghreb countries.[846]

At the end of 1967, the presidents of Air Maroc, Air Algeire, Tunis Air and Libya Airlines announced their agreement in principle on the formation of Air Maghreb, subject, of course, to the government approvals. At that time, it was anticipated that a detailed agreement to implement the merger would be finalised in January 1968.[847] However, since then, no significant development in this project has taken place, and it is a matter of some speculation as to whether Libya, which is now working for an Arab Federation with Egypt, Sudan and Syria, would still go along with the Air Maghreb project.

CHAPTER IV

FOOTNOTES

1. "Joint Ownership and Operation of International Services on Trunk Routes," ICAO Working Paper, A4-WP/8, EC/3, Appendix D (Memorandum submitted by France, March 24, 1950), p. 17.

2. L.C. Tombs, International Organization in European Air Transport (New York: Columbia University Press, 1936), p. 34.

3. E.W. Faller, Germany and International Civil Aviation - A Policy Oriented Historical Study (McGill Thesis, 1965), p. 127.

4. Ibid., pp. 127-128.

5. L.C. Tombs, op. cit. supra, note 2, p. 34.

6. Ibid.

7. Ibid.

8. R.Y. Jennings, "International Civil Aviation and the Law," 22 B.Y.I.L. (1945), p. 208. note 1.

9. L.C. Tombs, op. cit. supra, note 2, p. 34. Another writer, however, mentions that the additional service to Leningrad, opened on June 6, 1928, originated from Berlin via Konigsberg, Tilsit, Riga and Reval. See R.E.G. Davies, A History of the World's Airlines, (London: Oxford University Press, 1964), p. 59.

10. E.W. Faller, op. cit. supra, note 3, p. 158.

11. R.E.G. Davies, op. cit. supra, note 9, p. 188.

12. Ibid., p. 189.

13. Ibid.

14. Ibid, p. 192.

15. World Airline Record (6th ed.; Chicago: Roadcap and Associates, 1965), p. 63.

16. R.E.G. Davies, op. cit. supra, note 9, p. 410.

17. Ibid.

18. ICAO Working Paper, A4-WP/118, EC/14 (1950), Appendix II, p. 8; paper submitted by the United Kingdom Delegation to ICAO entitled "International Ownership and Operation of International Air Services." See also D. M. Hocking, and C.P. Haddon-Cave, Air Transport to Australia, (1st ed., Sydney: Angus and Robertson, 1951), p. 23.

19. Ibid.

20. ICAO Working Paper, op. cit. supra, note 18, p. 9. The company was incorporated on April 26, 1940. See Sir Leonard Isitt, "Air Transport in New Zealand and the South Pacific," Journal of the Royal Aeronautical Society (London, 1951); p. 713. D.M. Hocking and C.P. Haddon-Cave, however, state that the company was formed and registered in 1939 with a share capital of L N.Z. 500,000. See D.M. Hocking, and C.P. Haddon-Cave, op. cit. supra, note 18, p. 23. This statement is apparently incorrect as almost all aviation writers acknowledge that the company was incorporated in April, 1940. See R.E.G. Davies, op. cit. supra, note 9, p. 217, and, John Stroud, Annals of British and Commonwealth Air Transport, (London: Putnam, 1962), p. 530.

21. ICAO Working Paper, op. cit. supra, note 18, p. 9. It is stipulated that the agreement should be interpreted according to New Zealand Law.

22. Ibid.

23. Ibid., p. 10.

24. Ibid., p. 11. By 1951, the company's capital amounted to L 1,500,000 (New Zealand pounds). See Sir Leonard Isitt, op. cit. supra, note 20, p. 715.

25. ICAO Working Paper, op. cit. supra, note 18, p. 10. The subsidy obligations of the three governments were in the same proportion in which they held shares in the joint airline. See D.M. Hocking, and C.P. Haddon-Cave, op. cit. supra, note 18, p. 23.

26. The outbreak of World War II delayed the inauguration of services from October 1939 to April 20, 1940. See D.M. Hocking, and C.P. Haddon-Cave, op. cit. supra, note 18, p. 24. First service on Auckland-Sydney route was made on April 30, 1940, by C Class flying-boat ZK-AMA Aotearoa (Capt. J.W. Burgess) with 10 passengers. The return flight was made on May 2. See John Stroud, op. cit. supra, note 20, p. 530. See also R.E.G. Davies, op. cit. supra, note 9, p. 217.

27. Sir Leonard Isitt, op. cit. supra, note 20, p. 715.

28. Ibid.

29. ICAO Working Paper, op. cit. supra, note 18. p. 9.

30. Ibid.

31. Ibid.

32. Ibid.

33. Ibid.

34. Ibid., pp. 9-10.

35. Ibid., p. 10.

36. Ibid.

37. R.E.G. Davies, op. cit. supra, note 9, p. 388. See also World Airline Record, op. cit. supra, note 15, p. 154.

38. World Airline Record, op. cit. supra,note 15, p. 155. The Agreement under which New Zealand obtained

complete ownership of the company was signed on July 25, 1961. See R.E.G. Davies, op. cit. supra, note 9, p. 388.

39. Sir Leonard Isitt, op. cit. supra, note 20, p. 716.

40. W.H. Wager, "International Airline Collaboration in Traffic Pools, Rate-Fixing and Joint Management Agreements," 18 J A L C (1951), p. 304.

41. Ibid. See also R.E.G. Davies, op. cit. supra, note 9, p. 386.

42. D.M. Hocking and C.P. Haddon-Cave, op. cit. supra, note 18, p. 59. See also John Stroud, op. cit. supra, note 20, p. 366, and John Cobb Cooper, Explorations in Aerospace Law, ed. Ivan A. Vlasic, (Montreal: McGill University Press, 1968), p. 410.

43. R.E.G. Davies, op. cit. supra, note 9, p. 386.

44. Sir Leonard Isitt, op. cit. supra, note 20, p. 716.

45. John Stroud, op. cit. supra, note 20, p. 377. See also R.E.G. Davies, op. cit. supra, note 9, p. 386.

46. John Stroud, op. cit. supra, note 20, p. 563. See also World Airline Record, op. cit. supra, note 15, p. 36. Very little is published about WAAC and in particular nothing is said of aircraft registration, or representation on the company's Board of Directors.

47. World Airline Record, op. cit. supra, note 15, p. 36.

48. Ibid.

49. John Stroud, op. cit. supra, note 20, p. 563.

50. World Airline Record, op. cit. supra, note 15, p. 36.

51. R.E.G. Davies, op. cit. supra, note 9, p. 418.

52. John Stroud, op. cit. supra, note 20, p. 564. See also World Airline Record, op. cit. supra, note 15, p. 36.

53. R.E.G. Davies, op. cit. supra, note 9, p. 418.

54. World Airline Record, op. cit. supra, note 15, p. 39.

55. John Stroud, op. cit. supra, note 20, p. 565.

56. World Airline Record, op. cit. supra, note 15, p. 22.

57. John Stroud, op. cit. supra, note 20, p. 565.

58. ITA Bulletin, (26/1968, June 24, 1968), p. 207.

59. R.E.G. Davies, op. cit. supra, note 9, p. 415. See also John Stroud, op. cit. supra, note 20, p. 441.

60. ITA Bulletin, op. cit. supra, note 58, p. 608.

61. R.E.G. Davies, op. cit. supra, note 9, p. 416.

62. The Agreement of Salisbury, between the Governments of Southern Rhodesia, Northern Rhodesia (Zambia) and Nyasaland (Malawi). See Article 1 of the Agreement.

63. ITA Bulletin, op. cit. supra, note 58, p. 608.

64. Ibid.

65. Ibid.

66. Article 10 of the Salisbury Agreement.

67. Article 11 of the Salisbury Agreement.

68. Article 5 of the Salisbury Agreement.

69. Article 4 of the Salisbury Agreement.

70. Article 2 of the Salisbury Agreement.

71. Article 3 of the Salisbury Agreement. By Article 3 and Section 2 (2) of Annex A, decisions are taken by unanimous vote. See also Section 1 of Annex A. By Section 2 (3) of Annex A, the Higher Authority is empowered to give directives to the Corporation and the Corporation must give effect thereto.

72. Article 2. See also Section 5 of Annex A.

73. Section 7 (1) of Annex A.

74. Section 7 (2) (d) of Annex A.

75. Section 7 (2) (f) of Annex A.

76. Article 5 of the Salisbury Agreement.

77. Mention of this body has already been made in this chapter.

78. Article 20 of the Salisbury Agreement.

79. Ibid.

80. Article 21 of the Salisbury Agreement.

81. Article 23 of the Salisbury Agreement.

82. Article 22 of the Salisbury Agreement.

83. Section 6 of Annex B to the Salisbury Agreement, 1963.

84. Section 8 (1) of Annex B.

85. Section 11 of Annex B.

86. Section 15 of Annex B.

87. Articles 7 and 8 of the Agreement of Salisbury.

88. Article 8.

89. Abbas I.I.Imam, Transnational Cooperation for Air Transport: Towards the Establishment of International Airlines (McGill Thesis, 1966), p. 118.

90. ITA Bulletin, op. cit. supra, note 58, p. 609.

91. Ibid., pp. 608-609.

92. Ibid., p. 609.

93. Ibid.

94. Interavia, XXI (October, 1966), p. 1439.

95. Interavia, XXII (July, 1967), p. 1091.

96. ITA Bulletin, op. cit. supra, note 58, p. 609.

97. R.A. Nelson, "Scandinavian Airlines System Cooperation In The Air," 20 JALC (1953), p. 182.

98. Ibid.

99. "SAS Background," an SAS News Release, p. 3.

100. ICAO Circular 30 AT/5, Report on the Scandinavian Airline System (1953), p. 5, para. 6.

101. W.H. Wager, op. cit. supra, note 40, p. 309.

102. ICAO Circular, op. cit. supra, note 100, p. 5, para. 6.

103. R.A. Nelson, op. cit. supra, note 97, p. 184. See also ICAO Circular, op. cit. supra, note 100, p. 5, para 6, and, W.H. Wager, op. cit. supra, note 40, p. 309.

104. R.A. Nelson, op. cit. supra, note 97, p. 184.

105. Ibid.

106. ICAO Doc. C-WP/4115 of December 1, 1964, Annex 3, p. 7. This was the second conference held in this regard, and lasted from 15th to 19th December, 1960. See Air Afrique an 5 (printed in France; October 30, 1966), p. 2.

107. ICAO Doc. C-WP/1145, op. cit. supra, note 106.

108. Ibid.

109. Ibid.

110. Air Afrique an 5, op. cit. supra, note 106, p. 2.

111. Ibid.

112. Treaty relating to Air Transport in Africa, Yaounde March 28, 1961 (Translation). The participating African states that signed and ratified the Treaty were: the Republic of Dahomy and the Republic of the Congo (Brazzaville), the Republic of the Ivory Coast, the Republic of Cameroun, the Central African Republic, the Republic of Gabon, the Republic of Upper Volta, the Islamic Republic of Mauritania, the Republic of Senegal, the Republic of Chad and the Republic of Niger. Later, the State of Togo adhered to the Treaty of Yaounde and became a shareholder in the company. See ICAO Doc. 8446-18 (Closed), C/954-18 (February 22, 1965), para 4. It may be noted that adherence to the Treaty is open to all interested states subject to the requirement of unanimous agreement on the part of the participant states. See Article 13 of the Treaty of Yaounde.

113. Article 6 of the Treaty.

114. The Statutes, consisting of 46 Articles, have as complementary instruments a protocol of signature and a protocol annexed to the treaty and signed on behalf of the eleven states, on one hand, and, on the other, of Air Afrique (Société de Transport aérien en Afrique, which is an organization different from the one under examination here, and which has its headquarters at Paris. See ICAO Doc. C-WP/4115, op. cit. supra, note 106, p. 8.

115. Article 1 of the Articles of Incorporation.

116. Ibid., Article 2.

117. Ibid., Article 4.

118. ICAO Doc. C-WP/4115, op. cit. supra, note 106, p. 9.

119. ICAO - AT-WP/847 - 28/12/65, Appendix, p. 14.

120. According to Article 5 (A) of the Treaty of Yaounde, the private corporation member of Air Afrique held 34 per cent of the shares. That corporation enjoyed a membership different from that of member States and was limited to its capacity as a shareholder. This private interest (now held by UTA and

Caisse Dépots et Consignation) was reduced to 28 per cent when Togo adhered to the Treaty in 1964. See Ward Wright, "Air Afrique Emphasizes Measured Growth," Aviation Week and Space Technology, November 29, 1965, p. 33.

121. World Airline Record, op. cit. supra, note 15, p. 26.

122. Ward Wright, op. cit. supra, note 120, p. 33.

123. Article 3 of the Treaty.

124. Ibid. See also Article 1 of the Signatory Protocol to the Treaty of Yaounde where the contracting states further agreed to take the necessary measures to coordinate the activities of the national corporations with those of Air Afrique.

125. Article 2 of the Signatory Protocol.

126. Article 2 of the Treaty.

127. Ibid., Article 8.

128. Ibid.

129. Ibid., Article 10.

130. Ibid., Article 11.

131. Ibid., Article 9.

132. Article 13 of the Articles of Incorporation.

133. Ibid., Article 14.

134. Ibid., Article 15.

135. Article 16 of the Articles of Incorporation, as amended by the extraordinary general meeting of shareholders of November 19, 1962.

136. Ibid.

137. Article 18 of the Articles of Incorporation.

138. Ibid.

139. See Article 19 of the Articles of Incorporation.

140. Ibid.

141. Ibid.

142. Article 21 of the Articles of Incorporation, as amended by the decision of the extraordinary general meeting of shareholders of November 19, 1962.

143. Ibid.

144. Article 27 of the Articles of Incorporation.

145. Article 14 of the Articles of Incorporation.

146. Article 28 of the Articles of Incorporation.

147. Article 29 of the Articles of Incorporation.

148. Article 30 of the Articles of Incorporation.

149. Article 32 of the Articles of Incorporation.

150. Article 33 of the Articles of Incorporation.

151. Article 35 of the Articles of Incorporation.

152. Article 36 of the Articles of Incorporation.

153. Ibid.

154. Abbas I.I. Imam, op. cit. supra, note 89, p. 114.

155. Article 5 (a) of the Articles of Incorporation.

156. Ward Wright, op. cit. supra, note 120, p. 33.

157. Article 5 (b) of the Articles of Incorporation.

158. Article 6 of the Articles of Incorporation.

159. Article 8 of the Articles of Incorporation, read in conjunction with Article 5 (b).

160. Article 10 (a) of the Articles of Incorporation as amended by extraordinary general meeting of January 4, 1933, and para.(b) of Article 10.

161. Article 7 of the Articles of Incorporation.

162. Article 12 of the Articles of Incorporation.

163. Article 38 of the Articles of Incorporation.

164. Ibid.

165. Article 39 of the Articles of Incorporation. Five per cent of the net profits shall be earmarked for the creation of the reserve fund till the revenue fund equals 10% of the authorized capital.

166. Ibid.

167. Ibid.

168. Article 5 of the Treaty of Yaounde.

169. Article 4 of the Treaty of Yaounde.

170. Article 5 of the Treaty.

171. Article 4 of the Treaty of Yaounde.

172. Abbas I.I. Imam, op. cit. supra, note 89, p. 99.

173. Ibid.

174. Article 5 of the Treaty of Yaounde.

175. Article 1 of the Articles of Incorporation.

176. C. Wilford Jenks, The Proper Law of International Organizations, (1963), p. 4.

177. Article 3 of the Articles of Incorporation.

178. Abbas I.I. Imam, op. cit. supra, note 89, p. 100.

179. Air Afrique has its head office in Abidjan, Ivory Coast.

180. C. Wilford Jenks, op. cit. supra, note 176, p. 12.

181. Abbas I.I. Imam, op. cit. supra, note 89, pp. 100-101.

182. G.F. FitzGerald, "Offences and Certain Other Acts Committed on Board Aircraft: The Tokyo Convention of 1963" 2. C.Y.I.L. (1964), pp. 201-202. Congo (Brazzaville) and Senegal are members of Air Afrique and hence their statements throw light on the intentions of the drafters of the Preamble.

183. This Organization was later succeeded by the "Organisation Commune Africaine et Malgache." See ICAO Doc. 8743-C.978, p. 27.

184. ICAO Docs. C-WP/14115; and 8470-C/955, Action of the Council, 53rd Session, 19.

185. Abbas I.I. Imam, op. cit. supra, note 89, p. 101.

186. "Failing the possibility of joint registration" etc.

187. Ishaq R. Goreish,"The Problem of Registration and Nationality of Aircraft of International Operating Agencies and the ICAO Council's Resolution on the Problem," (McGill Thesis, 1970), p. 82. According to the writer, information was obtained on personal communication with Mr. Diallo, the Representative of Senegal in the Council of ICAO, dated November 13, 1969.

188. Ibid.

189. Article 36 of the Articles of Incorporation.

190. Article 16 of the Treaty of Yaounde.

191. Article 13 of the Treaty of Yaounde.

192. The Annex to the Treaty of Yaounde, 1961, "Concerning Fiscal and Financial Provisions. . .", para. 1.

193. Ibid., para. 3.

194. Article 45 of the Articles of Incorporation.

195. S.R. and O.1945 No. 1427. In 1943, a Committee was appointed by a Conference of Governors of the British territories of Kenya, Yganda, Zanzibar and Tanganyika to prepare a scheme for post-war airline services in East Africa.
See R.E.G. Davies, op. cit. supra, note 9, p. 416.

196. East Africa (High Commission) Order in Council, 1947, S.R. and O. 1947 No. 2863.
For a description of the East Africa High Commission, see East Africa, Report of the Economic and Fiscal Commission, Feb. 1961, Cmd.1279,paras. 11-19 and 29-38. This report is hereafter referred to as Raisman Report. Broadly speaking, the powers of the Commission in Civil Aviation were the same as those of the East African Community which will be referred to later. Structurally, there were substantial differences mainly because it was a trans-colonial rather than a trans-national body. One major difference was that the Commission was not financially autonomous.

197. R.E.G. Davies, op. cit. supra, note 9, p. 416.

198. V.C. Slight, Regional Cooperation in East African Civil Aviation, Institute Term Paper - McGill, 1964, p. 22. See also Air Transport in East Africa, ECA: Doc. E/CN. 14/TRANS/20 - ICAO Doc. 8419-AT/718, Appendix 4, p. 60, note (a), and, World Airline Record, op. cit. supra, note 15, p. 27.

199. John Stroud, op. cit. supra, note 20, p. 458.
See also R.E.G. Davies, op. cit. supra, note 9, p. 416, and, World Airline Record, op. cit. supra, note 15, p. 27.

200. R.E.G. Davies, op. cit. supra, note 9, p. 416.

201. Ibid., pp. 416-47, and, EAAC Annual Report and Accounts for year ending 31st December, 1966.

202. John Stroud, op. cit. supra, note 20, p. 458.

203. Poulton, a Review of Civil Aviation Organization in East Africa (1961), p. 28 (the Poulton Report).

The Constitutional Position of East African Airways, Report of the Commission under Chairmanship of Stephen Wheatcroft (1965) (the Wheatcroft Report), pp. 4-5 (Confidential).

204. Raisman Report, op. cit. supra, note 196, para. 37. The formula adopted for EAAC is described in the Poulton Report, para. 59.

205. Ibid., para. 134.

206. Information provided by Professor M. Bradley, Institute of Air and Space Law, McGill University, Montreal.

207. For a general description of EACSO, see the Future of East Africa High Commission Services, Report of the London Discussions, June 1961, Cmd. 1433. For a review of the civil aviation institutions of the Organization and the text of its constitution, see 1965 Yearbook of Air and Space Law, p. 130 et seq. 323 et sq. See also H.L. Adams, "Aviation In East Africa," Interavia, XIX (February, 1964), 227.

208. No. 4 of 1963.

209. The Treaty was signed on the 6th June, 1967. It came into force on 1st December 1967. See Article 91 of the Treaty. For text of the Treaty, see 6 International Legal Materials (1967), 933. For a general description of the Treaty, see Orloff, "Economic Integration in East Africa: The Treaty for East African Cooperation," 7 Columbia Journal of Trans-National Law (1968) 302. The Treaty is given effect to by the East African Airways Corporation Act 1967, Legal Notice No. 4 of 1967.

210. The Treaty, ibid., Article 87.

211. The Treaty, ibid., Annex XXIV Part B, para. 4. Specific arrangements are made in relation to Uganda.

212. East African Airways Corporation Act 1967, op. sit. supra, note 209, Section 16.

213. This is an institution of the Community which will be referred to in some detail later.

214. The Treaty, op. cit. supra, note 209, Article 3 (para. 4). The determination of the Authority is contained in the East African's Community (Immunities and Privileges) Order 1967, Legal Notice No. 7. of 1967.

215. Treaty, ibid., Article 72 (para. 6).

216. Article 1 of the Treaty establishes the Community. Article 3 enumerates the institutions of the Community.

217. Article 95 (para. 1) of the Treaty. See for an example of the enabling legislation: The East African Cooperation (Implementation) Act 1967 (No. 42 of 1967) of Tanzania.

218. Article 3 (para.1) of the Treaty.

219. Article 3 (para. 2) of the Treaty.

220. Para. 4 of Part B of Annex II specifies in relation to the East African Airways Corporation - Services and facilities relating to East African and international air transport.

221. Article 43 (para. 3) of the Treaty.

222. The Treaty, Article 72 (paras. 1-2); The East African Airways Corporation Act, 1967, Section 18.

223. Ibid., Article 72 (para. 3. Ibid., Section 18 (3).

224. Ibid., Article 72 (para.4).

225. Ibid., Article 72 (para.5).

226. Article 73 of the Treaty. Further powers are specified in Annex XIII of the Treaty. See also Sections 5, 6 and 9 of the Act.

227. Article 76 of the Treaty; Section 10 of the Act.

228. Article 75; Section 5 of the Act.

229. The Treaty Article 77 and the Act Section 24 as to the appointment of staff. Provision is made for appeals by aggrived staff. As noted above, Article 76 of the Treaty andSection 10 of the Act provide that the Director General shall be appointed by the Authority.

230. The Treaty Articles 78, 79; The Act Sections 20, 21.

231. Annex XIII, Part D of the Treaty; The Act Sections 11-14.

232. The Treaty ibid., paras. 1, 2; The Act, Section 11.

233. The Treaty ibid., paras. 3, 4; The Act, Sections 9, 11.

234. The Treaty paras. 5, 6; The Action Section 13.

235. The Treaty paras. 7, 8, 9; TheAct Section 14.

236. Articles 61 and 64 of the Treaty relating to offices in the service of the Community do not apply to offices in the service of a corporation. (See Article 61, para. 3 of the Treaty).

237. Article 43 (para. 7) empowers the Community to enact measures with respect to the matters set out in Annex X. Matter 4 is civil aviation. The Community's power to enact measures is vested in the East Agrican Legislative Assembly established by Article 56. It comprises ex officio members and 27 members, nine appointed by each Partner State. See Articles 56-58.

238. Articles 59 and 60 of the Treaty.

239. See supra note 217.

240. As is evident from the discussion following.

241. Articles 47 and 48 of the Treaty.

242. Annex XI, para. 3 (a) of the Treaty.

243. See Article 49 of the Treaty as to appointment. Tenure of office is governed by Article 50 thereof and Article 51 defines their function.

244. Article 51 (para. 1) of the Treaty.

245. See the discussion following.

246. Article 51 (para. 5) of the Treaty.

247. Articles 53-55 of the Treaty.

248. See supra note 234.

249. Annex XI Para. 7 (c) of the Treaty.

250. Annex XI (para. 8).

251. Article 43 (para. 1).

252. Article 43 (para. 3).

253. See supra note 222.

254. Articles 65-70 of the Treaty.

255. See supra notes 241-242.

256. Article 43 (para. 2) and Annex IX Part A of the Treaty.

257. Act No. 22 of 1965.

258. Ibid., Section 3.

259. Ibid., Section 12.

260. Ibid., Section 21.

261. Ibid., Section 2. EAAC's aircraft are therefore subject to the Act and Regulations.

262. Legal Notice No. 46 of 1965.

263. See the Treaty Annex XIV (para. 3) constituting this office and providing for decentralization of his functions to the Directors of his Directorate in the member states.

264. East African Air Navigation Regulations, Regulation 3 (1).

265. Ibid., Regulation 4 (1).

266. Ibid., Regulation 5 (2) and First Schedule Part B (para. 1).

267. Ibid., Regulation 4 (6).

268. Ibid., Regulation 4 (7).

269. Act No. 22 of 1964, op. cit. supra, note 257, Section 4.

270. Ibid, Section 6.

271. Legal Notice No. 47 of 1965.

272. Ibid., Regulations 3, 14, 17, 18 and 19. An appeal lies to an appellate tribunal in respect of applications for domestic service and decision is subject to confirmation by the Authority. See part V of the Regulations.

273. The Treaty Articles 84 and 85.

274. Report of the Panel of Experts: ICAO Doc. PE/77/Report (30-6-60), p. 4 (para. 10).

275. Information provided by Professor M. Bradley, Institute of Air and Space Law, McGill University, Montreal.

276. ICAO Registration No. 1812.

277. ICAO Registration No. 2051.

278. Brief History of MSA, (A Malaysia-Singapore Airline Pamphlet), p. 1. According to an aviation writer, the promoters of the company also included Alfred Holt and Company. See John Stroud, op. cit. supra, note 20, p. 519.

279. Memorandum of Association of Malayan Airways Limited, Article 3 (a).

280. See Certificate of Incorporation of Malayan Airways Limited signed by the Registrar of Companies, Straits Settlements. See also John Stroud, op. cit. supra, note 20, p. 519.

281. This was a charter from Singapore to Kaula Lumpur, with an Airspeed Consul (Captain J.R. Brown). See John Stroud, op. cit. supra, note 20, p. 521.

282. Malayan Airways opened its first scheduled service. Singapore-Kaula Lumpur - Ipoh, Penang operated thrice weekly with Airspeed Consuls. First service flown by Captain E. Woodrow, Services were opened soon after to Kuantan and Kota Bharu. See John Stroud, op. cit. supra,note 20, p. 521. In August, the company began taking delivery of DC-3 aircraft and international services to Batavia, Palembang, Medan and Saigon were started. In April 1948, a service to Bangkok was inaugurated. See Brief History of MSA, op. cit. supra, note 278, p. 1. See also R.E.G. Davies, op. cit. supra, note 9, p. 411, and, World Airline Record, op. cit. supra, note 15, p. 99.

283. R.E.G. Davies, op. cit. supra, note 9, p. 412. See also World Airline Record, op. cit. supra, note 15, p. 99.

284. The Story of MSA. (A Malaysia-Singapore Airline Pamphlet), p. 1. See also MSA Annual Report 1968-9, p. 8, and, Brief History of MSA, op. cit. supra, note 278, p. 1.

285. The original capital of the company was S $500,000 divided into 50,000 shares of $10 each. The capital was by a special resolution passed at an extraordinary general meeting of the members of the company held on 14th July 1948, was increased to S $5,000,000 divided into 500,000 shares of $10 each.

286. The capital of the company was by a further special resolution passed at an extraordinary general meeting of the members held on 18th October, 1957 increased to S $20,000,000 divided into 2,000,000 shares of $10 each.

287. R.E.G. Davies, op. cit. supra, note 9, p. 412. According to another source, BOAC and Qantas both

acquired a 33% shareholding. See World Airline Record, op. cit. supra, note 15, p. 99.

288. The Story of MSA, op. cit. supra, note 284, p. 1, and, Brief History of MSA, op. cit. supra,note 278, p. 1. The first Comet 4C was leased from BOAC in 1962 for a period of three years. A second was leased in 1964 and arrangements were completed to purchase five from BOAC in 1965. See World Airline Record, op. cit. supra,note 15, p. 99.

289. Brief History of MSA, op. cit. supra, note 278, p. 2. See also The Story of MSA, op. cit. supra,note 284, p. 2, and, MSA Annual Report 1968-9, op. cit. supra, note 284, p. 8.

290. Cecil Brownlow, "Asian Airline Prepares for World Routes," Aviation Week and Space Technology, April 6, 1970, p. 43.

291. Ibid. During 1968-9, the company made a highest-ever profit of S $9,466,000, before tax, compared with S $2,274,000 in 1967-8. The profit represents a 6 per cent return on net assets employed of S $158,814,000. See MSA Annual Report 1968-9, op. cit. supra,note 284, p. 4. See also The Mirror, August 31, 1970, p. 7.

292. Cecil Brownlow, op. cit. supra, note 290, p. 43.

293. The Story of MSA, op. cit. supra, note 284, p. 1; Brief History of MSA, op. cit. supra, note 278, pp. 1-2; MSA Annual Report 1968-9, op. cit. supra, note 284, p. 8, and, World Airline Record, op. cit. supra, note 15, p. 99.

294. Special resolution passed at the twenth-first ordinary general meeting of the members of the company held on November 27, 1963. See also supra note 293.

295. The Story of MSA, op. cit. supra, note 284, p. 1, and, Brief History of MSA, op. cit. supra,note 278, p. 2. See also special resolution of Malaysian Airways Limited, passed on 12th November 1964, at the twenty-second orginary general meeting of the members of the company.

296. Cecil Brownlow, "Singapore Tourist Drive Keyed to Airline," Aviation Week and Space Technology, April 13, 1970; The Story of MSA, op. cit. supra, note 284, p. 1, and, Brief History of MSA, op. cit. supra, note 278, p. 2. See also Cecil Brownlow, op. cit. supra, note 290, p. 45. On the formation of Malaysia and the subsequent separation of Singapore, see Peter Boyce, Malaysia and Singapore in International Diplomacy (Sydney University Press, 1968).

297. Article VI of An Agreement between the Government of Malaysia and the Government of Singapore relating to the separation of Singapore from Malaysia as an independent and sovereign State. Signed at Kuala Lumpur, on 7 August 1965. For complete text of this Agreement, see "An Agreement relating to the Separation of Singapore from Malaysia as an independent and sovereign State," Ministry of Foreign Affairs, Kuala Lumpur, Foreign Affairs - Malaysia, Vol. 1, Nos 1-2, 1966, pp. 24-7. This was published in Singapore on August 9, 1965, as Government Gazette Extraordinary, Vol. LL, No. 66. See also Peter Boyce, op. cit. supra note 296, pp. 31-33, and, United Nations Registration No. 8206, U.N. Treaty Series, 563 (1967), 89-103, and, The Times Supplement, August 31, 1966, for the complete text of the Agreement.

298 Cecil Brownlow, op. cit. supra, note 290, p. 45.

299. The Story of MSA, op. cit. supra, note 284, p. 1, and, Brief History of MSA, op. cit. supra, note 278, p. 2. See also MSA Annual Report 1968-9, op. cit. supra, note 284, p. 8.

300. Special resolution passed at the twenty-fourth ordinary general meeting of the members of the company held on the 30th December, 1966.

301. Article 4 of the Memorandum of Association of Malaysia-Singapore Airlines.

302. According to the Certificate of Incorporation dated 21st October, 1937.

303. The company is existing and operating under the Singapore Companies Act, 1967.

304. The Memorandum of the company was submitted before the Registrar of Companies, Straits Settlements, on 20th October, 1937.

305. The present Articles of Association were substituted for the previous Articles of Association by Special Resolution passed at an Extraordinary General Meeting held on the 6th February, 1958.

306. Article 2 of the Memorandum of Association.

307. The Memorandum of Association enumerates thirty-eight different objects of the company.

308. See Article 3 of the Memorandum of Association.

309. Ibid.

310. Articles 2, 4, 38, 39, and 40 of the Articles of Association.

311. Article 2 (i) of the Articles of Association.

312. Article 1 of the Articles of Association.

313. Ibid.

314. Ibid.

315. Article 2 (ii) of the Articles of the Association.

316. Article 2 (iii) of the Articles of the Association.

317. Ibid.

318. Article 3 of the Articles of Association.

319. Article 39 (i) of the Articles of Association.

320. Ibid.

321. Article 37 of the Articles of Association.

322. Article 40 of the Articles of Association.

323. Article 38 (i) of the Articles of Association.

324. Article 108 of the Articles of Association.

325. Article 84 of the Articles of Association as amended by the special resolution dated 29th April, 1969, at an extraordinary general meeting of the company.

326. Article 84 (iii) of the Articles of Association.

327. Article 86 of the Articles of Association.

328. Article 90 of the Articles of Association.

329. Article 91 of the Articles of Association.

330. Article 92 of the Articles of Association.

331. Article 93 of the Articles of Association.

332. Article 94 of the Articles of Association.

333. Article 95 of the Articles of Association.

334. Article 89 of the Articles of Association.

335. Article 96 of the Articles of Association.

336. Article 101 of the Articles of Association.

337. Article 97 of the Articles of Association.

338. Article 98 of the Articles of Association.

339. Article 103 of the Articles of Association.

340. Article 137 of the Articles of Association.

341. Article 139 of the Articles of Association.

342. Article 140 of the Articles of Association.

343. Article 141 of the Articles of Association.

344. Article 142 of the Articles of Association.

345. Article 143 of the Articles of Association.

346. Article 127 of the Articles of Association.

347. Article 129 of the Articles of Association.

348. Article 130 of the Articles of Association.

349. Articles 51 and 52 of the Articles of Association.

350. Article 53 of the Articles of Association.

351. Article 54 of the Articles of Association.

352. Article 55 of the Articles of Association.

353. Article 56 of the Articles of Association.

354. Article 57 of the Articles of Association.

355. Article 61 of the Articles of Association.

356. Article 5 of the Articles of Association as amended by the special resolution passed on 12th August, 1966, at an extraordinary general meeting of the company.

357. Information supplied to the writer by Malaysia-Singapore Airlines vide their letter LO/MISC/527 dated 21st July, 1970. See also Cecil Brownlow, op. cit. supra, note 290, p. 45.

358. Article 46 of the Articles of Association.

359. Article 47 of the Articles of Association.

360. Article 48 of the Articles of Association.

361. Article 49 of the Articles of Association.

362. Article 50 of the Articles of Association.

363. Article 51 of the Articles of Association.

364. Article 56 of the Articles of Association.

365. Article 57 of the Articles of Association.

366. Article 58 of the Articles of Association.

367. Article 60 of the Articles of Association.

368. Article 61 of the Articles of Association.

369. Article 65 of the Articles of Association.

370. Article 64 of the Articles of Association.

371. Article 66 of the Articles of Association.

372. Article 67 of the Articles of Association.

373. Article 68 of the Articles of Association.

374. Article 69 of the Articles of Association.

375. Article 70 of the Articles of Association.

376. Article 76 of the Articles of Association.

377. Article 77 of the Articles of Association.

378. Article 79 of the Articles of Association.

379. Article 112 of the Articles of Association.

380. Article 117 of the Articles of Association.

381. Article 118 of the Articles of Association.

382. Article 126 of the Articles of Association.

383. Article 127 of the Articles of Association.

384. Article 128 of the Articles of Association.

385. Article 129 of the Articles of Association.

386. Article 130 of the Articles of Association.

387. Article 132 of the Articles of Association.

388. Article 133 of the Articles of Association.

389. Ibid.

390. Information supplied to the writer by Malaysia-Singapore Airlines vide their letter LO/MISC/527 dated 21 st July, 1970, op. cit. supra, note 357. The schedule of MSA aircraft registration is as under:

Make and type	Registration Number: Registered with Malaysian Government	Registered with Singapore Government
1. Fokker Friendship		9V-BAP
2. " "		9V-BAQ
3. " "		9V-BAR
4. " "	9M-AMJ	
5. " "	9M-AMM	
6. " "	9M-AOJ	
7. " "		9V-BBF
8. " "	9M-AOX	
9. Douglas DC-3		9V-BAL
10. " "	9M-ALM	
11. " "	9M-ANE	
12. Britton Norman	9M-APD	
13. " " Islander		9V-BBS
14. " "	9M-APK	
15. Boeing 707-312B		9V-BBA
16. " "	9M-AOT	
17. " "		9V-BBB
18. Boeing 737-112	9M-AOU	
19. " "		9V-BBC
20. " "	9M-AOV	
21. " "		9V-BBE
22. " "	9M-AOW	

391. Cecil Brownlow, op. cit. supra, note 296, p. 32.

392. See Articles 153-156 of the Articles of Association.

393. "SAS Background," op. cit. supra, note 99, p. 6.

394. Clive Adams, "SAS Looks to Continuing Annual Growth of Up to 20% and . . . More Consortiums," Air Transport World, March 1970, p. 17.

395. Ibid. See also H. Bahr, "The Scandinavian Airlines System, Its Origin, Present Organization and Legal Aspects," Arkiv for Luftrett (1961), p. 204. It is said that final plans for the opening of North Atlantic service were completed by the spring of 1940. See "SAS Background," op. cit. supra, note 99, p. 2.

396. Clive Adams, op. cit. supra, note 394, p. 17.

397. "SAS Background," op. cit. supra, note 99, p. 2.

398. Clive Adams, op. cit. supra, note 394, p. 17.

399. H. Bahr, op. cit. supra, note 395, p. 204. See also "SAS Background," op. cit. supra, note 99, p. 3, and, E.A.G. Verploeg, The Road Towards a European Common Air Market (Institute of Air and Space Law, McGill University, Thesis, 1963), p. 40.

400. ICAO - Report on the Scandinavian Airlines System (SAS), Circular 30-AT/5, p. 4, para. (5).

401. H. Bahr, op. cit. supra, note 395, p. 205. The first aircraft to bear the SAS shield on a scheduled flight to New York took off on September 17,1946. Two months later, SAS linked Scandinavian to South America. See "SAS Background," op. cit. supra, note 99, p. 3.

402. H. Bahr, op. cit. supra, note 395, p. 205.

403. "SAS Background," op. cit. supra, note 99, p. 4.

404. This arrangement was first established on April 18, 1948, and was later extended in 1949. See ICAO Circular, op. cit. supra, note 400, page 5, para. (6). See also "SAS Background," op. cit. supra, note 99, p. 4.

405. Here also the activities covered by the consortium agreement were carried out in the name of SAS. See H. Bahr, op. cit. supra, note 395, p. 205.

406 ICAO Circular, op. cit supra, note 400, p. 5 para. (6).

407. Ibid. See also World Airline Record, op. cit. supra, note 15, p. 227.

408. H. Bahr, op. cit. supra, note 395, p. 205. See also World Airline Record, op. cit. supra, note 15, p. 227.

409. ICAO Circular, op. cit. supra, note 400, p. 5, para. (6), and, World Airline Record, op. cit. supra, note 15, p. 227.

410. ICAO Circular, op. cit. supra, note 400, p. 5. para. (6).

411. Ibid., para. 7.

412. With regard to the practical results of the other arrangement, OSAS, it appears that the consortium was successful. See H. Bahr, op. cit. supra, note 395, p. 205.

413. ICAO Circular, op. cit. supra, note 400, page 5, para 7.

414. The termination was to be effective from April, 1950. See H. Bahr, op. cit. supra, note 395, pp. 205-206. See also R.A. Nelson, op. cit. supra, note 97, p. 184.

415. Part of the negotiations, from January to March 1950, resulted in concrete proposals. It is noticed that these proposals were revised by the Ministers of Communications of the Scandinavian countries. Further negotiations continued throughout the summer of 1950 and resulted in the present Consortium agreement This agreement had effect as of October, 1950, though signed on 8 February, 1951 See ICAO Circular, op. cit. supra, note 400,

pp. 5-6, para. 8. Subject to the possibility of withdrawal or expulsion under certain eventualities, the agreement is to run for twenty-five years terminating on 30 September, 1975 (para. 18 thereof).

416. Para. 2 (2) of the SAS Consortium Agreement.

417. H. Bahr, op. cit. supra, note 395, p. 206.

418. Para. 1 (1) of the Agreement.

419. Para 1 (2) of the Agreement. R. A. Nelson, op. cit. supra, note 97, p. 187, says that this "indicates the desire of the framers of the agreement to minimise political-nationalistic considerations as much as possible in the operations of the consortium."

420. Para. 1 (3) of the Agreement.

421. Para 1 (4) of the Agreement.

422. Para 3 of the Agreement

423. ICAO Circular, op. cit. supra, note 400, p. 6, (para 9).

424. Ibid.

425. H. Bahr, op. cit. supra, note 395, p. 217.

426. Professor Martin Bradley of Institute of Air and Space Law, McGill University, Montreal, provided this definition to the writer in an interview granted to him.

427. H. Bahr, op. cit. supra, note 395, p. 219.

428. Ibid., p. 220. Under Norwegian law, the consortium does not possess any legal personality.

429. Hamid S. Saljooqi, Air Transport Regulation: An Analytical Approach with reference to Selected Countries Including Afghanistan, Institute Thesis - McGill University (1967), p. 128.

430. Abbas I. I. Imam, op. cit. supra, note 89, pp. 94-95. See also W.H. Wager, "International Airline Collaboration in Traffic Pools, Rate-Fixing and Joint Managemenr Agreements," 18 J A L C (1951), p. 305.

431. W.H. Wager, op. cit. supra, note 430, p. 309.

432. Para. 1 (1) of the SAS Agreement.

433. Para 2 (1) of the Agreement.

434. Para 2 (2) of the Agreement.

435. H. Bahr, op. cit. supra, note 395, p. 218.

436. ICAO Circular, op. cit. supra, note 400, p. 8, (para. 12).

437. See paras. 7-10 of the Consortium Agreement.

438. ICAO Circular, supra note 436. It has been noted that under the Consortium Agreement the parties are liable jointly and severally to third parties; this liability being unlimited. On the other hand, according to Bahr, the Consortium in Sweden has been accepted as a party in civil actions and has also in Germany, appeared as a party in a law suit. See H. Bahr, op. cit. supra, note 395, p. 221.

439. Para 5 (1) of the Consortium Agreement.

440. The Consortium exercises, with retard to third parties, the power to control and dispose of aircraft, including the power to sell. See para. 4 (3) of the Agreement.

441. ICAO Circular, supra note 436. See also the relevant provisions of the Agreement of 20 December 1951, referred to above in the same Circular, p. 12 (para. 25).

442. See paras. 3 and 6 of the Consortium Agreement, respectively.

443. ICAO Circular, supra note 436.

444 Ibid.

445. Ibid.

446. Ibid.

447. Ibid. Bahn similarly described SAS as "a creation sui generis." See Bahr, op. cit. supra, note 395, p. 223.

448. R.A. Nelson, op. cit. supra, note 97, p. 180.

449. H.A. Wassenberg, Post War International Civil Aviation Policy and the Law of the Air, (The Hague, 1962), p. 78.

450. Michel Pourcelet, "The International Element in Air Transport," 33 J A L C (1967), 78.

451. Jacob Sundberg, "Is SAS a Legal Person?", Arkiv for Luftrett (1964), pp. 165-172.

452. Para. 9 (4) of the Consortium Agreement.

453. Abbas I. I. Imam, op. cit. supra, note 89, p. 96.

454. H. Bahr, op. cit. supra, note 395, p. 221. This view has been expressed by Dutoit and is approved by Bahr.

455. Ibid.

456. See supra, note 453.

457. H. Bahr, op. cit. supra, note 395, p. 223.

458. Ibid., p. 221. Bahr states that the Consortium is not registered in any of the Scandinavian countries, and since it possesses no nationality, it is subject to the laws of all these countries.

459. Ibid. Bahr has in view - "an association or combination of airlines, or even governments, possessing a legal personality of its own, as

distinct from that of each of the participants. It may be perhaps possible to constitute a company of this kind in such a manner that it acquires a truly international character." See H. Bahr, op. cit. supra, note 395, p. 202.

460. See supra note 437.

461. H. Bahr, op. cit. supra, note 395, p. 221.

462. Para. 2 (2) of the Consortium Agreement. Sharing of capital subscription, profits and losses are to be in the ratios ABA, 3/7; DDL, 2/7; DNL, 2/7. According to para. 7 (2), each company shall be represented by not more than six voting members.

463. Para. 8 (4) of the Consortium Agreement.

464. Para. 7 (2) of the Consortium Agreement.

465. H. Bahr, op. cit. supra, note 395, p. 209.

466. Para. 7 (3) of the Consortium Agreement.

467. Para. 7 (4) of the Agreement.

468. Ibid.

469. Para. 8 (1) of the Consortium Agreement.

470. Para. 8 (3) of the Consortium Agreement.

471. Para. 8 (4) of the Consortium Agreement.

472. Para. 9 (6) of the Consortium Agreement.

473. Ibid.

474. Para. 9 (1) of the Consortium Agreement.

475. Para. 9 (2) of the Consortium Agreement.

476. Para. 9 (3) of the Consortium Agreement.

477. Para. 9 (4) of the Consortium Agreement.

478. W.H. Wager, op. cit. supra, note 430, p. 313.

479. Ibid., quoted at p. 316.

480. Para. 10 (1) of the Consortium Agreement.

481. Ibid.

482. R.A. Nelson, op. cit. supra, note 97, p. 188.

483. Para. 10 (2) of the Consortium Agreement.

484. Para. 10 (3) of the Consortium Agreement.

485. Para. 2 (2) of the Consortium Agreement.

486. Para. 12 (1) of the Consortium Agreement.

487. Para. 4 (1) of the Consortium Agreement.

488. "The New SAS' United Nations of the Air'," Interavia, VI (July, 1951), p. 366.

489. H. Bahr, op. cit. supra, note 395, p. 211, note 17.

490. Ibid, p. 211, note 18.

491. Para. 4 (1) (a), (b), (c) and (c) of the Consortium Agreement.

492. Para. 5 of the Consortium Agreement.

493. Para. 11 (1) of the Consortium Agreement.

494. Para. 11 (3) of the Consortium Agreement.

495. Ibid.

496. Para. 11 (2) of the Consortium Agreement.

497. Para. 4 (1) of the Consortium Agreement.

498. Para. 4 (3) of the Consortium Agreement.

499. Abbas I.I. Imam, op. cit. supra, note 89, pp. 118, 148.

500. H. Bahr, op. cit. supra, note 395, p. 225.

501. Ibid. The Consortium would not be a Norwegian owned, since two of the partners, representing 5/7 of the total interests, were companies having respectively Danish and Swedish nationalities.

502. Para. 6 of the Consortium Agreement.

503. There is no provision of the Chicago Convention which clearly prohibits the registration of aircraft of transnational organizations on a national basis.

504. For example whether or not they allow registration of aircraft owned or partially owned by non-nationals.

505. H. Bahr, op. cit. supra, note 395, p. 226.

506 Ibid.

507. Provided of course that the requirements under which such certificates are issued are equal to or above the minimum standards established by ICAO.

508. H. Bahr, op. cit. supra, note 395, p. 227.

509. Ishaq R. Goreish, op. cit. supra, note 187, p. 43.

510. H. Bahr, op. cit. supra, note 395, p. 227.

511. Ibid., p. 228. According to Goreish, appreciation of this device may require a liberal interpretation of Article 30 (b) of the Convention, since this Article requires the concerned licence to be "issued" by the state of registry of the aircraft. It could be apprehended that recognition by such state of a licence issued by another state would suffice for the purposes of the intention of the drafters. See Ishaq R. Goreish, op. cit. supra, note 187, p. 44.

512. H. Bahr, op. cit. supra, note 395, p. 230.

513. According to ICAO Circular 30-AT/5, in one instance, however, it was necessary to create a corporate body subsidiary to SAS to hold the rights on its behalf. See ICAO Circular, op. cit. supra, note 400, p. 9, (para.14).

514. Abbas I.I. Imam, op. cit. supra, note 89, p. 178.

515. ICAO Circular, op. cit. supra, note 400, p. 8, (para. 14).

516. Ibid., pp. 8-9, (para. 14).

517. See paras. 15-17 of the Consortium Agreement.

518. Para. 15 (1) (a) of the Agreement.

519. Para. 15 (1) (b) of the Agreement.

520. Para. 15 (2) of the Agreement.

521. Para. 15 (7) of the Consortium Agreement.

522. Para. 17 (1) of the Consortium Agreement.

523. Para. 17 (2) of the Consortium Agreement.

524. Para. 17 (3) of the Consortium Agreement.

525. As specified in Para. 15 of the Consortium Agreement.

536. Para. 16 (1) of the Consortium Agreement.

527. Para. 18 of the Consortium Agreement.

528. Para. 1 of the preamble of ATLAS Group Protocol between Air France, Alitalia, Deutsche Lufthansa and Sabena dated 14th Marth 1969 (hereinafter called ATLAS Protocol).

529. Described in subsequent pages of this chapter.

530. "In readiness for the Boeing 747," Interavia, XXIII (December, 1968), 1501.

531. Ibid., pp. 1500-1501.

532. Ibid., p. 1501.

533. Para. 1 of the preamble of ATLAS Protocol. See also supra note 528.

534. Para. 3 of the preamble of ATLAS Protocol.

535. Para. 2 of the preamble of ATLAS Protocol.

536. Ibid.

537. See part I of the Protocol.

538. See part II of the Protocol.

539. Flight International, January 1, 1970, p. 8.

540. Article 2 (5) of the ATLAS Group Production Agreement for the overhaul and maintenance of B-747 aircraft (hereinafter called ATLAS Production Agreement).

541. Article 2 (1) of the ATLAS Production Agreement.

542. Article 2 (2) of the Atlas Production Agreement.

543. Article 1.1. of the Protocol's Part I.

544. Article 1.1.1. of Part I of the Atlas Protocol.

545. Article 1.1.2. of Part I of the Atlas Protocol.

546. Article 1.2. of Part I of the Protocol.

547. Article 1.3. of Part I of the Protocol.

548. Article 1.4. of Part I of the Protocol.

549. Article 1.5. of Part I of the Protocol.

550. Articles 1.6. and 1.6.1. of Part I of the Protocol.

551. Article 6.2. of Part I of the Protocol.

552. Article 1.7. of Part I of the Protocol.

553. Article 1.7.1. of Part I of the Protocol.

554. Article 1.8. of Part I of the Protocol.

555. Article 1.1.1. of Part II of the Protocol. Air France will build and tool a maximum of two production lines. The word "airframe" means the whole airplane less engines, less engine related components, less major components treated in common and less all the components treated on an individual basis by each party. See Articles 1.1. and 2.1. of Exhibit 1 of the ATLAS Production Agreement.

556. Article 1.1.2. of Part II of the Protocol. The overhaul lines shall be built or organized and tooled as necessary to handle the overhaul and repair production forecast in common for a 5-year period. The engine means a JT9D-3 or JT9D-7 engine, including engine accessories as described in Pratt and Whittney Aircraft Specification No. 1948 dated July 20, 1967 or No. 1994 dated August 22, 1967, respectively, as may be revised from time to time. See Articles 1.1. and 2.1. of Exhibit 2 of the ATLAS Production Agreement.

557. See Article 1.1.3. of Part II of the Protocol. See also Article 3 of the ATLAS Production Agreement.

558. Article 1.1.5. of Part II of the Protocol.

559. Article 1.2.1. of Part II of the Protocol.

560. Flight International, op. cit. supra, note 539, p. 8.

561. Article 2.1. of Part II of the Protocol.

562. Article 2.2.1. of Part II of the Protocol.

563. Article 2.2.2. of Part II of the Protocol.

564. Article 2.2.3. of Part II of the Protocol.

565. Article 2.2.4. of Part II of the Protocol.

566. Articles 2.3.1. and 2.3.2. of Part II of the Protocol.

567. Article 2.4. of the Protocol's Part II.

568. Part III of the Protocol. Alitalia, Lufthansa and Sabena have already ordered DC-10 tri-jets. The only other ATLAS partner,Air France,is also reported to be leaning towards DC-10. The ATLAS arrangement thus appears to be becoming a more cohesive entity and there is a distinct possibility of the DC-10 work being added to the ATLAS arrangements. See Flight International, August 13, 1970, p. 225.

569. Article 1 of the ATLAS Production Agreement.

570. Ibid.

571. Ibid.

572. Article 3 of the Production Agreement.

573. Ibid.

574. Ibid.

575. Ibid.

576. Ibid.

577. Ibid.

578. Ibid.

579. Article 4.1. of the ATLAS Production Agreement.

580. Ibid.

581. Ibid.

582. Ibid.

583. Article 4.2. of the ATLAS Agreement.

584. Article 4.3. of the ATLAS Agreement.

585. Article 4.4. of the ATLAS Agreement.

586. Article 4.5. of the ATLAS Agreement.

587. Article 4.6. of the ATLAS Agreement.

588. Article 4.7. of the ATLAS Agreement.

589. Article 4.8. of the ATLAS Agreement.

590. Article 5.1. of the ATLAS Agreement.

591. Article 5.2. of the ATLAS Agreement.

592. Article 5.3. of the ATLAS Agreement.

593. Article 5.4. of the ATLAS Agreement.

594. Article 5.5. of the ATLAS Agreement.

595. Article 5.6. of the ATLAS Agreement.

596. Article 5.7. of the ATLAS Agreement.

597. Article 6.1. of the ATLAS Agreement.

598. Ibid.

599. Article 6.3. of the ATLAS Agreement.

600. Article 6.2. of the ATLAS Agreement.

601. Article 10 of the Agreement.

602. Ibid.

603. Ibid.

604. Article 2.1. of the Exhibit No. 5 to the ATLAS Agreement.

605. Article 2.2. of the Exhibition No. 5 to the ATLAS Agreement.

606. Article 4.1. of the Exhibition No. 5 to the ATLAS Agreement.

607. Article 4.6. of the Exhibition No. 5 to the ATLAS Agreement.

608. Article 8 of the ATLAS Agreement.
See also Article 1.1.5. of Part II of the Protocol.

609. Article 9 of the Agreement.
See also Part III of the Protocol.

610. Article 11 of the ATLAS Agreement.

611. Article 12 of the Agreement.

612. Ibid.

613. Article 13 of the ATLAS Agreement.

614. Article 17 of the ATLAS Agreement.

615. Article 18 of the Agreement.

616. Ibid.

617. Article 16 of the ATLAS Agreement.

618. Article 20 of the ATLAS Agreement.

619. Ibid.

620. Ibid.

621. Article 21 of the ATLAS Agreement.

622. Article 7 of the ATLAS Agreement.

623. See for example Flight International, June 25, 1970, p. 1029.

624. SAS Annual Report 1967-68, p. 20.

625. Ibid.

626. Flight International, January 18, 1968, p. 83.

627. "KSSU's evaluation of the tri-jets," Interavia, XXIV (October, 1969), 1666.
See also Flight International, January 23, 1969, p. 124, and, Flight International, May 16, 1968, p. 740.

628. Flight International, March 12, 1970, p. 371.
The Agreement was signed in Paris.

629. Letter No. SPL/DJ. 818. MN/AT, dated 28th July, 1970, from Mr. M.J. Nederlof, Heaf Legal Affairs Bureau, KLM-Royal Dutch Airlines.

630. See the KSSU Frame Agreement and the Memo of Understanding.

631. Para. 2 of the Preamble of the KSSU Agreement.

632. Paras. 1 and 2 of the Preamble of the KSSU Agreement.

633. Article 1 (1) of the KSSU Frame Agreement.

634. Article 1 (2) of the KSSU Agreement.

635. Article 1 (3) of the KSSU Agreement.

636. Article 2 (1) of the KSSU Agreement.

637. Article 2 (2) of the KSSU Agreement.

638. Article 3 (1) of the KSSU Agreement.

639. DC-10 power-plants.

640. Boeing 747 power-plants.

641 Letter of Mr. M.J. Nederlof, op. cit. supra, note 629.

642. Article 3 of the KSSU Memo of Understanding.

643. Article 3 (2) of the KSSU Agreement.

644. Article 3 (3) of the KSSU Agreement.

645. Letter of Mr. M.J. Nederlof, op. cit. supra, note 629. See also Flight International, August 1, 1968, p. 162. Further, see Flight International, op. cit. supra, notes 627 and 628.

646. Letter of Mr. M.J. Nederlof, op. cit. supra, note 629.

647. Article 3 (4) (a) of the KSSU Frame Agreement.

648. Article 3 (4) (b) of the KSSU Agreement.

649 Article 3 (4) (c) of the KSSU Agreement.

650. Article 3 (5) of the KSSU Agreement.

651. Article 3 (6) of the KSSU Agreement.

652. Article 6 of the KSSU Frame Agreement.

653. Article 7 (1) of the KSSU Agreement.

654. Article 7 (2) of the KSSU Agreement.

655. See supra note 653.

656. Article 7 (3) of the KSSU Agreement.

657. Article 8 (1) of the KSSU Agreement.

658. Article 8 (2) of the KSSU Agreement.

659. Article 8 (3) of the KSSU Agreement.

660. Article 9 (1) and (2) of the KSSU Agreement.

661. Article 9 (3) of the KSSU Agreement.

662. Article 9 (4) of the KSSU Agreement.

663. Article 9 (5) of the KSSU Agreement

664. Article 9 (6) of the KSSU Agreement.

665. Article 9 (7) of the KSSU Agreement.

666. Article 9 (8) of the KSSU Agreement.

667. Article 9 (9) of the KSSU Agreement.

668. Article 5 of the KSSU Agreement.

669. Article 10 of the KSSU Agreement.

670. See last paragraph of the KSSU Memo of Understanding.

671. For a discussion on the PIA-Alia technical co-operation, see PIA's "Performance and Potential" in Chapter II of this study.

672. Topflight, August 15, 1970, p. 1. See also Flight International, August 13, 1970, p. 229, and Interavia, XXV (September, 1970), 1021.

673. Letter dated September 15, 1970 from Miss Zenobia Kharas, Law Officer, PIA, addressed to the writer.

674. Topflight, op. cit. supra, note 672, p. 1.

675. Apart from the decision to keep the Consortium Agreement confidential, another possibility is that certain matters in respect of the Consortium might still have to be negotiated and agreed upon, which could explain the lack of details about the Consortium.

676. Observations of Mr. Bahjat Talhouni, Chairman Alia, and also Chairman Alia-PIA Consortium, in his opening address at the first Board meeting of the Consortium, quoted in Topflight, op. cit. supra, note 672, p. 6.

677. Topflight, op. cit. supra, note 672, pp. 1, 6; Flight International, op. cit. supra, note 672, p. 229; and, Interavia, op. cit. supra, note 672, p. 1021.

678. Flight International, op. cit. supra, note 672, p. 229.

679. See supra note 672.

680. See Topflight, op. cit, supra, note 672, p. 6.

681. Ibid.

682. Stephen Wheatcroft, Air Transport Policy, (London: 1964), p. 108.

683. H. A. Wassenbergh, op. cit. supra, note 449, p. 168.

684. "Air Union or Internationalization of Losses," Interavia, XVII (July, 1962), 833.

685. H.A. Wassenbergh, op. cit. supra, note 449, p. 169.

686. For early writings on Air Union, see H. Mourer, "Pour un pool européen des Transports aériens," 14 RGA 309 (1951). For an answer to his comments, see A. Meyer, "Aspects d'une organisation de la Navigation aérienne en Europe - Union ou Coopération?", 15 RGA 107 (1952). For the original text of Meyer in German, see 2 WEITSCHRIFT fur LUFTRECHT 133 (1952). See also E. Bonnefous, "Le problème des transports aériens en Europe," 14 RGA 305 (1951), in chich a European pool on the SAS pattern was proposed. See also ICAO Docs. Circular 28/AT/4 (1952), Interim Report of the

Air Transport in Europe (1954). Doc. 7575-CATE 1, Doc. ECAC 1/WP, 1/7676 (1956); and "La Integration Europeayel Transporte Aereo," ed. INI (Madrid 1957).

687. For texts of the proposals, see 14 RGA, 359-372 (1951).

688. Named after Edouard Bonnefous, Chairman of the Special Committee on Transport of the Council of Europe. See Council of Europe Doc. AS (3) 11, May 1951.

689. H. A. Wassenbergh, op. cit. supra, note 449, p. 79.

690. Ibid., p. 80. For criticism of the Sforza Plan and other integration plans, see inter alia Prof. Goedhuis in U.N. Transport and Communications Review, Vol. V, No. 3, July-September 1952; pp. 9 and 10.

691. See Van de Kieft Report of the "Committee for Economic Questions," (Council of Europe Doc. AS/3/59 of 26th November, 1951). See also H. A. Wassenberg, op. cit. supra, note 449, p. 80; Michel Pourcelet, op. cit. supra, note 450, pp. 78-79; and E. A. G. Veroploeg, op. cit. supra, pp. 142-145.

692. Air France, Alitalia, Deutsche, Lufthansa, KLM, and Sabena.

693. H. A. Wassenbergh, op. cit. supra, note 449, p. 166.

694. "Air Union Talks Again," Interavia, XIX, (March, 1964), 311.

695. See supra note 693.

696. Stephen Wheatcroft, op. cit. supra, note 682, p. 109.

697. H. A. Wassenbergh, op. cit. supra, note 449, p. 167. See also, The Aeroplane and Astronautics, February 22, 1964, p. 190.

698. ITA Bulletin 389/15 of June 8, 1959, p. 561, and Airline Commercial Agreements, Pacts and Consortiums, November 1960, Aviation Studies International Limited, London, p. 12.

699. See supra note 697. See also The Aeroplane and Commercial Aviation News, August 2, 1962, p. 14.

700. H. A. Wassenbergh, op. cit., supra, note 449, p. 167. See also Bin Cheng, The Law of International Air Transport, (London: 1962), p. 276. Cabotage traffic was obviously to be excluded from the pool.

701. See supra note 696.

702. Ibid.

703. Ibid. See also "Air Union Talks Again," op. cit. supra, note 694, p. 311.

704. H. A. Wassenbergh, op. cit. supra, note 449, p. 167.

705. Ibid., pp. 167-168.

706. See supra note 696.

707. Ibid.

708. "Air Union Talks Again," op, cit, supra, note 694, p. 311.

709. "The State of Air Union," Interavia, XX (February, 1965), 210.

710. Wolfgang Stabenow, "The International Factors In Air Transport Under The Treaty Establishing The European Economic Community," 33 JALC 120 (1967).

711. See supra note 708.

712. See supra note 710.

713. Abbas I. I. Imam, op. cit. supra, note 89, p. 125.

714. "Air Union Talks Again," op. cit. supra, note 694, p. 311.

715. Flight International, January 24, 1963, p. 133.

716. The Aeroplane and Commercial Aviation News, November 5, 1964, p. 11.

717. See supra note 709. See also Interavia, XIX, (December, 1964), 1786.

718. Ibid. See also Wolfgang Stabenow, op. cit. supra, note 710, page 120; and Carl H. Hulda, "International Aspects of Aviation," 33 JALC 68 (1967).

719. The Aeroplane and Commercial Aviation News, March 25, 1965, p. 11.

720. See supra note 714.

721. Ibid. See also The Aeroplane and Commercial Aviation News, August 2, 1962, p. 14.

722. The Aeroplane and Commercial Aviation News, op. cit. supra, note 721, p. 14.

723. Flight International, January 24, 1963, p. 134.

724. Ibid., Febriary 13, 1964, p. 238.

725. Ibid. See also The Aeroplane and Commercial News, January 17, 1963, p. 11; Flight International, February 13, 1964, p. 238, and, Aviation Week and Space Technology, July 20, 1964, p. 29.

726. "1965: A Great Year for Air Transport," ITA Bulletin, No. 12/21, March 1966, p. 329.

727. The Aeroplane and Commercial Aviation News, July 23, 1964, p. 14.

728. "Air Union Talks Again," op. cit. supra, note 694, p. 311.

729. See supra, note 727. See also Flight International, July 9, 1964, p. 311.

730. The Aeroplane and Commercial Aviation News, April 1, 1965, p. 7.

731. See supra, note 728. See also H. A. Wassenbergh, op. cit. supra, note 449, p. 168, and The Aeroplane and Commercial Aviation News, August 2, 1962, p. 14.

732. The Aeroplane and Commercial Aviation News, April 1, 1965, p. 7.

733. Ibid.

734. Aviation Week and Space Technology, December 14, 1964, p. 33.

735. "Starting a New Chapter," Interavia, XXIV (December, 1969), 1891.

736. For a detailed discussion on the proposed Commonwealth Caribbean Airline, see Ian De V.Archer, Multinational Co-operation In Air Transport In the Commonwealth Caribbean, Institute Thesis, McGill University (March, 1968).

737. See Trinidad Guardian, September 26, 1967, p. 13.

738. Sunday Guardian, October 29, 1967, p. 1. See also Barbados Daily News, October 28, 1967, p. 1; and Jamaica Sunday Gleaner, October 29, 1967, p. 1.

739. See supra note 736.

740. Ian De V. Archer, op. cit. supra, note 736, p. 41.

741. De Castro, Problems of the Caribbean Air Transport Industry 19 (1966). (Institute of Social And Economic Research, University of the West Indies).

742. Ian De V. Archer, op. cit. supra, note 736, p. 45.

743. Ibid., p. 46. No international organisation can be considered as having international legal personality per se. One evidentiary fact of international legal personality is the wording of the constituent instrument of the organisation. For a discussion of the criteria of international personality, see Hahn, "EURATOM: The Conception of an International Personality," 71 Harvard Law Review 1045-47 (1958).

744. For an interesting analysis of the legal capacities of international organisations, in the domestic legal systems of constituent members, see C.W. Jenks, "The Legal Personality of International Organisations," 22 Brit. Yb. Intl. L. 267-75 (1945); and W. G. Friedmann, "International Public Corporations" 6 Modern L. Rev. 203-5 (1942-43).

745. Ian De V. Archer, op. cit. supra, note 736, p. 47.

746. Ibid., p. 48.

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748. W. G. Friedmann and G. Kalmanoff, Joint International Business Ventures, (1961), pp. 155-6.

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750. Ian De V. Archer, op. cit. supra, note 736, p. 51.

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755. Ibid., pp. 54-55.

756. Ibid., pp. 56-57.

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763. See Council Resolution adopted on the 14th December, 1967. ICAO Doc. 8722, C/976 (1968).

764. Ian De V. Archer, op. cit. supra, note 736, p. 64.

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766. McDougal, Lasswell and Vlasic, Law and Public Order in Space (1963), pp. 906-10.

767. Ian De V. Archer, op. cit., supra, note 736, p. 68.

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770. J. Enrique Gaviria, The Flota Aerea Latino Americana (FALA) and Its Place in the Latin American Common Market, McGill-Institute Term Paper, 1965, p. 30, note 69.

771. Ibid., p. 32.

772. Ibid., pp. 29-30.

773. Ibid., p. 30.

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776. Ibid., p. 31.

777. Ibid., p. 30.

778. Ibid.

779. Ibid.

780. Ibid., p. 32.

781. Elias Atiyeh, Air Transport In The Arab World And The Economic Prospects Of Regional Integration, (Beirut: Bardawil and Co.),p. 14.

782. Ibid.

783. International and Regional Organizations, (Civil Aviation Training Institute, Embaba Aerodrome), p. 84. See also Khairy H. Y. Mostafa, Transnational Commercial Organizations In Public International Air Law, McGill University - Institute of Air and Space Law Thesis (August, 1969), p. 60.

784. The Report of the Cairo Conference of March 5-17, 1959, p. 1.

785. See supra note 783.

786. The Cairo Conference was convened between March 5 and 17, 1959, and was attended by delegates from Saudi Arabia, the United Arab Republic and Lebanon.

787. Report of the Cairo Conference, 1959, p. 5, para. 1, sub-paras. 1-3.

788. See p. 3, para. 2 of The Report of the Beirut Conference. The Conference was attended by the delegations of Iraq, Saudi Arabia, the United Arab Republic, Lebanon and an observer from Morocco.

789. Articles 17 and 18 of the Beirut draft agreement for the establishment of an International Arab carrier.

790. Ibid., Article 16.

791. Article 1 of the Beirut draft agreement for the establishment of a consortium of Arab International air carriers.

792. International and Regional Organizations, op. cit. supra, note 783, p. 84.
See also Khairy H. Y. Mostafa, op. cit. supra, note 783, p. 61.

793. Abbas I.I. Imam, op. cit. supra, note 89, p. 131.

794. Ibid.

795. Ibid.

796. Article 2 of An Agreement for the Establishment of the International Arab Airways Corporation signed at Baghdad on April 17, 1961.

797. Article 4 of the Baghdad Agreement.

798. Article 39 of the Baghdad Agreement.

799. Article 38 of the Baghdad Agreement.

800. Article 49 of the Baghdad Agreement.

801. Article 15 of the Baghdad Agreement.

802. Article 16 of the Baghdad Agreement.

803. Article 17 of the Baghdad Agreement.

804. Article 18 of the Baghdad Agreement.

805. Article 21 of the Baghdad Agreement.

806. Article 22 of the Baghdad Agreement.

807. Article 23 of the Baghdad Agreement.

808. Article 24 of the Baghdad Agreement.

809. Article 25 of the Baghdad Agreement.

810. Article 19 of the Baghdad Agreement.

811. Article 20 (1) of the Baghdad Agreement.

812. Article 20 (2) of the Baghdad Agreement.

813. Article 20 (3) of the Baghdad Agreement.

814. Article 20 (4) of the Baghdad Agreement.

815. Article 20 (6) of the Baghdad Agreement.

816. Article 20 (9) of the Baghdad Agreement.

817. Article 20 (10) of the Baghdad Agreement.

818. Article 20 (11) of the Baghdad Agreement.

819. Article 20 (13) of the Baghdad Agreement.

820. Article 20 of the Baghdad Agreement.

821. Article 6 of the Baghdad Agreement.

822. Article 7 of the Baghdad Agreement.

823. Article 12 of the Baghdad Agreement.

824. Article 13 of the Baghdad Agreement.

825. Article 9 (1) of the Baghdad Agreement.

826. Article 8 of the Baghdad Agreement.

827. Article 10 of the Baghdad Agreement.

828. Article 35 of the Baghdad Agreement.

829. Article 36 of the Baghdad Agreement.

830. Article 37 of the Baghdad Agreement.

831. Ibid.

832. Article 28 of the Baghdad Agreement.

833. Article 29 (1) of the Baghdad Agreement.

834. Article 30 of the Baghdad Agreement.

835. Article 32 of the Baghdad Agreement.

836. Article 44 of the Baghdad Agreement.

837. Article 45 of the Baghdad Agreement.

838. Article 46 of the Baghdad Agreement.

839. Laurence Doty, "Conflicts Hamper Arab Bloc Formation," Aviation Week and Space Technology, May 2, 1966, p. 35.

840. International and Regional Organizations, op. cit. supra, note. 783, p. 84.

841. The Maghreb Digest (March, 1966), Vol. IV-3, pp. 63-64.

842. The Maghreb Digest (Published by the School of International Relations, University of Southern California, December, 1965), p. 36.

843. A reservation to this effect was included in Resolution No. 4 of the Conference.

844. Abes Aberkane, Les Fondements de la Coopération Aéronautique Maghrebine, McGill University - Institute of Air and Space Law Term Paper (1968-1969), p. 19.

845. Ibid., pp. 21-22.

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847. Interavia, XXII (November, 1967), 1703.

CHAPTER V

CERTAIN LEGAL PROBLEMS OF MULTI-NATIONAL AIR TRANSPORT COLLABORATION

The preceding chapter surveyed the past, present and the proposed multi-national collaboration in air transport and, as far as possible, analysed the legal structures and organizational arrangements of various joint ventures in international airline industry. During that survey, it became apparent that any meaningful multi-national collaboration in air transport depends on the successful solution of a number of economic, political and legal problems. Of such legal problems, the more important ones are those relating to international legal personality, nationality and registration of aircraft, and bilateral air services agreements. In the airline industry, these problems have not remained unnoticed; the various operating multi-national airlines have attempted to solve them in different ways. In addition, the legal community has constantly striven to achieve solutions which may not only

satisfactorily resolve these complex issues, but may also be universally acceptable. In this process, certain concepts of international law, and especially those relating to international air law, have undergone certain changes. Of such concepts, the recently emerging concept of non-national registration is particularly significant. Accordingly, in this chapter, it is intended to discuss these legal problems and the various approaches in solving them.

1. International Legal Personality.

The international legal personality is distinct from the municipal legal personality because they owe their origin to different legal systems; the international legal personality is based on public international law which, in the broadest sense, is defined as the group of rules and principles governing interstate relations including international organization between states which comes by its nature under interstate relations. The emergence of the political organizations, the specialized agencies, and, more recently, the supra-national commercial organizations and the multiplicity of their legal transactions, have

radically changed the fundamental principle that the states alone are the subjects of international law.

Since public international law was based on the common consent, the common desire and volition of the states members of the international society, whether express or tacit, states were considered as the principal subjects of international law.[1] However, the needs of international co-operation and the requirements and exigencies of international life have necessitated the creation of international persons other than the states. It is, therefore, universally recognised that the states, as principal subjects of international law, are capable of establishing between them upon their volition and common consent international organizations, whether global or regional endowed with international legal personality. Schwarzemberger observes: "the existing subjects of international law are free to extend the application of international law to any entity they see fit to admit to the realm of the international legal system."[2] However, Starke distinguished between states and international organizations as subject to international law. He states:

> as international institutions are defined and limited by their constitutional powers, they differ basically from states as subjects of international law. In their case, problems such as those raised by the sovereignty or jurisdiction of states cannot arise or, at least, cannot arise in the same way. Almost every activity is prima facie within the competence of a state under international law, whereas practically the opposite principle applies to an international organ, namely that any function, not within the express terms of its constitution, is prima facie outside its powers.[3]

The determination of the international personality of supra-national commercial organizations is of significant importance. This is partly because such organizations perform functions similar to those done by individuals, private and international private enterprises, and partly because such determination specifies the legal system applicable to them and to what extent it is to be applied.

Under public international law, three criteria determine whether a certain arrangement between states amounts to an international entity endowed with international legal personality. The three criteria are:

a) a permanent co-operative arrangement between states, with lawful objectives, equipped with organs.

> This factor distinguishes an organization from a conference which convenes for some special purpose and then dissolves after accomplishing it;
>
> b) a distinction, in terms of legal powers and purposes, between the organization and its member states;
>
> c) the performance of legal powers on the international sphere as well as the internal sphere of one or more member states.[4]

Accordingly, when states agree between themselves to establish an international organization and couple this with an instrument focusing their intention to establish such a body with the abovementioned characteristics, a newly international body emerges, which has an international personality distinct from the legal personality of each of the constituent states. Such entity or organization enjoys its personality towards the member states and any other state or entity that admits to it the legal personality expressly or tacitly.[5] Mostafa, however, cautions that these criteria are much too delicate and not easy to apply as they relate to issues

of law and fact in the meantime. The really difficult question pertains to the determination of the exact legal capacities of a given organization as a legal person and its relations towards the members, third states and other organizations.[6] It may, therefore, be stated that a specific provision in the constitutive instrument,providing for international legal personality is, per se, a conclusive evidence of the legal status of the organisation. In the event that such a specific provision is lacking in the constitutive instrument,a resort may be made to the criteria mentioned above to assess the status of the organization.[7]

As mentioned before, the primary source of the international personality of the international organizations is the consent of the contracting parties concerned, whether express or implied. This was reaffirmed by Fritzmaurice in expressing the opinion of the United Kingdom in the Reparation Case by observing that "the constituting instrument setting up an organization and containing its constitution, must be the primary source of any conclusions, as to the status, capacities and powers of the organization concerned."[8]

Examples of the grant of legal personality in the constitutive instrument may be found in the Agreements establishing international corporate bodies. For instance, the Articles of Agreement of the International Monetary Fund and of the International Bank for Reconstruction and Development provide that the Fund and the Bank (respectively):

> shall possess full juridical personality, and, in particular, the capacity:
>
> (a) to contract;
>
> (b) to acquire and dispose of immovable and moveable property ;
>
> (c) to institute legal proceedings.[9]

It may be stressed that such grant of legal personality is based on public international law, and it cannot, therefore, be assumed that it emanates from the laws of the member states constituting the corporate body. C. W. Jenks remarks:

> It is as inherently fantastic as it is destructive of any international legal order to regard the existence and the extent of legal personality provided for in the constitutive instrument of an international organization as being derived from, dependent upon, and limited by, the

> constitution and laws of its individual member states.[10]

However, Jenks believes in a necessary link between international law and municipal law, and in this respect, states:

> The legal capacity of public international organisations, like that of individual foreign states, derives from public international law; municipal legislation may be necessary to secure effective recognition of this capacity for municipal purposes, but the function of such legislation is declaratory and not constitutive.[11]

The creation of an international airline as distinct from an airline established under municipal law poses certain legal problems, including the problem of international legal personality. It is obvious that such a joint venture must be constituted by international legal persons to endow it with international legal personality. Imam believes that if, however, its participants include legal entities other than the subjects of international law, it must be endowed by the states concerned with the necessary "functional" legal capacity on the international plane.[12] In air transport joint enterprises, such grant of international legal personality

may be specifically stated in the constitutive instrument establishing the enterprise, as in the case of Air Afrique.[13] However, a declaration of international legal personality in the constitutive instrument is not the sole evidence as to whether the joint air transport venture possesses such international legal personality. This may be inferred from provisions relating to its functions, rights and obligations, as in the case of East African Airways Corporation, an institution of the East African Community,[14] and "a body corporate with perpetual succession and a common seal" and having "power to sue and be sued in its corporate name and to acquire, hold and dispose of moveable and immovable property."[15]

2. Nationality and Registration of Aircraft Operated by Multi-National Airlines.

The desire of many new states to have international air services of their own in an era of high-cost aircraft is imposing great pressure on traditional concepts of nationality and registration of aircraft. It has long been held that civil aircraft must have a nationality,[16] that they must be registered in a state[17] and that they must

have the nationality of the state of registry.[18] As the new states contemplate the international air services in question provided through international operating agencies formed by them and owning aircraft registered on other than a national basis,[19] it is no wonder that the problem of nationality and registration has been the object of serious study in the International Civil Aviation Organization.[20] In the beginning, there was considerable reluctance in ICAO to acknowledge that non-national registration of aircraft is possible. However, this reluctance has now been overcome by the ICAO Council's resolution of December 14, 1967, which indicates that aircraft operated by international operating agencies could be registered, non-nationally, in two ways: joint registration and international registration.[21] This somewhat daring consensus runs counter to the long-held concept that if civil aircraft have to fly internationally, they must have a nationality.

The concept of nationality and registration of aircraft has evolved with the developments in air transport. In 1901, Fauchille was the first to suggest that aircraft, like vessels, should have nationality.[22] In maritime law,

this concept of nationality was extended to vessels to enable the state of the flag to control a vessel's activities and to protect it.[23] According to Professor Cooper, it was thought that, as in maritime law, the nationality of an aircraft should be the basis for determining the state responsible for its conduct and protection and also the basis for determining which aircraft can enter the aerospace above any given state.[24] The International Aeronautical Congress held in 1909 in Nancy, concluded by noting that registration of aircraft would presumably be the only way to assure liberal regulation of air navigation.[25] In 1910, the draft Paris Convention accepted the principle of nationality of aircraft. The majority of states present at the Conference felt that aircraft should be under the control of a particular state responsible for it to other states and that aircraft itself should be entitled to the protection of such state.[26] This principle was first formally incorporated into public international air law by its inclusion in the Paris Convention of 1919, Article 6 of which laid down that "aircraft possess the nationality of the state in the register of which they are entered." By the time World War II broke out, "the nationality of aircraft was accepted

into customary international law as fully as the nationality of merchant vessels."[27] Accordingly, the Chicago Convention, 1944, enunciated the principle of nationality in its Article 17:

> "Aircraft have the nationality of the State in which they are registered."

Article 20 of the Chicago Convention contemplates that every aircraft[28] engaged in international air navigation, shall have nationality and be registered. According to Bin Cheng, this principle is important for its recognition that aircraft possess legal personality under municipal law and are endowed with nationalities of their own. It opens the way to other rights and liabilities being grafted directly onto aircraft, irrespective of their owners or operators.[29] Thus, under the Chicago Convention, it is only the aircraft having the nationality of a contracting state that are entitled to the rights and privileges under the Convention. The Convention attaches these privileges and rights to aircraft having such a nationality, the criterion being, according to Article 17, the place of registration of aircraft.

It may be stressed that most of the rights exchanged under the Chicago Convention, 1944, including the right of non-scheduled flights under its Article 5, are in regard to aircraft registered in the contracting states, without reference to the nationalities of their owners or operators. Other privileges exchanged under the Convention again inure to aircraft only on account of their being registered in one of the contracting states. These include, for instance, non-discrimination in the operation prohibited areas (Article 9), the use of airports in other contracting states (Article 15), aircraft being searched and documents inspected "without unreasonable delay" (Article 16), facilitation of international air travel and transport (Article 22), certain exemptions from customs duties (Article 24) and from patent claims or seizures (Article 27), facilities for the state of registration to assist at accident inquiries held in another contracting state (Article 26), mutual recognition of certificates and licences (Article 33, 39-42).[30]

In addition, a number of other provisions in the Convention are, so to speak, moored to the nationality of the aircraft. Thus, Article 12 imposes a duty on all

contracting states to insure "that every aircraft carrying its nationality mark, wherever such aircraft may be shall comply with the rules and regulations relating to the flight and manoeuvre of aircraft "in force at any given place, including, over the high seas, rules of the air established by the ICAO, and "each contracting State undertakes to insure the prosecution of all persons violating the regulations applicable." Moreover, certificates of airworthiness (Article 31) and licences for radio transmitting apparatus (Article 30 (a)), and of the operating crew (Article 30 (b) and 32) are to be those issued or rendered valid by the state in which the aircraft is registered. (Cf. also Articles 39-42).[31]

As regards aircraft registered in the contracting states to the Chicago Convention, 1944, in general, the Convention lays down the following two rules:

> Article 18. An aircraft cannot be validly registered in more than one State, but its registration may be changed from one State to another.
>
> Article 19. The registration or transfer of registration of aircraft in any contracting State shall be made in accordance with its laws and regulations.

On the other hand, mention should also be made of Chapter XVI of the Convention (Articles 77 - 79), which expressly permits and even encourages joint operating organizations and pooled air services:

> Article 77. Joint Operating Organisations Permitted.
> Nothing in this Convention shall prevent two or more contracting States from constituting joint air transport operating organisations or international operating agencies and from pooling their air services on any routes or in any regions, but such organisations or agencies and such pooled services shall be subject to all the provisions of this Convention, including those relating to the registration of agreements with the Council. The Council shall determine in what manner the provisions of this Convention relating to nationality of aircraft shall apply to aircraft operating by international operating agencies.
>
> Article 78. Function of Council.
> The Council may suggest to contracting States concerned that they may form joint organisations to operate air services on any routes or in any regions.
>
> Article 79. Participating in Operating Organizations.
> A State may participate in joint operating organisations or in pooling arrangements, either through its government or through an airline company or companies designated by its government. The companies may, at the sole discretion of the State concerned, be State-owned or partly State-owned or privately owned.

Pooling arrangements have become commonplace. There have been also several instances of joint air transport operating organizations. In Europe, the Scandinavian Airlines System has operated for several years and there are joint operating organizations in Africa. According to Dean Richardson, "these forms of collaboration between contracting States comfortably fit within the framework of the Chicago Convention as long as each aircraft under the mutual arrangement is on the register of one or other of the participating contracting States."[32]

However, it appears that many states wish, for various reasons, to depart from a system of national registration in favour of international registration. Hence, the resolution of the ICAO Council contemplating that civil aircraft operated by international operating agencies may be registered on other than a national basis and also that, if so registered, they would not have a personality.

The first link in the chain of events of which the ICAO Council resolution of December 14, 1967, is the last link is the Conference on International Civil Aviation

which met in Chicago from November 1, to December 7, 1944.[33] That Conference drew up the Convention on International Civil Aviation, the constituent instrument of ICAO. The subject of internationalization of air services was much discussed at the Conference, where a New Zealand-Australia proposal for international ownership and operation of civil air services on world trunk routes was rejected.[34] Nevertheless, the Conference kept the subject alive by including in the Convention Chapter XVI (Articles 77 - 79) containing provisions concerning joint operating organizations and pooled services.

It will be seen below that the main discussions in ICAO have been concerned with the interpretation of the second sentence of Article 77 which declares:

> . . . The Council shall determine in what manner the provisions of this Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies.

Deliberations on the international ownership and operation of trunk air services gave rise to resolutions of the First Session of the ICAO Assembly in 1947,[35] and at the Second Session in 1948.[36] At the Second Session,

the Assembly decided:

> That the Council, in accordance with its normal procedures, promptly formulate and circulate the Contracting States its views on the legal, economic and administrative problems involved in determining the manner in which the provisions of the Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies.[37]

As there appeared to be no international operating agencies which at that time required the determination of the Council under Article 77, the study was carried on sporadically in the Air Transport Committee to which it had been referred by the Council. Thus, the Council considered the report of the Committee only in 1956 and took no action other than to refer the study to the Legal Committee for certain advice.[38] Again, since there appeared to be no urgent need for a study in the Legal Committee, the subject was placed in the non-current part of the work programme of the Committee and no action was taken on it.[39]

In December 1959, the Council received the first request that it make a determination on a specific project. The League of Arab States requested that the Council

determine the manner in which the provisions of the Convention relating to nationality of aircraft should apply to aircraft to be operated by a Pan-Arab airline which it was proposed to establish under the auspices of the League.[40] The Council appointed a Panel of Experts to make a general study of the problems posed by Article 77 and not merely to consider the specific request received from the Arab League. The Panel in its Report[41] submitted in June 1960 that the expression "joint air transport organizations" in Article 77 referred to organizations composed of contracting States to the Chicago Convention, 1944, only, and was not applicable to those which included non-contracting States. Since the proposed Pan-Arab Airline included states which were not parties to the Chicago Convention, 1944, the Panel suggested, therefore, that there was no cause for the ICAO Council to make a determination under Article 77 of the Convention, as requested by the Arab League. For the rest, it observed that the general problem had already been on the agenda of the Legal Committee since 1956. Moreover, while its members were not unanimous, it seems that there was broad agreement that, unless an aircraft were registered in a sovereign and independent state, it

would not have a nationality and would not be governed by the domestic law of any country. In the opinion of the majority of the Panel, the ICAO Council could not, under Article 77 of the Chicago Convention, 1944, substitute the obligations of an international operating agency or an international registering authority for those of a sovereign contracting state.[42] Thus, the general problem raised by Article 77 was left by the Panel largely unresolved. Thereafter, the Council again referred to the Legal Committee the question of "Problems of nationality and registration of aircraft operated by international agencies."

In 1962, the Legal Commission of the Fourteenth Session of the Assembly recommended that the subject be placed in the active part of the work programme of the Legal Committee.[43] Meanwhile, in 1963, the Tokyo Conference on Air Law included in the Convention on Offences and Certain Other Acts Committed on Board Aircraft a provision concerning aircraft not registered in any one State and operated by joint operating organizations or international operating agencies. This was an acknowledgement, at least for the purpose of that Convention, that there could be civil aircraft registered on other than a national basis.[44] A similar provision was included

in a draft convention on aerial collisions drawn up by the Legal Committee in 1964.[45]

Late in 1964, the Council received requests from the Union africaine et malgache de coopération économique and the Government of the United Arab Republic to resolve the problems relating to nationality and registration of aircraft operated by international operating agencies.[46] Acting on the request of the Council, the Chairman of the Legal Committee established a subcommittee on these problems. The subcommittee held two sessions, one in July 1965[47] and the other in January 1967.[48] At the outset, the subcommittee decided that its task was to give advice to the Council, through the Legal Committee, as to the manner in which, in pursuance of the last sentence of Article 77 of the Chicago Convention, 1944, the provisions of that Convention relating to nationality of aircraft should apply to aircraft operated by international operating agencies.[49]

The second sentence of Article 77 of the Convention empowers the Council to "determine in what manner the provisions of this Convention relating to nationality of aircraft shall apply to aircraft operated by international

operating agencies." The interpretation and application of these words raised a number of problems.

According to a view of the ICAO Secretariat in 1960, while the first sentence of Article 77 includes three expressions: "joint air transport operating organizations", "international operating agencies", and "pooled services", the second sentence of that Article requires action by the Council only in case of "international operating agencies". Obviously, "pooled services" are not contemplated in that sentence, but it is possible that the other expressions are used interchangeably. The agency would have an international character and would not be formed under the national law of any particular state: otherwise, it would be indistinguishable from any airline company established under such law, and its aircraft could, and normally would, be registered thereunder.[50]

The implications of the words "aircraft operated by international operating agencies" may now be examined. It was realised that no problem would arise in the case of nationally registered aircraft operated by such an agency since the provisions of the Convention relating to nation-

ality would apply to such aircraft.[51] The privileges, obligations and functions of the state of registry of the aircraft would fall upon the state or states in which they were registered.[52] If the aircraft were, on the other hand, registered on other than a national basis, problems could arise under the Convention and outside the Convention.[53] Either the aircraft would have the nationality of each of the constituent states of the international operating agency or no nationality at all. In any event, Article 18 of the Chicago Convention would prevent it from having the nationality of more than one state. It was, therefore, acknowledged that the question of some form of non-national registration would arise.[54]

The 1960 Panel concluded that:

(i) an international operating agency must be composed of states parties to the Chicago Convention;

(ii) the agency must have an international character and would not be constituted under the national law of any particular state; and

(iii) that it need not - contrary to one suggestion - be constituted only by contiguous states for operating air services between their territories.[55]

In its reply to the Arab League, the Council confirmed point (i) and did not make specific mention of points (ii) and (iii). In regard to point (i), the Council stated that an operating agency formed partly by contracting states and partly by non-contracting states would be a case outside the scope of Article 77. In this view, the Council could not make a determination under Article 77 concerning the aircraft of an agency of mixed composition.[56]

The subcommittee, during its first session in 1965, took as a working hypothesis the constitution of an international operating agency by states parties to the Chicago Convention and left open for later consideration the question of a mixed agency composed of contracting and non-contracting states.[57] In 1967, at its second session, the subcommittee concluded that a contracting state which was not a member of the international operating agency

could refuse a non-contracting state which was a member the benefits or privileges which the Chicago Convention confers only on aircraft of contracting states. During the debate in the second session of the subcommittee, it was noted that, while Article 79 of the Convention refers to "A State", Article 77 itself refers only to "contracting States" in relation to the constitution of an international operating agency. It was also said that admission of a non-contracting state to the benefit of a determination under Article 77 would be in derogation of the principle that a state not a party to a treaty could have no claim to benefit from the provisions thereof. It was not enough that the contracting states belonging to the agency would be jointly and severally responsible for the fulfilment of those obligations which, under the Chicago Convention, attached to a state of registry. Finally, in order to benefit from the Chicago Convention, a state had to accept all the obligations specified therein and the accepted method of so doing would be to deposit an instrument of adherence.[58]

Divergent interpretations were offered in respect of the Council's determination as to the manner in which

the "provisions of the Convention relating to nationality of aircraft shall apply to aircraft of international operating agencies." It may be recalled here that many provisions of the Convention confer rights and privileges on aircraft having the nationality of a contracting state; others impose obligations and functions on the state of nationality of the aircraft with respect to that aircraft.[59]

The narrow interpretation of the words "provisions of the Convention relating to nationality of aircraft" is that the second sentence of Article 77 refers only to Chapter III of the Convention which is entitled "Nationality of Aircraft". The effect of the narrow interpretation would be that, in reaching its determination, the Council would be able to conclude that, without amendment of the Convention, normal national registration alone is permissible for the aircraft of international operating agencies.[60]

According to the extensive interpretation, it would be assumed that the Convention actually gives power to the Council to determine that the relevant provisions of the Convention apply to the aircraft of international

operating agencies if such aircraft are registered on a non-national basis, and therefore have some status other than simple national status.[61]

In the opinion of the 1960 Panel, the words under examinatinn should be interpreted as referring to all articles of the Convention which either refer expressly to "nationality of aircraft" or imply it by the use of such expressions as "aircraft of a contracting State", or "the State in which an aircraft is registered".[62] This opinion was confirmed by the subcommittee in its 1965 report.[63]

The report of the Air Transport Committee submitted to the Council in 1956 recorded a cautious view expressed by the ICAO Legal Bureau that there is not sufficient justification to consider that a determination by the Council under the second sentence of Article 77 is legally binding upon the contracting states to the same extent as the provisions of the Convention itself.[64] However, by 1960, the Legal Bureau had reversed its view on inter alia the following grounds:

(i) the words "the Council shall determine" in the second sentence of Article 77 have the grammatical

meaning of "the Council shall decide"; and if the Council's function under Article 77 were only to recommend, the text of the Article would have so provided;

(ii) if the word "determine" were construed as "recommend", then each contracting state would determine the very question which the Convention says shall be determined by the Council;

(iii) the determination under Article 77 is to be binding upon all contracting states. The authors of the Convention could have chosen to achieve this result by the procedure of amending the Convention under Article 94, but, instead, chose the special procedure under Article 77. Had they chosen the first procedure, the second procedure would have been unnecessary;

(iv) just as the Council has, under Article 12 of the Convention, the power to make rules binding on states in respect of the rules of air over the high seas, the second

> sentence of Article 77 provides that the Council could act so as to bind states in regard to the application of the relevant provisions of the Convention to aircraft operated by international operating agencies.[65]

Following these reasons, the 1960 Panel construed the word "determine" as denoting nothing else but "decide."[66] The subcommittee, at its first session in 1965, unanimously reiterated the view that the Council's determination would be binding if made within the scope of authority given to it by Article 77.[67] The subcommittee also decided, by a majority vote,[68] (this vote being transformed into a consensus in 1967),[69] that registration on other than a national basis was permissible under the Convention.

The first shift in the thinking concerning the legality and feasibility of registration of civil aircraft on other than a natinnal basis took place at the Tokyo Conference on Air Law in 1963, when the Convention on Offences and Certain Other Act Committed on Board Aircraft adopted at the Convention provided, for the purposes of that Convention, for a certain type of recognition of such registration.[70]

A further shift took place in 1965, this time in relation to Article 77 of the Chicago Convention, when the majority of the subcommittee considered that, without prior amendment, the provisions of the Convention are not an obstacle to the principle of "joint international registration" and that Article 77 gives the Council the duty and thus the power to interpret the provisions of the Convention, so as to permit such registration to be carried out. The main argument advanced for this view was that otherwise the second sentence of Article 77 would have no meaning. The opposing view maintained that since the Convention was based on the principle of national registration, it would be necessary, in order to permit joint international registration, to amend some of its articles.[71]

In the view of the majority, in 1965, it was important to promote international co-operation in air transport as envisaged in Articles 77, 78 and 79 of the Convention. A practical means of attaining the objectives of this international co-operation would be the joint registration or international registration of the aircraft of an international operating agency.[72]

An international operating agency constituted under a treaty, and not under a national law, its properties, including its aircraft, would have an international character as distinct from a national character. National registration of these aircraft would be inconsistent with their international character. The meaning of the second sentence of Article 77 is that aircraft operated by international operating agencies would not attract literally, that is,word for word, the application of "the provisions of this Convention relating to nationality of aircraft." Therefore, the Convention provides for a determination by the Council of the manner in which these provisions will apply to the aircraft of an international operating agency. In view of the foregoing, it would not only be consistent with, but would be within the scope of, the second sentence of Article 77 that the aircraft of an international operating agency could be other than nationally registered.[73]

During its first session in 1965, the subcommittee examined in detail the provisions of the Convention which expressly or by implication refer to the nationality of aircraft. This examination revealed, inter alia, that

the Convention did not require that aircraft must have the nationality of the State in which they are registered; that not being registered in a state, they would not have the nationality of a state. Registration in more than one state at a time was barred by Article 18, but that article did not prohibit joint registration, that is, one single registration by two or more states. Nor in the case of Articles, 7, 9, 12, 20, 21, 25, 26, 27, 30 to 33, which referred variously to "contracting States", "state of registry" and "nationality", would joint or international registration involve violation of the Convention. Consequently, no question of amending the Convention would arise in the case of such registration.[74]

At the first session of the subcommittee in 1965, the representative of the United Kingdom stated that it was unlikely that the drafters of the Convention had intended that the Council (which, in 1962, increased from 21 to 27 members), by a bare majority of 14 states, should have the power to bind the other contracting states to accept important alterations to the provisions of the Convention. In reply, the majority group stated that the second sentence of Article 77 specifically required the

Council to make a "determination" and that the determination would be binding. It was not relevant to refer in this connection to the adoption of amendments to the Convention by a two-thirds majority vote of the Assembly, or the adoption of Annexes to the Convention by a two-thirds vote of the Council. Neither of these matters was involved. In addition, it was inadmissible to say that the Council could not do what the second sentence of Article 77 required it to do. Reference was also made to the Council's power under Article 12 to adopt rules of the air applicable over the high seas which would be binding on all contracting states without any exception. While the Convention specified a special majority in certain cases, such as the amendment of the Convention or the adoption of an Annex, a determination by the Council under Article 77 required a simple majority in accordance with Article 52 which applied in the case of the discharge by the Council of other functions, for example, under Articles 54 and 55. Many of the other functions of the Council were at least of equal importance to that of making a determination, but the decisions relating to them did not require a special majority.[75]

The majority view was that the scope of the authority of the Council under the second sentence of Article 77 was to make applicable, by any adaptations as might be required in the case, to aircraft of international operating agencies, provisions of the Convention which relate to nationality of aircraft. If the Council were to go beyond those functions, it would be acting beyond its authority in the matter. For example, the determination of the Council could not have the effect of giving to the aircraft of an agency a special advantage not enjoyed under the Convention by nationally registered aircraft.[76]

At the first session of the subcommittee in 1965, there was not unanimity in regard to the proposition that "the determination made by the Council under Article 77 has sufficient effect for the international registration in question to be recognized by the other contracting states and for the aircraft so registered to have the benefit of rights and privileges equivalent to those granted by national registration."[77] Nevertheless, there was agreement that, if the decision of the Council included the advice contained in that proposition, it should state that:

(a) The States that constitute the international operating agency shall be jointly and severally bound to assume the obligations which, under the Convention, attach to a state of registry;

(b) The operation of the aircraft concerned shall not give rise to any discrimination against aircraft registered in other Contracting States.[78]

In 1967, the members of the subcommittee arrived at a consensus to the effect the second sentence of Article 77 of the Convention would be applicable to cases of joint registration or international registration only if certain conditions were fulfilled.[79]

The Legal Committee of the ICAO examined the report of the subcommittee in September 1967, and unanimously approved the substance of that report.[80] Then the Legal Committee made a report, and in October, 1967, the ICAO Secretariat distributed the Legal Committee's report to the members of the Council and suggested that the Council accept its conclusions and pass a resolution in terms envisaged by the Committee.[81]

Finally, on December 14, 1967, the ICAO Council unanimously adopted a Resolution concerning problems of

nationality and registration of aircraft operated by international operating agencies. The Council agreed that without any amendment to the Chicago Convention, 1944, the provisions of that Convention can be made applicable by a determination of the Council, under Article 77, to aircraft which are registered on non-national basis. The Resolution contemplates that aircraft operated by international operating agencies could be registered, non-nationally, in two ways: joint registration and international registration. Appendix 1 of the Resolution defines these two procedures as follows:

> For the purpose of this Resolution
>
> - the expression "joint registration" indicates that system of registration of aircraft according to which the States constituting an international operating agency would establish a register other than the national register for the joint registration of aircraft to be operated by the agency, and
>
> - the expression "international registration" denotes the cases where the aircraft to be operated by an international operating agency would be registered not on a national basis, but with an international organization having legal personality, whether or not such international organization is composed of the same States as have constituted the international operating agency.

The Council held that a "determination" made by it, within the scope of Article 77 and in accordance with the procedures laid down in the said Resolution, will be binding on all contracting states and thus, in the case of jointly registered or internationally registered aircraft and in respect of which the basic criteria which have been established by the Council are fulfilled, the rights and obligations under the Convention would be applicable as in the case of nationally registered aircraft of a state party to the Chicago Convention, 1944. Moreover, the Council established, pursuant to its powers under Article 77, basic criteria for any plan for joint or international registration.

The Council differentiated between joint and international registration, and noted that, while it has discretion to arrive at such determination as it deems appropriate, in the case of joint registration, there should be little problem in regard to the fulfilment of the basic criteria, and, therefore, its determination in such a case should be merely formal and could automatically be given. It further noted, inter alia, that cases of international registration might require different approaches.

The Council established the following basic criteria in Appendix 2 to the Resolution:

- In the case of joint registration -

A. The States constituting the international operating agency shall be jointly and severally bound to assume the obligations which, under the Chicago Convention, attach to a State of registry.

B. The States constituting the international operating agency shall identify for each aircraft an appropriate State from among themselves which shall be entrusted with the study of receiving and replying to representations which might be made by other Contracting States of the Chicago Convention concerning that aircraft. This identification shall be only for practical purposes and without prejudices to the joint and several responsibility of the States participating in the agency, and the duties assumed by the State identified shall be exercised on its own behalf and on behalf of all the other participating States.

C. The operation of the aircraft concerned shall not give rise to any discrimination against aircraft registered in other Contracting States with respect to the provisions of the Chicago Convention.

D. The States constituting the international operating agency shall ensure that their laws, regulations and procedures as they relate to the aircraft and personnel of the international operating agency when engaged in international air navigation

shall meet in a uniform manner the obligations under the Chicago Convention and the Annexes thereto.

- In the case of international registration, the Council, in arriving at its determination, shall be satisfied that any system of international registration devised by the States constituting the international operating agency gives the other member States of ICAO sufficient guarantees that the provisions of the Chicago Convention are complied with. In this connection, the criteria mentioned in A, C and D above shall, in any event, be applicable, it being understood that additional criteria may be adopted by the Council.

Note 1: In connection with B above, in the case of joint registration under the Convention (in particular, the issue of certificates of registration and the issue and validation of certificates of airworthiness and of licences for the operating crew) shall be performed by the State which maintains the joint register or the relevant part of the joint register pertaining to a particular aircraft. In any case, the exercise of such functions shall be done on behalf of the States jointly.

Note 2: In connection with C above, and with reference to the undermentioned Articles of the Chicago Convention, it is noted as follows:

Article 7 (Cabotage): The mere fact of joint or international registration under Article 77 would not operate to constitute the geographical area of the multinational group as a cabotage area.

Article 9 (Prohibited Areas) and Article 15 (Airport and Similar Charges): The mere fact of joint or international registration under Article 77 will not affect the application of these Articles.

Article 27 (Patent Claims): The requirement of this Article being that a given State should be not only a party to the Chicago Convention, but also a party to the International Convention for the Protection of Industrial Property, it might be that, in a particular case, one or other of the States constituting an international operating agency was not a party to the latter Convention. In such case, the interests of that State are not protected by the terms of Article 27.

The Council further decided that, upon completion of the process of determination for a particular plan for an international operating agency which in the opinion of the Council would satisfy the abovementioned basic criteria, the manner of application of the provisions of the Convention relating to nationality of aircraft as follows:

(1) In the case of joint or international registration, all the aircraft of a given international operating agency shall have a common mark, and not the nationality mark of any particular State, and the provisions of the Convention which refer to nationality marks (Articles 12 and 20 of the Convention) and Annex 7 to the Convention shall be applied mutatis mutandis.

> (2) Without prejudice to the rights of other Contracting States as provided for in C of Appendix 2 hereto and in note 2 therein, each such aircraft shall, for the purposes of the Convention, be deemed to have the nationality of each of the States constituting the international operating agency.
>
> (3) For the application of Articles 25 and 26 of the Convention, the State which maintains the joint register or the relevant part of the joint register pertaining to a particular aircraft shall be considered to be the State in which the aircraft is registered.

The Council also declared that the Resolution applies only when all the States constituting the international operating agency are and remain parties to the Chicago Convention, and further that it does not apply to the case of an aircraft which, although operated by an international operating agency, is registered on a national basis.

At the end of its Resolution (Appendix 3), the Council stated that in connection with this Resolution, it had before it the following scheme of joint registration, noting, at the same time, that other schemes might also be possible:

> (a) The States constituting the international operating agency will establish a joint register for registration of air-

craft to be operated by the agency. This will be separate and distinct from any national register which any of those States may maintain in the usual way.

(b) The joint register may be undivided or consist of several parts. In the former case, the register will be maintained by one of the States constituting the international operating agency and in the latter case, each part will be maintained by one or more of these States.

(c) An aircraft can be registered only once, namely, in the joint register or, in the case where there are different parts, in that part of the joint register which is maintained by a given State.

(d) All aircraft registered in the joint register or in any part thereof shall have one common marking, in lieu of a national mark.

(e) The functions of a State of registration under the Chicago Convention (for example, the issuance of the certificate of registration, certificate of airworthiness or licences of crew) shall be performed by the State which maintains the joint register or by the State which maintains the relevant part of that register. In any case, the exercise of such functions shall be done on behalf of all the States jointly.

(f) Notwithstanding (c) above, the responsibilities of a State of registration with respect to the various provisions of the

> Chicago Convention shall be the joint and several responsibility of all the States which constitute the international operating agency. Any complaint by other Contracting States will be accepted by each or all of the States mentioned.

To bring Annex 7 to the Chicago Convention relating to nationality and registration of aircraft into line with this Resolution, the Council declared that consideration will soon be given to the question of amending that Annex and that information on this point will be issued as a supplement to the Resolution.

On January 23, 1969, the Council adopted the required amendment of Annex 7.[83] The resolution of adoption of this amendment states that such parts of the amendment as have not been disapproved by more than half of the total number of contracting states on or before "May 23, 1969" would become effective on that date and would become applicable on "September 18, 1969". In a letter to the contracting states of the Chicago Convention, covering the amendment,[84] the Secretary General of the ICAO describes the scope of the amendment as the introduction in Annex 7 of appropriate provisions to enable the

aircraft of international operating agencies to be registered on other than a national basis; the determining principle of these provisions being that the Common Mark Registering Authority of each international operating agency will be assigned a distinctive common mark by the ICAO, which will be selected from the series of symbols included in the radio call signs allocated to the Organization by the International Telecommunications Union. Consequently, definitions of the expressions "Common Mark", "Common Mark Registering Authority", and "International Operating Agency" have been introduced.

A "Common Mark" is defined in the amendment as "a mark assigned by the International Civil Aviation Organization to the Common Mark Registering Authority registering aircraft of an international operating agency on other than a national basis." The amendment prescribes that all aircraft of an international operating agency registered on other than a national basis will bear the same Common Mark.

The amendment defines the "Common Mark Registering Authority" as the "authority maintaining the non-national register or, where appropriate, the part thereof, in which

aircraft of an international operating agency are registered." According to the amendment, an "International Operating Agency" is "an agency of the kind contemplated in Article 77 of the Convention." This, of course, excludes organizations like the United Nations and the International Civil Aviation Organization.

It may be noted that other changes, respecting the drafting of Annex 7, have been introduced in the amendment, with the same view of making that Annex applicable to the case of registration of aircraft of international operating agencies on other than a national basis. Thus, according to Goreish, "the new amendment provides the finishing touches for the solution of the problem of registration of such aircraft non-nationally."[85]

3. Bilateral Air Services Agreements.

The emergence of multi-national airlines or joint air transport operating organizations requires certain deviations from the traditional concept of bilateral air services agreements; the changes involved affect the negotiation and conclusion of bilateral agreements, the

designation of the chosen airline, and the substantial ownership and effective control clause.

a) Negotiation and Conclusion.

The joint air transport operating organizations usually provide for multi-national machinery to coordinate aviation policy between the constituent governments. To this end, there may be periodic meetings of the government authorities, or a specially constituted intergovernmental body with representation from each participating state may vested with this responsibility. In the case of SAS, the heads of civil aviation departments of the three Scandinavian countries meet periodically.[86] According to some writers, this arrangement has influenced the conclusion of uniform bilateral agreements by each of the three Scandinavian countries with third states.[87]

The East African Community states, that is, Kenya, Uganda and Tanzania, do not negotiate bilateral air services agreements in their individual capacities; such agreements are negotiated and concluded on behalf of the partner states by "the East African Ministers."[88]

Paragraph 1 of Article 10 of the Treaty of Yaounde, establishing Air Afrique, provides for consultation among the constituent states in respect of bilateral air agreements. It requires the contracting states to co-ordinate their bilateral air agreements, taking into consideration the interests and operations of Air Afrique. An intergovernmental civil aviation organization, the Committee of Ministers of Transport, is made responsible for achieving co-ordination in all civil aviation matters.[89] However, the constituent states of Air Afrique are bound to submit to the Committee of Ministers of Transports for its opinion any bilateral draft agreement to be concluded by them. Further, each state is bound to accord the highest consideration to the Committee's opinion, so as to avoid concluding bilateral agreements which may be prejudicial to the interest of Air Afrique.[90]

While examining the negotiation and conclusion of bilateral agreements, it is generally considered that, through the medium of joint air transport operating organizations, the smaller countries enhance their bargaining position by negotiating collectively.[91] In this context, example is often cited of the SAS Consortium,[92] where the

co-operation of Denmark, Norway and Sweden makes refusal by important states to grant reciprocal traffic rights to them, a more serious matter than if each operated its international services separately.[93] It may, however, be stressed that the creation of an international operating agency by the smaller countries does not automatically enhance their bargaining power for traffic rights; other states would invariably exchange traffic rights while giving highest consideration to what the states constituting the joint air transport operating organization have to offer them. A relevant case in this context is the failure of East African Governments - Kenya, Uganda and Tanzania - to negotiate traffic rights through London and New York. Bilateral negotiations with Britain have been in abeyance since an East African delegation was in London, in 1969, for talks with the British Board of Trade.[94]

b) Designation of the Chosen Airline.

One of the standard clauses in any bilateral agreement is a clause conferring on each contracting party the right to designate one or more national airlines to exploit

the traffic rights exchanged between the parties.[95] Obviously, the introduction of multi-national air transport joint ventures tends to modify, to a certain extent, such a standard. Accordingly, to facilitate the operation of air transport services by the international operating agencies, many bilateral air agreements dispense with such a clause by granting an exception permitting the designation of a joint airline constituted in conformity with the provisions of the Chicago Convention.

In the case of SAS, the established practice of the Scandinavian states is to designate their national airlines as constituent members in the SAS Consortium. This, however, does not imply that the Consortium itself cannot be directly designated by a member state as its chosen instrument in bilateral agreements with third countries. In the bilateral air transport agreements concluded by the Scandinavian states, there is a condition attached to each concession granted by each government to a parent company entitling it to operate the agreed services through the SAS Consortium.[96]

Each of the three Scandinavian countries separately concludes bilateral air agreements, in which one national company, member of the SAS Consortium, is designated by its government as the chosen instrument to exercise the traffic rights granted in co-operation with the other parent companies and through the SAS Consortium. Such a clause is usually included in an "Exchange of Letters" between the respective contracting parties and annexed to the bilateral agreement between them; it is generally referred to as the "SAS Clause."[97] Thus, the Agreement between Denmark and Malaysia for air services between and beyond their respective territories, signed at Kaula Lumpur on March 26, 1965, provides in the Exchange of Notes, made on the same date:

> 1. Det Danske Luftfartselskab (DDL), cooperating with Det Norske Luftfartselskap (DNL) and A B Aerotransport (ABA) under the designation of Scandinavian Airlines System (SAS), may operate the routes for which it has been designated under the Agreement with aircraft, crews and equipment of either or both of the other two airlines.
>
> 2. Insofar as Det Danske Luftfartselskab (DDL) employ aircraft, crews and equipment of the other airlines participating

> in the Scandinavian Airlines System (SAS), the provisions of the Agreement shall apply to such aircraft, crews and equipment as though they were the aircraft, crews and equipment of Det Danske Luftfartselskab (DDL), and the competent Danish authorities and Det Danske Luftfartselskab (DDL), and the competent Danish authorities and Det Danske Luftfartselskab (DDL) shall accept full responsibility under the Agreement therefor.[98]

Professor Bin Cheng explains that the incorporation of the so-called "SAS Clause" in most of the Scandinavian bilateral air agreements has been possible because of "the general good will of other States."[99] Even where such a clause has not been explicitly incorporated in a bilateral agreement, its application has generally been accepted in practice.[100]

Imam notes that in the designation of the joint airlines of other multi-national enterprises, the practice of the member states has varied from expressly naming their joint airline in the bilateral agreements to making an indirect reference to it. Such provisions are usually incorporated in the agreements, although occasionally they may be expressed in the Exchange of Notes.[101] Thus, the air transport Agreement between Denmark and the Ivory

Coast, signed at Abidjan on 7th June, 1966, provides in the Exchange of Letters, made on the day of signature, that:

> . . . the Government of the Republic of Ivory Coast has designated the airline Air Afrique to operate the agreed services specified in the annex.[102]

Other bilateral agreements also expressly provide for the designation of Air Afrique as the chosen instrument by using a more or less similar formula.[103] For example, the air transport Agreement between Senegal and France, signed at Paris on 15th June, 1962, stipulates:

> Pursuant to:
>
> - Articles 77 and 79 of the Convention on International Civil Aviation, concerning the establishment by two or more States of joint operating organizations or international operating agencies, and
>
> - Articles 4 and 2 and the annexes to the Treaty on Air Transport in Africa, signed at Yaounde on 28th March 1961,
>
> the Government of the Republic of Senegal reserves the right to designate the company Air Afrique as the instrument chosen by the Republic of Senegal for the operation of the agreed services, such designation being accepted by the Government of the French Republic.[104]

Some bilateral air agreements concluded by the states constituting Air Afrique indirectly refer to the joint air transport operating organization. For instance, the air transport Agreement between Senegal and Mali, signed at Dakar on February 7, 1963, provides:

> Article 14:
>
> Notwithstanding the provisions of Article 7 of this Agreement, either Contracting Party may designate an airline constituted in conformity with articles 77 and 79 of the Convention on International Civil Aviation signed at Chicago on 7 December 1944, concerning the establishment by two or more States of joint air transport operating organizations or international operating agencies.[105]

A very similar provision is also contained in Article 14 of the air transport Agreement between Senegal and Switzerland, signed at Berne on January 23, 1963. It declares:

> Notwithstanding the provisions of Article 6 of this Agreement, either Contracting Party may designate a joint airline constituted in conformity with articles 77 and 79 of the Convention on International Civil Aviation signed at Chicago on 7 December 1944, and such airline shall be accepted by the other Contracting Party.[106]

c) The Substantial Ownership and Effective Control Clause.

One of the most important reservations, both in multilateral and bilateral air transport agreements, is that the designated airlines should be substantially owned and effectively controlled by the state designating them or its nationals.[107] At the Chicago Conference, 1944, Lord Swinton, Chairman of the United Kingdom Delegation, said:

> Then there is another matter, what I may call genuine ownership. That is very important. We want to agree, if we can, that we shall know, and everyone shall know, with whom they are dealing, and if an airline is registered in a particular country, it is a national airline and not something quite different, masquerading under an assumed nationality.[108]

It appears that the historical basis for such a clause was the states' concern for security. The clause is reported to have originated in the Lima Conference, 1940, and was aimed at frustrating German-owned companies registered in Latin America from conducting their operations near the Panama Canal Zone.[109] After the Chicago Conference, 1944, the clause was introduced for

reasons of economic protection, and to prevent indirect operations by third states not parties to a bilateral air agreement.[110] Further, it bars airlines and investors from circumventing national laws by acquiring a substantial share in a foreign airline or airlines,[111] as well as prohibiting a single state from acquiring a far greater share of international traffic by holding substantial interests in foreign air carriers.[112]

Bin Cheng observes that a fifty per cent holding in an airline by a state or its nationals qualifies as substantial national ownership. He, however, adds that, in general, it would seem that a fifty-one per cent holding of the capital of an airline is regarded as more immune from challenge.[113] The determination as to whether a particular airline is substantially owned by a certain state or by its nationals may actually depend on the powers and functions assigned to such airline under its constitutive instrument. Wassenbergh opines that, in the case of tight state control, even thirty per cent ownership could be regarded as substantial.[114] In a few instances, this requirement has been waived in respect of the designated airlines of Peru, Cuba and Malaya, which had not at the time attained substantial national ownership and control.[115]

Obviously, in the case of multi-national airlines or international operating agencies, the clause must either be varied to permit the substantial ownership and control to be vested jointly in the states, constituting such multi-national airlines or international operating agencies, or in their nationals, or, alternatively, the clause should be waived.

In the case of SAS, the peculiar structure of the Consortium allows for the circumvention of the substantial ownership requirement since each of the three Scandinavian countries designates its national airline as party to the SAS Consortium. Thus, the clause has not been waived except in a few cases.[116] The formula used in the Scandinavian bilateral air transport agreements is similar to the Bermuda formula. For example, the Agreement between Denmark and Singapore for air services between and beyond their respective territories, signed at Singapore on 20 December, 1966, in Article 3 (4), provides:

> Each Contracting Party shall have the right to refuse to accept the designation of an airline and to withhold or revoke the grant to an airline the privileges specified in . . . the present Agreement or to impose such conditions as it may deem necessary on

> the exercise by an 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 nationals of the Contracting Party designating the airline.[117]

In the case of bilateral air agreements of other states constituting a joint airline, the general practice seems to have been to require the substantial ownership and effective clause, and subsequently to waive the requirement contained in that clause. For example, Article 5 of the Agreement between Kenya and France, signed on 28 July, 1964, provided:

> The provisions of the present Agreement relating to substantial ownership and effective control shall not apply to or in relation with the designated airlines of the Government of Kenya or any airline designated by that Government to enjoy the rights specified in paragraph (3) of Article 2 of the present Agreement if and so long as the airline or airlines are effectively controlled by the countries comprising East Africa.[118]

The waiver in the abovementioned Agreement between Kenya and France has a limited scope, since it is required that substantial ownership and effective control must be vested in the states constituting the international operating agency or their nationals.

Air Afrique states have devised different formulae in order to waive the requirement of substantial ownership and effective control. Thus, in some bilateral agreements, the usual substantial ownership clause was provided, and waiver or exception was made. However, a later provision either expressly declared that the Contracting State (member of Air Afrique) "reserves the right" to designate Air Afrique, or named it as its designated airline. The first type of provision is found in the Agreement of October 9, 1963, between the Netherlands and the Ivory Coast,[119] while the second type occurs in the Exchange of Notes annexed to the Agreement between Mali and Niger, signed on January 15, 1964.[120]

Some bilateral agreements waive the condition of substantial ownership and effective control by using a "notwithstanding" clause and allowing the designation of a joint air transport organization or an international operating agency constituted in conformity with the provisions of the Chicago Convention, 1944. Thus, the above-mentioned Agreement between Senegal and Mali incorporates the requirement of substantial ownership and effective control in Article 7, and in Article 14 thereof allows the designation of a joint air transport operating organization notwithstanding the provisions of the said Article 7.[121]

FOOTNOTES

CHAPTER V

1. L.F.L. Oppenheim, International Law, ed. H. Lauterpacht (8th ed.; London: 1955), Vol. 1, p. 19.

2. G. Schwarzemberger, International Law, (London: 1945), p. 62.

3. J.S. Starke, An Introduction to International Law (6th ed., London: 1967), pp. 489-490.

4. Brownlie, Principles of Public International Law (Oxford: 1955), p. 520.
See also H. Sultan, Public International Law in Peace-Time (Cairo University: 1962), p. 250.

5. Khairy H.Y. Mostafa, Transnational Commercial Organizations in Public International Air Law; McGill University Institute Thesis (August, 1969), pp. 48-49.

6. Ibid., p. 49.

7. Ibid., p. 50.

8. I. C. J. Reports (1949), p. 178.

9. Article 9 (2) of the Fund Agreement and Article 7 (2) of the Bank Agreement cited by C. W. Jenks, "The Legal Personality of International Organisations," 22 B.Y.I.L. (1945), p. 269.

10. C. W. Jenks, op. cit., supra note 9, pp. 270-271.

11. Ibid.

12. Abbas I. I. Imam, Transnational Cooperation in Ait Transport: Towards The Establishment of International Airlines; McGill University - Institute Thesis, (August, 1966), p. 156.

13. Article 4 of the Treaty of Yaounde.

14. Section 3 (3) of the East African Airways Corporation Act, 1967,

15. Section 3 (2) of the East African Airways Corporation Act, 1967.

16. The concept of the nationality of aircraft was accepted at an early date in the history of flight by heavier-than-air aircraft. For example, the draft international convention on air navigation drawn up at the International Conference on Air Navigation held at Paris in 1910, contains a chapter concerning the nationality and registration of aircraft. See A. Roper, La convention internationale du 13 octobre 1919 portant sur la réglementation de la navigation aérienne 212-13 (Paris, 1930). The passage of time did nothing to weaken this concept. Hence, shortly after the Convention on International Civil Aviation had been drafted in 1944, one commentator stated that: "It is idle to suppose that a concept as powerful as nationality can be disposed of merely by demonstrating that the Convention could be more conveniently administered without it" and again "... the existing law provides no status whatever for any but national aircraft of a contracting state."
See R.Y. Jennings, "International Civil Aviation Organization," (1945) 22 B.Y.I.L., pp. 207-208.

17. Convention relating to the Regulation of Aerial Navigation (Paris, 1919), Article 6: 11 L.N.T.S. 173; Convention on International Civil

Aviation (Chicago, 1944), Article 17: The Text of the Chicago Convention can be found in (1944) Can. T.S. No. 36; Stat. 1180; T.I.A.S. 1591; 15 U.N.T.S. 295.

18. Ibid.

19. Jack E. Richardson, "Nationality and Registration of Aircraft operated by International Agencies," The Freedom of the Air, ed. Edward McWhinney, and Martin Bradley (The Netherlands: 1968), p. 210.

20. For a discussion on the study in ICAO on the problem of nationality and registration of aircraft, see Ishaq R. Goreish, The Problem of Registration and Nationality of Aircraft of International Operating Agencies and the ICAO Council's Resolution on the Problem, McGill University - Institute Thesis (1969-70). See also Gerald F. FitzGerald, "Nationality and Registration of Aircraft Operated by International Operating Agencies and Article 77 of the Convention on International Civil Aviation, 1944," Can. Y.I.L. (1967).

The main documents produced in connection with the various ICAO studies of the problems of nationality and registration of aircraft operated by international operating agencies are: (1) Air Transport Committee: C-WP/2284 15/11/1956; (2) Panel of Experts (1960): C-WP/3091 24/2/60, PE-77/WD Nos. 1-18 and PE-77/Report 30/6/60; C-WP/3186 25/8/60; Doc. 8106-C/927 Council, Minutes of 41st Session, Meetings 3, 8, 9 and Doc. 8124-C/928, Action of the Council, 41st Session, 31-34; (3) Subcommittee on problems of Nationality and Registration of Aircraft Operated by International Agencies (also known as "Sub-committee on Article 77"): C-WP/4115 1/12/64 and Corrigendum; Doc. 8470-C/955, Action of the Council, 53rd Session, 19; LC/SC Article 77/WD Nos. 1-5; Discussion Papers 1-3 and LC/SC Article 77/Report 24/7/65, (First Session)

and LC/SC Article 77/WD Nos. 6-12; LC/SC Article 77/Report 7/2/67 (Second Session).

Literature on the subject of Article 77 of the Chicago Convention includes the following: Bin Cheng, The Law of International Air Transport (London: 1962), pp. 131-132; R. H. Mankitwicz, "Aéronefs internationaux," (1962) 8 Annuaire Français de Droit International 685; R.H. Mankiewicz, "Aircraft Operated by International Operating Agencies," (1965) 31 J.A.L.C. 304; International Law Association - Helsinki Conference (1966) - Air Law Committee - Report on Nationality and Registration of Aircraft with Special Reference to Article 77 of the 1944 Chicago Convention on International Civil Aviation, 41 pp.; Bin Cheng, "Nationality and Registration of Aircraft - Article 77 of the Chicago Convention," (1966) 32 J.A.L.C. 551-563; International Law Association - Helsinki Conference (1966) - Air Law Draft Minutes of Meeting held on 16 August, 1966.

Legal literature on the subject of nationality of aircraft includes the following:

J. C. Cooper, The Legal Status of the Aircraft, Mimeo. 88 pp., prepared for the International Law Association in 1949. For conclusions of this report, see International Law Association, Report of the Forty-Fourth Conference, Copenhagen, 1950, at 227-31;
J. C. Cooper, "Etude sur le statut juridique des Aéronefs," (1950) 5 Rev. Fr. de Droit Aérien 125, 205 (full translation of Cooper Report);
J. C. Cooper, "National Status of Aircraft," (1950) 17 J.A.L.C. 292 (condensed version of material in ILA Report);

J. P. Honig, The Legal Status of Aircraft (The Hague: 1956); pp. 41-56;
J. C. Cooper, "The Legal Status of Flight Vehicles," Explorations in Aerospace Law, ed. I.A. Flasic (Montreal, 1968); pp. 205-250;
J. Nemeth, The Nationality of Aircraft, McGill University - Institute Thesis, (1953).

21. ICAO Doc. 8722-C/976 20/2/68.

22. Paul Fauchille, Le Domaine Aérien et le régime juridique des aérostats, Paris, A. Pedone, 1901. Also, in: Revue générale de droit international public, Vol. 8, 1901, pp. 414-485. Text at p. 471. See also J. C. Cooper, "The Legal Status of Flight Vehicles," op. cit. supra, note 20, p. 217.

Nationality has been described as the status of a natural person who is attached to a state by the tie of allegiance. See "Harvard Research in International Law - Nationality," American Journal of International Law, Vol. 23, (1929, Supplement), pp. 13-22.

23. A. P. Higgins and C. J. Colombos, The International of the Sea (London, New York, Toronto: 1943), p. 189.

24. J. C. Cooper, "The Legal Status of Flight Vehicles," op. cit., supra, note 21, pp. 215, 218.

25. Ibid., p. 220.

26. Ibid., p. 224.

27. J. C. Cooper, "National Status of Aircraft," op. cit., supra, note 20, p. 298.

28. A definition of the word "aircraft" is contained in the Annexes of the Chicago Convention. Those Annexes define the word "aircraft" as any machine that can derive

support in the atmosphere from the reaction of the air. This definition was amended by the Council of ICAO in November 1967 to read that "aircraft" means: "Any machine that can derive support in the atmosphere from the reactions of the air other than the reactions of the air against the earth's surface."

29. Bin Cheng, The Law of International Air Transport (London: 1962), p. 128.

30. Ibid., pp.128-129.

31. Ibid., p. 129.

32. Jack E. Richardson, op. cit., supra, note 19, p. 210.

33. United States, Department of State: Proceedings of the International Civil Aviation Conference. (Chicago, Illinois: November 1 - December 7, 1944). (Publication No. 2820) 2 volumes, Washington, D.C., 1948.

34. Ibid., p. 546.

35. Resolution A1-37.

36. Resolution A2-13.

37. Ibid.

38. C-WP/2284 and Doc. 7763-C/896, Action of the Council, 29th Session, 24.

39. Doc. 7921-LC/143-1 Legal Committee, 11th Session, Volume 1, Minutes (ix), 145.

40. C-WP/3091, Appendices 1 - 3.

41. PE-77/Report 30/6/60.

42. Ibid.

43. Doc. 8279, A 14-LE/11, Assembly, 14th Session, Report and Minutes of the Legal Commission 7.

44. For the text of this Convention, see Doc. 8364.

45. For the test of this draft convention, see Doc. 8582-LC/153-1, Legal Committee, 15th Session, Montreal, September 1-19, 1964, Volume 1 - Minutes (xxvii) - (xxxiii).

46. C-WP/4115 and Doc. 8470-C/955, Action of the Council, 534d Session, 19.

47. LC/SC Article 77 / Report 24/7/65.

48. LC/SC Article 77 / Report 7/3/67.

49. LC/SC Article 77 / Report 24/7/65, p. 2, (para.4).

50. PE - 77/WD No. 2, p. 2 (para. 2).

51. PE - 77/WD No. 2, p. 2. (para. 3).

52. PE - 77/WD No. 6, P. 1, (para. 2).

53, PE - 77/WD No. 6, passim.

54. PE - 77/WD Not. 6, p. 1 (para. 4).

55. PE - 77/Report 30/6/60, pp. 3-4, (para. 7). See PE - 77/WD No. 9, p. 6 (para. 4), for a suggestion of the United States member of the Panel that the international operating agencies contemplated in the second sentence of Article 77 are those established for the purpose of providing air services between contiguous states only.

56. Doc. 8124/C-928,Action of the Council, 41st Session, p. 33.

57. LC/SC Article 77/Report 24/7/65, p. 3 (para. 5.3).

58. LC/SC Article 77/Report 7/2/67, p. 5, (para. 16).

59. See PE-77/WD No. 5 for statements of:
(i) the provisions of the Convention which confer rights and privileges on aircraft having the nationality of a contracting state, and
(ii) the provisions of the Convention imposing obligations and functions of the state of nationality of the aircraft with respect to that aircraft.

60. C-WP/2284, p. 4 (para. 4 (ii)).

61. Ibid., p. 6 (para. 8).

62. PE - 77/Report 30/6/60, p. 3 (para. 8).

63. LC/SC Article 77 Report 24/7/65, p. 3, (para. 8).

64. C-WP/2284, p. 11 (footnote).

65. PE377/WD No. 2, pp. 4-5, (Para. 5).

66. PE-77/Report 30/6/60, p. 3 (para. 9).

67. LC/SC Article 77 Report 24/7/65, p. 3, (para. 7).

68. Ibid., p. 4 (para. 12).

69. LC/SC Article 77 Report 7/2/67, pp. 2, 6-7, (paras. 1, 4.1, 17 - 21).

70. See Article 18 of the Tokyo Convention.

71. LC/SC Article 77 Report 24/7/65, p. 4, (Para. 12).

72. Gerald F. FitzGerald, op. cit., supra, note 20, p. 206.

73. Ibid., pp. 206-207.

74. Ibid., p. 207.

75. Ibid., pp. 207-208.

76. Ibid., p. 208.

77. LC/SC Article 77 Report 24/7/65, p. 5, (para. 14).

78. Ibid., p. 5 (para. 15).

79. LC/SC Article 77 Report 7/2/67, p. 2, (para. 4.1).

80. ICAO Doc. 8704-LC/155.

81. ICAO Doc. C-WP/4680.

82. See supra, note 21. This took place in the 62nd Session of the Council. See ICAO Doc. 8743-C.978, p. 25.

83. The amendment was adopted by the Council at the second meeting of its sixty-sixth session.

84. Letter No. AN 3/1-69/31 dated February 5, 1969.

85. Ishaq R. Goreish, op. cit., supra, note 20, p. 159.

86. H. Bahr, "The Scandinavian Airlines System (SAS): Its Origin, Present Organization and Legal Aspects," Arkiv For Luftrett (1961), pp. 192-235, p. 232.

87. In joint negotiations by the three Scandinavian states with a third state, there is normally one joint delegation representing them including the governmental and the SAS officials.

See H. Mortensen, The Legal Status of the SAS in International Air Transportation, McGill Term Paper (1964), p. 23.
See also W. H. Wager, "International Airline Collaboration in Traffic Pools, Rate-Fixing and Joint Management Agreements," 18, J.A.L.C. (1951), pp. 314-315.

88. Ishaw R. Goreish, op. cit., supra, note 20, p. 69.

89. Article 8 of the Treaty of Yaounde.

90. Paras. 2 and 3 of Article 10 of the Treaty of Yaounde.

91. See, for instance, Abbas I.I. Imam, op. cit., supra, note 12, p. 168; and Khairy H. Y. Mostafa, op. cit., supra, note 5, p. 141.

92. W. H. Wager, op. cit., supra, note 87, pp. 316-317.
See also R. A. Nelson, Scandinavian Airlines System Cooperation in the Air," 20 J.A.L.C. (1953), p. 179;
and ICAO Circular 30-AT/5 (1953), p. 8, para. 14.

93. R. A. Nelson, op. cit., supra, note 92, p. 194. Nelson observes that refusal by the three Scandinavian States to grant traffic rights to third states would be a more serious threat than a refusal by one of them only.

94. Flight International, June 25, 1970, p. 1032. This failure is reflected in the choice of Zurich as the European port of call for East African Airways' proposed transatlantic services.

95. See Article 2 of "ECAC Standard Clauses" of March, 1959, and the "Standard Form of Agreements for Provisional Air Routes of Chicago Conference, 1944."

96. H. Bahr, op. cit., supra, note 86, p. 228. See also ICAO Circular, op. cit., supra, note 92, p. 9, para. 14, which states that it became possible through the Scandinavian cooperation in SAS Consortium to obtain fifth freedom traffic rights from third states.

97. H. Bahr, op. cit., supra, note 86, p. 230.

98. 540 U.N.T.S. (1965), pp. 222-225.

99. Bin Cheng, The Law of the International Air Transport, op. cit., supra, note 20, p. 275.

100. Ibid., p. 276.
The agreements without such a specific clause, inter alia, include, the agreements between Cyprus and Sweden, signed on January 26, 1963, (ICAO-Registration No. 1779), Cyprus and Denmark, signed on April 27, 1963, (ICAO-Registration No. 1780), and Cyprus and Norway, signed on March 5, 1963, (ICAO-Registration No. 1671).

101. Abbas I.I. Imam, op. cit., supra, note 12, pp. 171-172.

102. 595 U.N.T.S. (1967), p. 335.

103. Similar provisions employ a "notwithstanding" clause by making reference at the tail of the "Substantial Ownership and Effective Control" clause, or their designation provision appears directly after the "ownership" clause. See, for example, para. 2 of Article 14 of the Agreement between Cameroun and Israel, signed on August 9, 1963 (ICAO-Registration No. 1720), and Article 13 of the Agreement between Ivory Coast and France, signed on October 19, 1962 (ICAO-Registration No. 1659).

104. Article 13; the Agreement is registered with the United Nations under Registration No. 7563.
See 524 U.N.T.S. (1965), p. 15.

105. 524 U.N.T.S. (1965), p. 53.

106. 524 U.N.T.S. (1965), p. 33.

107. Bin Cheng, The Law of International Air Transport, op. cit., supra, note 20, p. 375.

108. Proceedings of the International Civil Aviation Conference, op. cit., supra, note 33, p. 451.

109. D. Goedhuis, "The Basis of the Present Regime of the Air," Recueil des Cours (1952), II, p. 213.

110. Ibid.

111. H. A. Wassenbergh, Post-War International Civil Aviation Policy and the Law of the Air, (2nd rev. ed.; The Hague: 1962), p. 63.

112. Ibid., pp. 63-64.

113. Bin Cheng, The Law of the International Air Transport, op. cit., supra, note 20, p. 378.

114. H. A. Wassenbergh, op. cit., supra, note 111, p. 62, note 1.

115. This was in the U.K. Bilateral agreements with these countries in the years 1958, 1959.
See Bin Cheng, The Law of the International Air Transport, op. cit., supra, note 20, pp. 359 and 379.

116. Ibid., p. 379, note 89.

117. 593 U.N.T.S. (1967), p. 130.

118. ICAO - Registration No.1812.

119. Article 13 of the Agreement (ICAO - Registration No. 1728).

120. ICAO - Registration No. 1730.
A similar provision is included in the Agreement dated August 9, 1963, between Israel and Cameroun in Article 14 by employing the "notwithstanding" clause;
See Icao Registration No. 1720.

121. See supra note 105, pp. 49 and 53.

CHAPTER VI

A PROPOSAL FOR AN RCD AIRLINE

1. Historical Background.

The original proposal for a joint RCD airline was in the offing even before the Regional Cooperation For Development alliance between Iran, Pakistan and Turkey was formalized in Istanbul on July 21, 1964. In the first half of 1964, it was realized at PIA headquarters that the establishment of a joint air transport operating organization with some of the neighbouring countries was desirable to effectively meet the many challenges being faced by the small international airlines. Motivated, undoubtedly, by the economic considerations, Air Marshal M. Nur Khan, PIA's then Managing Director, in a proposal to the Government of Pakistan, suggested collaboration with the national airlines of Iran, and Turkey for the formation of an "SAS" type joint airline in the region.[1]

Consequently, at the Istanbul Summit Conference of July, 1964, the Heads of State of Iran, Pakistan and Turkey agreed in principle "to improve the air transport services

within the region and the eventual establishment of a strong and competitive international airline among the three countries."[2] For the realization of these goals, they set up a Working Group on Air Transportation to study measures required to:

> (a) Improve the transport services within the region so that quick and frequent movement of passengers and freight is facilitated within the region.
>
> (b) Establish a strong and competitive international airline among the three countries.
>
> (c) Foster cooperation among the civil and commercial aviation authorities of the three countries and develop common policies in international forums.[3]

At a subsequent meeting of the heads of the three national airlines, a subcommittee, comprising the representatives of the three airlines, was constituted to assess the traffic potential and the economic feasibility of the joint airline. This Subcommittee of the Air Transportation Group met in Karachi from 11th to 18th August, 1964, and submitted a Report on the Economic Feasibility of Joint International Airlines to the Air Transportation Group, which, inter alia, concluded:

1) On conservative estimates, there seems to be good potential of international traffic.

2) Adequate number of frequencies can be provided by combining the traffic requirements of Iran, Pakistan and Turkey.

5) The joint operation is expected to make a profit from the very beginning.[4]

In its first meeting at Teheran on 29th August, 1964, the Working Group on Air Transportation considered the Report on the Economic Feasibility of Joint International Airlines and, with a view to study the problems raised in the said Report, decided to process the formation of the following committees:

1. The Legal Committee: To study the laws of each country pertaining to the formation, registration, and dissolution of the proposed joint airline, and advise how and/or after what kind of measures such a joint airline can be formed.

2. Civil Aviation Committee: To study the air regulations of the three countries, and their effect on the proposed joint airline, and also to indicate to what extent uniformity

> of the rules in the three countries becomes necessary. Further, to study the utilization of bilateral agreements of the three countries by the joint airline.
>
> 3. Financial Committee: To study and investigate the rules and regulations pertaining to capital investments abroad; laws pertaining to the promotion of foreign investment; rules and regulations pertaining to the transfer of capital, profit, and purchase of goods and services abroad; and the tax liability of the proposed joint airline.[5]

Subsequently, the Working Group on Air Transportation submitted its report to the Regional Planning Committee (now Regional Planning Council) of the RCD alliance, which considered it during its session held at Teheran on September 7-9, 1964. At this session, the Regional Planning Committee decided to replace the Working Group on Air Transportation by the Committee on Air Transportation. Further, the Committee noted that:

> ... there is enough traffic to justify the formation and operation of a joint international airline. In accordance with the decisions of the Summit Conference, . . . a joint international airline should be formed as soon as the relevant studies have been completed and a decision taken on its administrative structure, etc.[6]

The establishment of a strong and competitive international airline among the three RCD countries was one of the principal and perhaps the most far reaching objective, set forth by the Heads of State during the Istanbul Summit Conference. Accordingly, the RCD Ministerial Council in its very First Session in September 1964, expressed the view that there was enough traffic to justify the formation and operation of a joint international airline and decided that the relevant studies for the formation of a joint international airline should be completed as soon as possible.[7] Further, it directed the RCD Committee on Air Transportation to study in detail all the measures required to establish a strong and competitive international airline, namely:

i) To study the laws of each country pertaining to the formation, registration, and dissolution of the proposed joint airline, and advise how and/or after what kind of measures such a joint airline can be formed, with special reference to the following:

   a) What type of legal entity the joint airline should have.

   b) What problems would the airline face in connection with liability towards its passengers, freight and mail, as well as liabilities to third parties.

c) Rules and regulations pertaining to the employment of foreigners.

d) Other aspects of the Air Law of each country.

ii) To study and investigate:

a) Rules and regulations pertaining to capital investment abroad.

b) Laws pertaining to the promotion of foreign investment.

c) Rules and regulations pertaining to the transfer of capital, profit and purchase of goods and services abroad.

d) The tax liability of the proposed joint airline.[8]

The first concrete proposal for a joint airline emerged from Pakistan International Airlines. Immediately after the formation of the RCD alliance, PIA put forward its "Proposals for the Operation of a Joint Airline" to Turkish Airlines and Iran National Airlines Corporation. This proposal pointed out that a "consortium of the type of SAS will best suit the interests of the three nations concerned", and suggested that the joint airline may be assigned "the operation of such international routes . . . as may be agreed."[9]

The next significant development took place during the meetings of the Financial, Legal and Intra-Regional Sub-committees, held at Karachi from 3rd to 6th November, 1964, wher. PIA presented a comprehensive Working Paper to initiate discussions and outline the subjects to be considered for the formation of the joint airline. This paper also included a draft treaty and draft articles of incorporation of the proposed joint airline. The parties agreed that this paper, and any counter proposal which Turkey and Iran may put forward, would be discussed at the next meeting which was to take place at Istanbul.[10]

It would be appropriate at this juncture to recall some of the salient features of the PIA's proposal as contained in its Working Paper. The proposal called for the formation of an international body corporate very similar in functions and structure to Air Afrique with one notable exception that the aircraft of the joint corporation were to be nationally registered on the SAS pattern. The proposed Turkish-Iranian-Pakistan Airline was to have all the attributes, functions and powers of a body corporate, and was to have the nationality of Pakistan, Iran and Turkey. It was deemed to have a registered office in each of the three

participating states.[11]

The joint airline was envisaged as the chosen instrument of the constituting states to operate international services save those reserved for the existing national airlines. Upon the request of a participating state, however, the proposed airline could be asked to undertake some of the domestic operations of the state concerned. The capital of the joint airline was to be subscribed by the member states in the following ratio:

Iran	25%
Turkey	25%
Pakistan	50%

The aircraft of the joint airline were to be registered in the participating states in nearly the same ratio as the capital subscribed. Subject to unanimous agreement, the draft treaty permitted the introduction of new member states into the joint corporation. In case of war or emergency, and even otherwise after a twelve months notice, a member state could withdraw from the joint corporation. Any dispute between the parties was to be resolved through arbitration, in conformity with the established rules of public international law.[12]

The management of the proposed airline was to be vested in a Board of Directors consisting of at least ten Directors including the Chairman and the Managing Director. Iran, Turkey and Pakistan were to appoint 3, 3 and 5 Directors, respectively. The Board was to meet from time to time, and its business could be transacted through various committees. In conducting the business of the joint corporation, theBoard was obliged to give due consideration to sound business principles. In addition to the Board of Directors, the proposed airline was to have a Committee of DirectorsGenerals of Civil Aviation - an organ comparable to the Committee of Ministers of Transport of Air Afrique - to unify the civil aviation policies of the three member states.[13]

The authorised share capital of the proposed airline was $25 million. The corporation was to have the powers to invest its funds and, if required, to borrow money. Its accounts were to be audited by a team of three auditors; each participating state having the right to name one auditor. An audited statement of accounts and a report by the Board was to be submitted annually to the Governments of Iran, Pakistan and Turkey.[14]

However, at the Istanbul meeting held in May, 1965, the Iranian delegation suggested the establishment of a Joint Sales Arrangement before the eventual formation of a joint airline which, according to them, was the ultimate goal of RCD collaboration in air transport. The Turkish delegation pointed out the inequalities of the three airlines in standards, fleets and facilities, and suggested that the three airlines should cooperate to remove their disparities before forming the joint airline, which should always remain the ultimate goal of the parties. The Pakistani delegation was, however, of the opinion that there was a clear mandate from the Regional Planning Council to form a joint airline and, accordingly, the Iranian and Turkish recommendations were against this mandate and were likely to delay the formation of the joint airline. Since the difference of opinion on the procedures, methods and timing for the establishment of the joint airline could not be resolved, the matter was referred to the Committee on Air Transportation.[15]

Meanwhile, the RCD Ministerial Council reiterated its directions for pursuing the formation of the joint airline to the Committee on Air Transportation during its Second,

Third and Fourth Sessions, and, to further this cause, approved the formation of the two important subcommittees, namely, the Subcommittee on Civil Aviation and the Subcommittee on Subsonic and Supersonic Transportation.[16]

The Subcommittee on Civil Aviation was required to study, inter alia, the Air Regulations of the three countries and their effects on the proposed joint airline with particular reference to the following:

a) Registration of Aircraft;

b) Licencing of Air Crew;

c) Licencing of Airline;

d) Licencing of Maintenance Engineers;

e) Airworthiness and Operational Standards;

f) International Air Law (acceptance of all Air Law Conventions);

g) Penalties for contravention of regulations.

At the Fourth Session of the Ministerial Council, the Civil Aviation Subcommittee was further directed to undertake the standardisation of Rules and Air Regulations in the three countries as far as possible.[17]

Since the Committee on Air Transportation could not meet, a report based on the Subcommittees' discussion and the difference of opinion amongst the three airlines was submitted to the Regional Planning Council. The Council, during its Third Session, held at Ankara on July 16-18, 1965, directed the Committee on Air Transportation to meet with the participation of the heads of the three respective national airlines to study the abovementioned proposals and decisions along with the concrete proposals on the establishment of a joint airline with a view to reaching definite conclusions concerning cooperation among the three countries in the field of air transportation.[18]

The Committee on Air Transportation met at Karachi on 29th and 30th November, 1965, and took the following decisions after considering the divergence of views on the establishment of a joint airline:

a) The three airlines will appoint each other as their general sales agent.

b) The three airlines will pool traffic within the region.

c) The airlines will exchange information and will consult each other before the purchase of new aircraft.

d) The three airlines will have a common stand in international forums by prior consultation.

e) The airlines will include in each airline's time-table the services of the other two airlines within the region and also connecting domestic flights.

f) The airlines will cooperate in fields of training facilities.

g) The civil aviation authorities would standardise rules and regulations as far as possible.[19]

During its Fourth Session, held at Islamabad on February 1-2, 1966, the Regional Planning Council considered the report of the Committee on Air Transportation's meeting held at Karachi, and recommended that:

> ... the Committee on Air Transportation consider the possibility of establishing a consultative panel of air experts for considering the feasibility for setting up joint operations by the three Airlines on agreed routes and should report its views to the . . . Regional Planning Council.[20]

In pursuance of an earlier decision for instituting regular consultation among the three airlines before any of them undertook the purchase of new aircrafts, the RCD Ministerial Council, during its Fifth Session, held at

Teheran on May 20-21, 1966, created the Subcommittee on Subsonic and Supersonic Transportation. The following terms of reference were spelled out for this Subcommittee:

> To study the international traffic growth of the three countries with a view to considering the feasibility of purchase of SST or large subsonic jets for joint operation by the three airlines and also specify the routes on which this joint operation is feasible.[21]

In fact the proposal for this Subcommittee was originated by PIA in a memorandum submitted to the Committee of Air Transportation at Istanbul on May 9, 1966. The memorandum outlined the problems regarding re-equipment of the three airlines in the 1970's, and it inspired the Committee of Air Transportation to make a recommendation for the creation of the Subcommittee to the Regional Planning Council.[22]

At its Fifth Session, held at Teheran on May 18-19, 1966, the Regional Planning Council recalled its previous recommendation for the establishment of a panel of air experts of the three airlines, and suggested that this panel should consider the re-equipment plan of the three airlines

in the 1970's. In this context, the Regional Planning Council recommended to the Ministerial Council the appointment of a subcommittee consisting of at least two members from each airline to consider the feasibility of joint operations by SSTs and large capacity subsonics.[23]

The studies of the Subcommittee on Civil Aviation and the Subcommittee on Subsonic and Supersonic Transportation could have possibly cleared the initial hurdles in the formation of a joint international airline by furnishing answers to most of the basic questions and by providing data required to determine the economic viability and commercial feasibility of the joint international airline. The progress made so far by these Subcommittees, however, has been extremely slow, and, to the dismay of many, the Subcommittees have never really been able to go into the substantive matters referred to them. The Civil Aviation Subcommittee met in Teheran in April, 1966, and recommended that the legal experts should meet after the English versions of the Iranian and Turkish Regulations were made available by their respective Governments. Even after a passage of over two years, the Subcommittee had not been able to meet again, as it had not been possible for the Governments of Iran and Turkey to

furnish the summaries of their Air Codes for consideration by this Subcommittee.[24]

The other Subcommittee on Subsonic and Supersonic Transportation was directed to meet in August, 1966, but during the period 1966-1968, despite repeated re-affirmation of the Regional Planning Council's recommendations during its Sixth, Seventh and Eighth Sessions, the Subcommittee could not meet. The delay occurred due to the non-compilation of the necessary traffic data by the three airlines. The data was reportedly exchanged among the three airlines in the second half of 1968.[25]

While the work of these two important Subcommittees has run into procedural difficulties, certain other developments have occurred which are likely to make the task of one of the Subcommittees (Subcommittee on Subsonic and Supersonic Transportation) much more difficult and complex. Iranair and THY have gone ahead and purchased Boeing 727s and Douglas DC-9s. This development would have the effect of ruling out, at least temporarily, the possibility of ensuring uniform equipment among the three airlines in the 1970's. In view of the extremely low priority assigned to

the completion of the work of these two Subcommittees and the divergence in the policies of the national airlines in acquiring their future aircraft equipment, many observers believe that the RCD partners appear to have moved a few steps away from the ideal of creating a joint international airline.[26]

In spite of the abovementioned difficulties, the efforts to form a joint airline in the RCD region have continued. The Regional Planning Council, which held its Eighth Session at Teheran on April 11-12, 1968, observed that progress in the field of air transportation had been slow, and suggested that a meeting of the representatives of the three airlines should be held with a view to accelerating the realization of the objective set up at Istanbul Summit Conference of July, 1964.[27] In accordance with this decision, the Representatives of THY, Iranair and PIA met at Karachi on February 4-5, 1969.

In his opening address, the chairman of the meeting and the leader of Pakistani delegation, Mr. S.U. Durrani, Managing Director, PIA, stressed the importance of multilateral cooperation in air transport industry and reiterated

the proposal to form a joint airline to operate supersonic aircraft as well as subsonic aircraft. He observed:

> . . . we should aim to establish a competitive joint airline based on supersonic and if possible, subsonic aircraft. This, I feel, has an economic justification too. The new aircraft being introduced require huge investments. Cooperation between airlines purely on economic grounds has been giving good results in various parts of the world. We now hear every day about the joint use of facilities by airlines and . . . when . . . big airlines find it necessary to make joint use of facilities, there is still greater need for the smaller airlines like us to cooperate in the interest of economy.[28]

The meeting at Karachi noted that at their recent Summit Conference in Karachi, the RCD Heads of State had approved the following recommendation of the Ramsar Summit Working Group:

> In accordance with the directive of the Istanbul Summit Conference, we should aim to establish a competitive joint airline based on supersonic and, if possible, subsonic aircraft.[29]

The chairman observed that the recent directive on the issue envisages the formation of a joint international airline separate from and in addition to the three existing

national airlines to operate supersonic and large subsonic aircraft without affecting the operation of the three airlines and that there was need for exploring the possibility of such a collaboration. In this context, the chairman proposed that the feasibility of establishing a joint fourth airline could best be examined by an independent and reputed aviation consultant. The chairman further stated that the terms of reference of this consultant could be mutually agreed upon and his appointment effected by approval of all the three airlines. As regards the cost of the consultant's services, it could be shared equally by the sponsoring airlines. The consultant could be assisted by one liaison officer from each of the three airlines to effectively reflect the viewpoint of the three national airlines. After the feasibility study becomes available, the heads of the three national airlines would get together and take a final decision on the matter.[30]

The proposal of Mr. Durrani was discussed in detail and the need for studying the feasibility of the formation of a joint international airline was generally recognised. It was similarly agreed that such a feasibility study could

be appropriately undertaken only by an internationally reputed and independent aviation consultant and that the Subcommittee on Subsonic and Supersonic Transportation would not have adequate time, resources and a global outlook necessary for undertaking the feasibility study of this nature.[31]

The meeting noted that the international aviation policies of the participating airlines were in the process of being finalised in consultation with their respective governments and this was expected to take some time. It was, therefore, agreed that a final decision on this proposal would be taken when the national aviation policies were finalised. In the meantime, however, the matter would be progressed by a group consisting of the representatives of the three airlines to determine the terms of reference for the consultant and to obtain information concerning aviation consultants who could possibly be appointed to undertake this study after an agreement had been reached.[32]

The report of this meeting was considered by the Committee on Transport and Communications, which had absorbed the Committee on Air Transportation, in its meeting at Teheran on April 15 - 17, 1969, and it was decided to forward

it to the RCD Council of Ministers through the Regional Planning Council. During its Tenth Session at Islamabad/ Murree on June 25 - 26, 1969, the Council of Ministers approved the recommendation of the heads of the airlines regarding a study for the formation of a joint international airline operating supersonic and large subsonic aircraft on agreed international routes.[33]

However, as of now, no concrete measures have been taken to initiate the agreed feasibility study by an expert aviation consultant; in fact, so far, the appointment of the consultant has not even been made. This apparent lack of progress influenced the RCD Heads of State to recently direct that:

> . . . the possibility of operating subsonic and supersonic aircraft on a joint basis be explored expeditiously and the national airlines should endeavour to enlarge other areas of cooperation among themselves.[34]

2. The Proposal.

Having presented a brief outline of the previous proposals for attempting the creation of an international operating agency in the RCD region and the various measures

taken to transform those proposals into concrete shape, the writer wishes to present his own proposal for the formation of a joint RCD airline to operate a major portion of the international services of Iran, Pakistan and Turkey in the age of large capacity subsonic jets and SSTs. The writer wishes to emphasize that the proposal itself is not original; in one form or the other, it has been under discussion since the last six years. What is new about the proposal is its substance which, in certain areas, differs from those of the previous proposals. It may further be emphasized that the proposal itself and the suggested deviations from the previous proposals are intended in no way to discount either the merits of the previous proposals or the gallant efforts of men of wisdom and experience who, in all sincerity and integrity, tried to materialise those noteworthy proposals. The primary objective of this proposal, therefore, is to suggest a legal framework for a joint air transport operating organization which may be of some use to the parties concerned.

The writer as a member of the international airline industry and as a student of air law is fully conscious of the many difficulties involved in the creation of a joint

international airline; besides, the existence of a number of factors, many political, economic and legal obstacles have to be surmounted before such an airline can be established. Perhaps the most powerful single stimulant for any multilateral collaboration in the economic field is the existence of strong belief among the prospective members that the joint venture would benefit them equally. The failure of the previous proposals for a joint RCD airline can be attributed largely to the absence of such belief among the RCD partners. When the idea of a joint airline was first mooted, the only established airline with long-range equipment, necessary engineering facilities and excellent reputation was the Pakistan International Airlines. The other airlines, that is, Iranair and THY were without jet equipment, lacked manpower and facilities, and had virtually no international operations. The striking disparities in their operations, facilities and standards unfortunately created an impression in certain quarters that the proposed joint venture would turn out to be a partnership of unequals in which the strong would be tempted to devour the weak. Accordingly, Iranair and THY felt that the individual airlines should be strengthened before they merge. An Iranair official has stated: "we should be fat before we integrate."[35]

Apparently, this fear was also actuated by the fact that in the previously proposed joint airline, PIA's share was to be equal to the combined shares of Iranair and THY, and thus, the latter airlines could have been disturbed at the prospect of the possible domination of the joint airline by PIA. It is, therefore, imperative that in any joint air transport undertaking the cardinal principle of equal participation by all partners should strictly be followed in order to eliminate any doubts or fears of those partners which are comparatively less developed. It is needless to stress that the creation of mutual trust and confidence is absolutely essential if a joint airline is to be formed in the RCD region.

Many changes in the last five or six years have taken place in Iranair and THY; the two carriers have acquired medium- and long-range first generation jet transports and developed significant European networks. Besides consolidating their existing international services, the two carriers are planning to introduce new international services, including a service to New York being contemplated by Iranair in 1973-1974. Although disparities still exist in the operations, fleets, facilities and standards of the three national airlines of Iran, Pakistan and Turkey, there are definite

signs that the gap between PIA on the one hand and Iranair and THY on the other hand is narrowing. Under the present circumstances, both Iranair and THY are sufficiently strong to join hands with PIA on a basis of equality and mutual assistance. Thus, the recent development of these two carriers augurs well for the eventual integration of air transport in the RCD states.

The principal advantages for the establishment of a single joint RCD international airline are economic. Iranair and THY, and even PIA, are small airlines, and yet on their international routes, they compete with most of the world's largest and most efficient airlines. In order to compete - and competition is ever increasing in the international airline industry - on anything approaching favourable terms, these small airlines are forced, and will continue to be forced, to use the latest and most modern aircraft. All the major international carriers operating through the RCD region have already either acquired or placed orders for the wide-bodied subsonic jet transports, and it is expected that such aircraft would be operating the bulk of the international services passing through the RCD region by the summer of 1971. It is feared that if the airlines of the RCD states

do not acquire and operate suitable wide-bodied aircraft in the near future, their competitive ability in the international field is very likely to be significantly impaired, and eventually they might find themselves reduced to the unenviable position of small and insignificant regional and domestic airlines.

Airlines all over the world, whether big or small, are collaborating in joint undertakings in various fields of aviation activity, with the objectives of association embracing a very wide sphere extending from defining technical specifications of an aircraft to amalgamation of operations and corporate entities. The economics of modern air transport, especially that of the large-capacity subsonic jets and the coming SSTs, is so compelling that even the major airlines are acting together in pooling resources, so as to operate more economically whereas one would have thought that they were big enough to operate efficiently and profitably on an individual basis. The position of the smaller airlines is even more critical; they have neither the resources nor the technical know-how to compete with the bigger and better equipped major airlines of the world. Considering the existing sad state of affairs of the inter-

national airline industry, it can safely be concluded that their future is bleak unless they acquire the economies of scale either through the formation of joint operational and engineering consortia or joint international airlines. Unpleasant as it is, the fact remains that this conclusion is also applicable to the existing RCD airlines, especially THY and Iranair.

The plight of the RCD airlines is best illustrated by the fact that so far none of them has been able to even order a small fleet of wide-bodied subsonic jet transports. It is estimated that a small fleet of two or three medium-sized, medium-to-long-range wide-bodied aircraft, such as the DC-10-30 (extended-range variant) or the Lockheed L-1011, including spares and necessary support facilities, would involve a minimum capital investment of $50 - 75 million. For the existing RCD airlines, the raising of such huge amounts of capital to finance the purchase of the enormously expensive large-capacity subsonic jets, and eventually the supersonic transports, is going to be a tremendous burden on their borrowing abilities, which are already under strain, due to the recent purchases of first generation jet transports such as the Boeing 707s, the Boeing 727s and the Douglas

DC-9s. Apart from the raising of necessary capital, another problem for the RCD airlines with large-capacity subsonic jets would be the generation of adequate international traffic to make the operation of such aircraft economically feasible. It is slightly dubious if the RCD airlines individually are in a position to effectively overcome these two problems. It can understandably be speculated that in the event of any of them possessing such a capability, an order for a fleet of wide-bodied jets would have been announced by now; the absence of any such order underscores their problems as small airlines.

There is no doubt that the stresses and strains of international competition will force the RCD airlines to operate wide-bodied jets, as well as the supersonic transports as and when they enter the scheduled airline service. Similarly, there is little doubt that the acquisition and operation of these infinitely expensive aircraft appears to be beyond the capability of any RCD airline, save to the extent that PIA might be able to go alone on these aircraft if it can effectively maintain the same growth rate in the 1970's that it maintained in the 1960's, and which by no means seems an easily achievable target. Thus, it is becoming

increasingly evident that Wheatcroft's warning of multi-national cooperative solutions having "become an absolute necessity for the survival" of small airlines is fully applicable in the case of RCD airlines.[36]

While making his proposal, the writer is aware of the fate of the previous proposals in this respect, and wishes to stress that their failure for certain reasons does not detract the merit of the idea. It is generally agreed, notwithstanding the past difficulties, that basically the idea of a joint RCD international airline is sound, and further that the formation of such an airline remains (the immediate or the ultimate) goal of RCD collaboration in air transportation. The strengthening of Iranair and THY, and the introduction of the large-capacity subsonic jets, unmistakably suggests that the time to implement this idea has come; any delay in executing it would obviously work to the detriment of the RCD airlines.

It might be suggested that, in view of the past difficulties in amalgamating air transport in the RCD states, the joint undertaking in air transport may be initially restricted to an operational and engineering consortium, like

the ATLAS or KSSU groups, which arrangement, if successful, might eventually lead to the formation of a joint airline. Apparently, this suggestion seems to have much appeal as it would lead to a gradual and orderly integration of air transport in the region. On a close scrutiny, however, it is revealed that the basic criterion for such a technical consortium is the ability of its members to split maintenance and overhaul work in a fair manner. In the ATLAS and KSSU consortia, whose members have almost similar operational and engineering standards, maintenance and overhaul work in respect of airframes, engines and components is divided among various members. A similar arrangement among the RCD airlines cannot be introduced, primarily, because Iranair and THY have no facilities for the heavy maintenance and overhaul of the airframes, engines or components of their jet fleets. In view of this handicap, a pooling of maintenance and overhaul work on the basis of equality and mutual assistance is simply not possible.

Another basic requirement for any technical consortium is the fleet standardization among the partners. Presently, there is not even one type of aircraft which is common to the three RCD airlines. A consortium is neither feasible nor

desirable, even if all the RCD airlines acquire a common type of wide-bodied aircraft because a fair and equal sharing of maintenance and overhaul work would not be possible due to the absence of requisite facilities with certain members of such a consortium.

As against this, the advantages of having a joint RCD airline would be many. In the airline, the governments of the participating states would enjoy an equal status within the organization. No one government will have a controlling or dominant financial or other interest and the aircraft, facilities and properties would be jointly owned, with the consequence that all partners would have a sense of equal participation. Further, the joint airline would ensure substantially larger economies as compared to an operational consortium, particularly in view of reduced station costs, operating costs, administrative costs and advertising costs.

Another significant advantage of establishing a joint RCD airline would be that its existence would tend to encourage the participating governments to negotiate and conclude bilateral air transport agreements collectively. Generally, such an integrated group of governments would have greater

bargaining power than would be the case if the governments bargained individually. Moreover, if they so desired, the RCD governments could create a virtual "cabotage" area in the RCD region extending from Istanbul to Dacca, by insisting that on the routes granted to goreign carriers, the inter-RCD sectors shall be "blind" sectors.

The economic desirability of the joint airline is generally recognised in the RCD countries. It has to be, however, appreciated that apart from being economically desirable, the joint RCD airline is also a political necessity, since no other political underpinning is available to RCD partners to undertake a joint economic venture. For example, PIA cannot contemplate any collaboration with Air India as long as the basic problems of Jammu and Kashmir and Farrakha Barrage remain unresolved. Similarly, Iranair cannot enter into any joint air transport venture with its neighbouring Arab countries, because Iran does not have excellent political relations with them. Likewise, Turkey cannot conceive of any meaningful collaboration with the Middle Eastern airlines because the Turkish-Arab relations are not very warm. As an associate member of the European Economic Community, Turkey might look to Europe if Air Union

ever takes shape. However, even if a European airline takes shape, the role of THY in such a venture would obviously be small and insignificant. Under these circumstances, the RCD alliance turns out to be the best political medium through which Iran, Pakistan and Turkey can channel their economic collaboration in the field of air transport.

The substance of the writer's proposal is that the RCD states, Iran, Pakistan and Turkey, should form a joint air transport operating organization in accordance with Articles 77 and 79 of the Chicago Convention, 1944, to operate large-capacity subsonic jets and supersonic transports on agreed medium-and-long-haul international routes. Although the writer agrees that the joint airline should be created in addition to the three existing national airlines, the writer does not subscribe to the views that the joint airline should be established without affecting the operations of the three national airlines. No wonder certain experts agree that there is "good potential of international traffic" in the RCD countries to make the joint airline economically feasible,[37] butthere should be little doubt that in the event of the three national airlines maintaining their existing international operations, the joint airline would

never have adequate traffic to become an economically viable unit. The fact is that in spite of a growing trend in the RCD region, the existence or even the projected traffic would not justify the operation of four different RCD airlines on the international routes.

Another unpleasant consequence of such a situation would be that the joint airline would be directly competing with the three national airlines on most of their international routes. Such an undesirable situation could eventually bring financial disaster to all the airlines concerned. Considering these factors, the only course to create a strong, competitive and profitable joint airline would be to allow it to exploit most of the traffic rights obtained by the RCD countries. This, of course, would involve the drastic curtailment of the international operations of such fine airlines as PIA, Iranair and THY, and would also tend to reduce them primarily to domestic and regional airlines. This would also involve a certain loss of international prestige and national pride. To some, these might appear as unpleasant steps, but they are required to be taken for the progress, reform and rationalization of air transport in the RCD region. Accordingly, barring regional services and

certain limited international services, such as the operations to Muslim holy places in Saudi Arabia and Iraq, PIA's service to the Peoples Republic of China and THY's service to Tel Aviv, all other international operations should be assigned to the joint airline.

The writer's proposal contemplates absolutely equal participation by the three member states in the international operating agency. Experience is not lacking to demonstrate that the developing countries with more or less equal resources and status are unlikely to participate in any joint venture which is designed to allow one particular party to have a dominant role in the management or the operations of the enterprise. The principle of equal participation and the resulting parity between the parties are likely to encourage Iran and Turkey to become partners in the joint airline.

3. The Proposed Legal Framework for the RCD Airline.

As a part of his proposal, the writer suggests the following legal framework for the joint RCD airline. This legal framework is given concrete form in the draft of the Treaty Relating to Air Transport in RCD States, which is

being submitted by the writer. This Treaty and its Annexes are intended to be the constitutive legal instrument of the joint airline, and are further intended to provide satisfactory solutions to the various legal problems involved in constituting an international operating agency or a joint air transport operating organization. The Treaty, the draft of which is contained in the following pages, is preceded by brief introductory remarks which aim at explaining the salient features of the proposed legal framework. It is hoped that in the event the writer's proposal evokes any meaningful interest, the RCD partners should actively consider the conclusion of the proposed Treaty Relating to Air Transport in RCD States subject, of course, to certain changes or modifications which may be required to achieve a consensus between the parties in realising the cherished objective of a strong and competitive international airline in the area.

a) The Nature of the Constitutive Legal Instrument.

It is proposed that the joint airline should be constituted under an international treaty, and should not be created under any national law. The main objection against national incorporation would be that in that case, the joint undertaking would acquire nationality of the state of registration, and thus by acquiring a national character would

become indistinguishable from any company existing and operating under the national companies law. In that event, unless specifically exempted by appropriate legislation, the joint airline would become subject to all national laws of the state of registration.

The conclusion of an international treaty is an essential requirement to endow the proposed joint airline with appropriate international legal personality, and would also tend to manifest the equality of participating states.

The Treaty Relating To Air Transport In RCD States with its Annexes would be an international agreement between the states of Iran, Pakistan and Turkey, and would set out the legal, organisational and financial structure of the joint enterprise. The Treaty would regulate the entire activity of the joint airline, and would thus be the supreme law governing this international operating agency.

b) The Nature of the Proposed Joint Enterprise.

The Treaty envisages the creation of an international operating agency in the form of an international body corporate specifically endowed with appropriate international legal personality.

The Treaty contemplates the joint airline as an institution of the Regional Cooperation for Development alliance, and styles the joint airline as a body corporate having power to sue and be sued in its corporate name and also having the power to acquire, hold and dispose of movable and immovable property.

c) Name.

TUPAIR International Airlines Corporation is proposed as the name of the joint air transport operating organisation. This name is derived by taking the first two letters from the name of the partner states Turkey, Pakistan and Iran, and seems and sounds better than the previously proposed name of Turkish-Iranian-Pakistan Airlines Corporation. It may be mentioned here that the name TUPAIR has already been suggested by some for the proposed airline.

d) Aims and Objectives.

One of the first provisions of the Treaty enumerates the aims and objectives of the joint airline. It makes it clear that the scope of the airline's activities is limited to the operation of air services on the agreed international routes by using large-capacity subsonic jets and SSTs; it being understood that the responsibility for determining the

agreed routes would rest with the Board of Directors of the airline. It is hoped that as the bulk of the international services in future would be operated by the large-capacity subsonic jets and supersonic transports, the joint airline would be assigned the operation of the bulk of the international services of the partner states. As such the Treaty provides that the joint airline would be the principal chosen instrument of the partner states for exercising the traffic rights obtained by them.

Since the three existing national airlines are to be maintained for the domestic and regional operations, the Treaty does not contain a provision for the operation of any domestic or regional services by the joint airline at the request of a partner state. Such functions have normally been assigned to the other multi-national airlines such as the SAS, EAAC and Air Afrique.

e) Parties and their Relationship.

The parties to the Treaty and thus in the joint airline are the RCD States of Iran, Pakistan and Turkey. Their relationship in the airline is on the basis of equality and equal participation. The Treaty stipulates that this principle should be adhered to under all circumstances, with

the obvious objective that the joint airline is not dominated by any one of the parties.

f) Ownership.

Strictly speaking, an enterprise created by an international agreement and possessing international legal personality is incapable of being owned by the contracting parties, if the term "owned" is given its usual meaning. By virtue of the Treaty, the states merely acquire certain rights and privileges, and assume certain obligations and responsibilities. However, since the ultimate control of the joint airline would rest jointly with the RCD States, they may be deemed the "owners" of the airline.

The aircraft acquired by the airline would become the property of the airline and not that of the partner states. With regard to third parties, therefore, the power to hold and dispose of such property would be exercised by the airline and not by the partner states. The same will be the case in respect of any real or other property acquired by the airline in its own name.

g) Organizational Arrangements.

The overall management and superintendence of the joint airline is vested, according to the Treaty, in the

RCD Council of Ministers and the Board of Directors.

Subject to the overriding powers of the Council of Ministers, which are described below, the Board will be responsible for the general direction and the administration of the airline and its affairs. In this respect, it will exercise all powers and do all acts which may be exercised or done by the airline. As the principal governing organ of the enterprise, the Board will have vast powers. Since the shareholders of the joint airline are three states only, the Board, besides being the Board as usually understood, will also act as if it constituted the general body of the shareholders. It would thus emerge as a truly powerful governing body. It shall consist of twelve Directors including the Chairman and the Managing Director. Each state will nominate four Directors each for a period of four years. As far as possible, they will include the Director General of Civil Aviation, the Managing Director of the national airline and two senior government officials from each partner state. The inclusion of the Director Generals and the Managing Directors would bring professional experience to the Board, and would also lead to the promotion of the coordination of the aviation policies and the standard-

ization of the air laws, rules and regulations, which is an obligation of the partner states contracted under the Treaty.

The four-year term for the Directors is intended to ensure stability and continuity in the Board, and the provision for their re-appointment makes it possible to retain persons of excellence in the Board. No provision is, however, made for Alternate Directors, because it is felt that under that arrangement, the level of attention and devotion of the Directors may suffer likely.

The Board will have a Chairman who is nominated by rotation by the partner states, and presides over the Board meetings.

The management of the airline will be carried out by the Board through the Managing Director who will be the chief executive officer of the airline. The office of the Managing Director, like that of the Chairman, will rotate among the nominees of the partner states. The qualifications for this office require professional aviation or airline experience. In order to provide the best possible person for this responsibility and to ensure the efficient and dynamic

management, the Treaty stipulates that as far as possible each partner state will endeavour to nominate the managing director of its national airline as the Managing Director of the joint airline, provided that no person shall hold a dual assignment.

The board, which will have a number of enumerated and general powers to do all such acts, deeds and things in the name of the airline which it may consider expedient for the purposes of the airline, will determine the time and place of its meetings. However, four Directors, which in effect means one partner state, could summon a Board meeting. The quorum at a Board meeting will be constituted by six Directors, provided that at least one Director from each partner state shall be present. This is to ensure that the Board, which arrives at its decisions by majority vote, will have the participation of all partner states in its deliberations and decisions.

The RCD Council of Ministers, described in Chapter I above, will be responsible for developing common aviation policies in the partner states, approving development and operating plan of the airline prepared by the Board, and determining all questions relating to civil aviation. The

Council will have the power to give directives to the Board on matters of policy, which shall be binding for the Board.

In exercising control over the development and operating plans of the airline, the Council would tend to ensure that the business of the airline is conducted in accordance with the sound business principles as required by the Treaty.

h) Financial Provisions.

The initial capital of the joint airline, which is U.S. $30 million, would be subscribed in equal amounts by the three partner states. No provision for contribution of aircraft or other property as capital is contained in the Treaty because the joint airline intends to operate advanced technology aircraft which no partner state or its national airline possesses. The idea is to develop a new airline and common facilities from the beginning. Although the existing facilities with the national airlines cannot be capitalised for the new joint airline, there should be no problem in using them on suitable payment or acquiring them outright for the joint airline.

The financial year of the airline will be the calendar year, and each year an audited statement of its

accounts will be furnished to the partner states through the Council of Ministers. The airline will have a reserve fund, and will declare dividends if it makes profit. The airline will also have powers to invest its funds and to borrow money from the international money market.

The accounts of the proposed airline will be audited by a team of three auditors, one from each partner state, appointed for a four-year term. They will have all the necessary powers to carry out their inspection of the airline's accounts, and will submit their report to the partner states through the Council of Ministers.

i) Provisions with respect to Taxation and Customs Duties.

The airline will be exempt from the payment of any tax or duty of any kind throughout its existence. Such support is essential for strengthening the financial condition of the proposed airline, and is usually available to many other national and multi-national airlines.

j) Registration of Aircraft.

As a truly international body corporate and an international operating agency, the aircraft of the proposed airline would be jointly registered in accordance with the provisions of the ICAO Council's Resolution of December 14,1967.

k) Personnel.

The Treaty provides that as far as possible nearly equal number of important positions in the proposed airline would be filled by the nationals of all the partner states. This is considered necessary to remove any possible national jealousies or hard feelings if the nationals of any one or two partner states dominate in the joint airline. This will also ensure the application of the fundamental principle of equal participation of the partner states although the absolute applicability of this principle would neither be possible in all the cases, nor be desirable for commercial viability and operational efficiency.

l) Modification and Termination.

Any modification of the Treaty including the constitution of the proposed airline or the termination of the Treaty and the consequential dissolution of the joint airline would require a unanimous agreement of the partner states.

m) Duration.

The duration of the proposed airline will be 99 years as in the case of Air Afrique.

n) Head Office and Operating Base.

The head office and the operating base of the joint airline would be located in Teheran and Karachi respectively. The Treaty's choice of these cities is influenced by the fact that Teheran is the central city in the RCD region and that Karachi has the best potential to develop into an operating base.

o) Settlement of Disputes.

Settlement of disputes will be by arbitration through an arbitral tribunal consisting of three arbitrators. The tribunal will determine its rules of procedure, applicable legal principles and its seat. Its awards would be binding for the parties concerned, and no appeal would be against them.

4. The Draft Treaty for the RCD Airline.

TREATY RELATING TO AIR TRANSPORT IN RCD STATES

The Kingdom of Iran
The Islamic Republic of Pakistan
The Turkish Republic

Whereas in furtherance of their friendly relations and with a view to accelerating their economic development, the Contracting States have associated themselves in a

regional organisation under the name and style of Regional Cooperation for Development;

Whereas one of the principal objectives of RCD collaboration is to improve the transport services within the region and to establish a strong and competitive international airline among the Contracting States;

Whereas the development of Civil Aviation and of Air Transport in particular can greatly help to create and preserve friendship and understanding among the Contracting States;

Whereas the existence of an instrument of air transport common to the Contracting States may serve to improve their mutual relations and thus, help to accelerate the development of their economies;

Whereas Articles 77 and 79 of the Convention on International Civil Aviation signed in Chicago on the 7th December 1944, to which all the Contracting States are signatories, provide for the setting up by two or more States of joint air transport operating organizations or international operating agencies and the participation of the States in these organizations and agencies;

Whereas the Contracting States have accordingly decided to conclude a Treaty to that end and have agreed on the following provisions.

Article 1.- Purpose of the Corporation.

In order to develop their air transport and with a view to exercising their rights in respect of air traffic between their territories and with outside territories, the Contracting States have decided to set up a joint air transport operating organization with an appropriate legal status, which shall be referred to hereinafter as the Joint Corporation, and which shall operate large-capacity subsonic jet transports and supersonic transports on the agreed medium and long-haul routes. In this respect, the Contracting States undertake to designate the Joint Corporation as the principal instrument chosen by them for exercising their rights in respect of the agreed international traffic and air transport rights.

Article 2.- Legal Status of the Joint Corporation.

The Joint Corporation shall be endowed with the fullest legal capacity recognised by the Laws of the Contracting States in the case of bodies corporate and shall be deemed as possessing international legal personality.

The Joint Corporation shall be a body corporate with perpetual succession and a common seal and shall have power to sue and be sued in its corporate name and to acquire, hold and dispose of movable and immovable property for the purposes of the Joint Corporation.

The Joint Corporation shall be an institution of the Regional Corporation for Development.

This Treaty and its Annexes, including the Articles of Incorporation of the Joint Corporation shall determine the legal terms of existence and operation granted to the Joint Corporation by the Contracting States by departing, if need be, from the present or future provisions of their national laws.

The Articles of Incorporation of the Joint Corporation may be modified only with the unanimous agreement of the Contracting States insofar as the following provisions are concerned.

- Purpose of the Joint Corporation
- Terms of admission for new States
- Majority rules
- Rules governing allotment, increase or decrease of the authorised capital

- Voting rights and members of the Board
- Rules for liquidation.

Article 3.- Equal Participation.

Each of the Contracting States shall have an equal part in the Joint Corporation's capital.

Article 4.- Joint Registration of Aircraft.

The aircraft belonging to the Joint Corporation shall be jointly registered in accordance with the ICAO Council's Resolution of December 14, 1967.

Article 5.- Council of Ministers.

The RCD Council of Ministers shall develop common civil aviation and air transport policies, approve development plans of the Joint Corporation and determine, in a general manner, all questionsrelating to civil aviation. The Council may give directions of a general nature to the Board of Directors of the Joint Corporation relating to the operation of the undertaking of the Joint Corporation. Moreover, the Council may give particular directions to the Board concerning any matters involving agreement with, or the interests of, any country other than a Contracting State.

Article 6.- Coordination of Bilateral Air Transport Agreements.

The Contracting States undertake to adopt, for the purpose of negotiating and concluding bilateral air transport agreements, a position in coordination with that of the other Contracting States, due consideration being given to the operations and the interests of the Joint Corporation. To this effect, each Contracting State undertakes to consult other Contracting States on any air traffic draft agreement to be concluded by said Contracting State. Each Contracting State shall endeavour to take into the highest consideration other Contracting States' opinion so as to avoid concluding air transport agreements which may be prejudicial to the interest of the Joint Corporation.

Article 7.- Uniform Air Laws and Regulations.

The Contracting States shall bring into uniformity their air laws and regulations particularly in respect of the following matters:

- Rights to aircraft
- Registration and airworthiness of aircraft
- Air navigation
- Measures to facilitate carriage by air
- Contract of carriage by air
- Technical operation of aircraft for carriage by air

- Status of licenced flight personnel.

The drafts of acts, rules and regulations shall be the subject of recommendations on the part of the RCD Council of Ministers. The Contracting States shall bring into uniformity their positions in respect to international conventions on Civil Aviation which shall be submitted for consideration to the RCD Council of Ministers which shall formulate recommendations on this matter.

Article 8.- Enabling Provisions.

The Contracting States shall take the necessary legal, financial and customs measures enabling the normal carrying out by the Joint Corporation of its activities, due account being taken of its special status and of its quality as instrument chosen by each of them for operating their international services.

Article 9.- Admission of a New State.

This Treaty shall be open to accession by all interested States. The admission of a new State to the provisions of this Treaty shall, however, be subject to unanimous agreement on the part of the Contracting States. The instrument of adherence shall be deposited with the Government of the ———————— which shall notify the Governments of the other signatory and adhering States.

Article 10.- Ratification and Coming into Force.

This Treaty shall be ratified in accordance with the formalities set forth in the Constitution of each Contracting State. The instruments of ratification shall be deposited with the Government of the _____. The Treaty shall come into force on the first day of the month following the deposit of ratification by the last signatory State to proceed with this formality. The Government of the _____ shall notify the other signatory States of each deposit of the instrument of ratification and of the date on which the Treaty comes into force.

Notwithstanding the provisions contained in the preceding paragraph, the signatory States shall put this Treaty into effect provisionally on the expiry of a period of three months as from the date of its signature, provided that it has been ratified by at least one Contracting State and that the full amount of the authorised capital of the Joint Corporation has been subscribed.

Article 11.- Transfer of Rights.

None of the Contracting States is entitled to transfer, wholly or partly, its rights or obligations under this Treaty without the other Contracting States' consent.

Article 12.- Withdrawal or Denunciation.

Should any of the Contracting States fail to fulfil its obligations under this Treaty, unless the failure be of minor relevance, the other Contracting States shall be entitled to demand, jointly, that such Contracting State withdraw from the Treaty. The withdrawal shall take place one year after notice of said demand has been given by the other Contracting States.

Should a Contracting State become involved in a war or have a state of national emergency, such Contracting State shall be entitled to withdraw from the Treaty. At a later date when the war or the national emergency has ceased, such Contracting State shall be entitled to re-enter the Treaty on the mutually agreed terms and conditions. Where the Contracting States concerned cannot agree on the terms and conditions, such dispute shall be decided by arbitration.

Any Contracting State may denounce this Treaty, subject to two years' notification being given to the depository State. The depository State shall notify the other Contracting States.

On the withdrawal or the expiry of the said period of notification, the Contracting State withdrawing or

effecting the denunciation shall cease to be part of the Joint Corporation and the shares belonging to the said Contracting State shall be ~~effected~~ disposed of by mutual agreement between the withdrawing Contracting State and the other Contracting States, or, failing this, by arbitration.

The withdrawing Contracting State shall accord the Joint Corporation all authorizations and facilities for the export, transfer or sale of property and assets possessed or held by the Joint Corporation in its territory.

If a Contracting State withdraws from the Treaty, the other Contracting States shall be entitled to continue their cooperation under the unchanged name and insignia of the Joint Corporation. The withdrawing Contracting State shall not directly or indirectly use the name or insignia of the Joint Corporation as long as the same is used by the other Contracting States. Furthermore, the withdrawing Contracting State shall be obligated to lend its cooperation to the end that all the rights appertaining to the Joint Corporation be transferred to the other Contracting States or to the Joint Corporation, which then will consist only of the remaining Contracting States.

Article 13.- Settlement of Disputes.

Any disputes between the Contracting States relating to the interpretation or application of this Treaty which cannot be settled by consultation shall be submitted to arbitration in conformity with the established rules of international law.

Article 14.- Registration.

In accordance with Article 83 of the Convention on International Civil Aviation signed at Chicago on 7 December 1944, this Treaty and its Annexes shall be registered with the Council of the International Civil Aviation Organization by the Government of the _____.

Done at _____ the _____ day of _____ in one single copy which shall remain deposited in the archives of the Government of the _____ and duly certified copies shall be transmitted by that Government to all the signatory States.

For the Kingdom of Iran

For the Islamic Republic of Pakistan

For the Turkish Republic

ANNEX TO THE TREATY CONCERNING FISCAL AND FINANCIAL PROVISIONS GRANTED TO THE JOINT CORPORATION

1. The Joint Corporation shall be exempt from all fees and taxes, within the territories of the Contracting States, on its constitution, when its capital is subscribed or increased and on extension of the period fixed for the duration of the Joint Corporation, as well as from various formalities which its activities may require. Similarly, it shall be exempt from all fees, and taxes on its dissolution or winding up.

The Joint Corporation shall be exempt within the territories of the contracting parties from all fees and taxes payable upon the acquisition of immovable property, from inscription and registration fees with the exception of the fees and taxes corresponding to the payment of a service rendered. The Joint Corporation shall also be exempt, within the territories of the Contracting States, from taxes of an exceptional or discriminating nature and from all fees and taxes involved for issuing loans.

The Joint Corporation shall also be exempt,within the territories of the Contracting States from payment of stamp duties and court fees. Notwithstanding any thing contained

in any national law to the contrary, the Joint Corporation, within the territories of the Contracting States, shall also be exempt from the payment of any customs or other duties, taxes, cess, charges, levies, rates - whether local, provincial or national on any of its imports, exports, properties, assets, undertaking or business. Further, no national laws of the Contracting States relating to any restrictions on imports, exports, movement of money or goods, or sale of goods shall apply to the Joint Corporation.

2. The Contracting States undertake to harmonize their respective national laws and regulations, so that the aircraft and the specific aeronautical or non-aeronautical equipment destined to be incorporated in the aircraft or to complete their equipment and necessary to the Joint Corporation to ensure its operation, shall be admitted into their territories free of customs duties and of charges on the turnover or of all duties and charges of like effect. The Contracting States also undertake to harmonize their respective laws so that the equipment mentioned hereinabove and publicity and advertising material shall be allowed to circulate among their respective territories with similar exemptions.

3. The Contracting States undertake to accord the Joint Corporation all authorizations and facilities to enable it to perform all transfers of funds and to dispose of all currencies necessary for carrying out its activities, including the issue and service of loans. In this connection, the Contracting States agree to exempt the Joint Corporation from the restrictions imposed by any of their foreign exchange laws and regulations.

Done at ———— the ———— day of ———— in one single copy which shall remain deposited in the archives of the Government of the ———————— and duly certified copies shall be transmitted by that Government to all the signatory States.

For the Kingdom of Iran

For the Islamic Republic of Pakistan

For the Turkish Republic

ANNEX TO THE TREATY CONTAINING ARTICLES

OF INCORPORATION

Article 1.- Form and Name.

An air transport Corporation under the name and style of TUPAIR International Airlines Corporation is hereby constituted and is governed by:

(1) The RCD Treaty relating to air transport signed on the ————day of ———————— and by the present Articles of Incorporation attached thereto.

(2) Residuarily and only insofar as they are compatible with the provisions of the Treaty and the Articles of Incorporation by the principles pertaining to the laws of the signatory States of this Treaty.

Article 2.- Interpretation.

In this Instrument, unless the content otherwise requires - "air transport services" mean services for the transport of passengers, mail or freight by air;

"air transport services and facilities relating thereto" includes, without prejudice to the generality of the expression, air transport services and services for the provision of hotel and catering facilities, for the carriage of passengers to and from airports and aerodromes and for the collection, delivery and storage of baggage and freight;

"Board" means the Board of Directors of the Corporation;

"Chairman" means the Chairman of the Board;

"Corporation" means the TUPAIR International Airlines Corporation constituted under Article 1 of this Instrument;

"Council of Ministers" means the RCD Council of Ministers;

"Director" means a member of the Board of Directors of the Corporation;

"employee" means any person in the service of the Corporation;

"international air services" means air transport services provided to or from any place outside the Partner States;

"Partner State" means Iran, Pakistan and Turkey and shall be deemed to include any other State that may join in the Treaty;

"purposes of the Corporation" means any purposes necessary or desirable for the performance of the services, or the provision of any facilities, which the Corporation is authorized to perform or provide under this Instrument;

"Treaty" means the Treaty Relating To Air Transport In RCD States entered into between Iran, Pakistan and Turkey on the ———— day of ———————— with present Instrument attached thereto;

"prescribed" means prescribed by rules or regulations made under this Instrument;

"Rules and Regulations" mean rules and regulations framed under this Instrument.

Article 3.- Functions of the Corporation.

It shall be the function of the Corporation to provide and develop safe, efficient, adequate, economical and properly coordinated air transport services by large-capacity subsonic jet aircraft and supersonic aircraft on agreed international routes as the Board may decide upon; and the Corporation shall so exercise its powers as to secure that air transport services are developed to the greatest possible advantage in the interests of the Partner States.

The Corporation shall have power to do all things necessary or advantageous and proper for the purposes of the Corporation and, in particular and without prejudice to the generality of the foregoing, shall have power:

(a) to operate any air transport service or any flight by aircraft for a commercial or other purpose, and to carry out all forms of aerial work;

(b) to acquire aircraft, parts of aircraft, aircraft equipment and accessories and stores;

(c) to promote any organisation for the purpose of engaging in any activity of a kind which the Corporation has power to carry on;

(d) to acquire, hold or dispose of any property, whether movable or immovable, or any air transport undertaking;

(d) to repair, overhaul, reconstruct, assemble or recondition aircraft, vehicles or other machines and parts, accessories and instruments thereof or therefor;

(f) to hold shares in any other corporation and to establish or acquire any subsidiary corporation;

(g) to do all things incidental to or in connection with any of the matters referred to in (a) to (g) hereinabove.

In discharging its functions the Corporation shall have careful regard to sound business principles.

Article 4.- Share Capital.

The authorised share capital of the Corporation shall in the first instance be US $30 million divided into 300,000 shares of US $100 each, which shall be divided equally between the Partner States. The entire share capital of the Corporation shall be subscribed to at the time of the establishment of the Corporation.

The Corporation may increase its capital whenever it thinks fit subject to the conditions laid down in Article 2 of the Treaty. Any increase of capital shall in no circumstance prejudice the principle of the equal participation of each of the Partner State.

The admission of a new State may be effected by the transfer of shares belonging to the Partner States or by increasing the Corporation's capital provided always that such admission shall in no circumstance prejudice the principle of the equal participation of each of the Partner State.

The shares held by a Partner State are non-transferable, except when the transfer is made to a new State taking membership in the Corporation in accordance with the provisions of the Treaty and of this Instrument.

Article 5.- Administration of the Corporation.

The general direction and the administration of the Corporation and its affairs shall vest in the Board of Directors which may exercise all powers and do all acts which may be exercised or done by the Corporation.

The Council of Ministers may, as and when it considers necessary, issue directives to the Board on matters of policy, and such directives shall be binding on the Board. If a question arises whether any matter is a matter of policy or not, the decision of the Council of Ministers shall be final.

Article 6.- Board of Directors.

The Board of Directors shall consist of twelve Directors, including the Chairman and the Managing Director.

Each Partner State shall appoint four Directors who shall hold office for a term of four years, unless sooner removed by the appointing Partner State, and may be appointed thereafter for a further term or terms of such duration.

All appointments fo the Board shall be made in writing served on the Corporation, and the respective Partner States shall also be entitled in like manner to remove from office any Director appointed by them respectively and to appoint another Director in place of any person so removed or otherwise ceasing to be a Director after having been so appointed.

In nominating Directors, each Partner State shall, as far as possible, nominate its Director General of Civil Aviation, Managing Director of its national airline and two senior government officials.

Article 7.- When office of Director is vacated.

The office of a Director shall ipso facto be vacated if he be found lunatic or become of unsound mind or, if he be absent from the meetings of the Board during a period of six calendar months, without special leave of absence from the Board by resolution duly recorded or, if by notice in writing to his appointing Partner State he resigns his office.

Article 8.- Filling of Casual Vacancies.

A casual vacancy in the office of a Director shall be filled by appointment, and the Director so appointed shall hold office for the unexpired period of the term of his predecessor.

Article 9.- Chairman of the Board.

The Chairman of the Board of Directors shall be appointed by rotation by the Partner States in alphabetical order. The appointment of the Chairman, whose nomination should be acceptable to the other Partner States, shall be for a period of four years. A casual vacancy in the office of the Chairman shall be filled by appointment, and the Chairman so appointed shall hold office for the unexpired period of the term of his predecessor.

Article 10.- Duties of the Chairman.

The Chairman of the Board shall be Chairman of any meeting at which he is present. If at any meeting, he is not present, the Directors present may choose one of their number to be Chairman of the Meeting.

Article 11.- Managing Director.

The management of the Corporation shall be carried out by the Managing Director who shall be the chief executive

officer of the Corporation. The Board shall delegate to the Managing Director the powers necessary for the exercise of his duties.

The Managing Director shall be appointed by rotation by the Partner States in alphabetical order, provided that the person nominated by one Partner State is acceptable to the other Partner States. The appointment of the Managing Director shall be for a period of four years and he shall be eligible for re-appointment subject to the unanimous agreement of all the Partner States.

The Managing Director shall be a professional aviation person having vast experience in aviation or airline industry. As far as possible, each Partner State shall endeavour to nominate the managing director of its national airline as the Managing Director of the Corporation, provided that no person in any circumstance shall hold office in the national airline and the Corporation simultaneously.

Article 12.- Powers of the Board.

Subject to any directives on matters of policy which may be given to it by the Council of Ministers, the Board shall be endowed with full powers to act in the name of the Corporation.

Without prejudice to the generality of the foregoing power, the Board shall have the following powers, namely:

(a) to represent the Corporation in its dealings with States, Governments, public and private organizations, trading bodies and in general all third parties;

(b) to appoint, remove or suspend any managers, secretaries, officers, clerks, agents, servants or employees and to direct and control them and determine their duties, conditions of service and salaries;

(c) to establish offices, depots and branches wherever it may consider necessary;

(d) to be responsible for fulfilling all the formalities necessary to enable the Corporation to operate within the terms of the laws and the regulations of the countries in which it shall operate;

(e) to determine the general administrative costs, to control all supplies and to arrange the operating plans of the Corporation;

(f) to decide upon all treaties, agreements, tenders, adjudications, contract work or otherwise coming within the framework of the activities of the Corporation;

(g) to receive the moneys due to the Corporation and to pay its debts;

(h) to determine who shall be entitled to sign on the Corporation's behalf bills, notes, receipts, acceptances, endorsements, cheques, releases, contracts and documents, to invest and deal with any of the monies of the Corporation not immediately required for the purposes of the Corporation;

(i) to authorize all purchases, withdrawals, movements and transfers of all movable goods and all rights to movable property and in particular rents, values, credits, patents and licences;

(j) to authorize all contracted loans and advances or opening of credits with or without guarantee;

(k) to commence, and carry on or defend, abandon or compromise any legal proceedings whatsoever on

behalf of the Corporation or to settle or refer any claims or demands by or against the Corporation to arbitration and to observe and to perform the awards and to accept compositions from or give time to any debtor or contributory owing money or alleged to owe money to the Corporation;

(l) to open and operate bank accounts in the name of and in connection with the affairs of the Corporation;

(m) to delegate such of its powers and duties as it may deem necessary for the efficient carrying on of the day-to-day affairs of the Corporation to the Managing Director, any Director or employee of the Corporation;

(n) to enter into any arrangements with any company, firm or person carrying on any business similar to that of this Corporation for mutual concession or for any joint working or combination or any restriction upon competition or for any pooling of business or profits that may seem desirable and to carry the same into effect;

(o) to grant a power of attorney and to appoint any person or persons to be the Attorney or, Attorneys Nominee or Nominees of the Corporation for such purposes and with such powers, authorities and directions not exceeding those vested in or exercisable by it and for such period and subject to such conditions as it may, from time to time, think fit;

(p) to draw up financial statements, inventories and accounts to be submitted to the Partner States;

(q) to do all such acts, deeds and things in the name of and on behalf of the Corporation as it may consider expedient for or in relation to any of the purposes of the Corporation.

Article 13.- Board Meetings.

The meetings of the Board shall be held at such times, and at such places, as may be prescribed by the rules and regulations, provided that a meeting may also be otherwise convened by the Chairman when he so deems fit. The Chairman shall convene a Board meeting in the event of the written request being made to him by at least four Directors who shall set the question they wish to have placed on the agenda

of this meeting. In these circumstances, a meeting of the Board shall be held not later than two weeks after the receipt of this written request.

To constitute a quorum at a meeting of the Board not less than six Directors including the Chairman shall be present, provided always that at least one Director from each Partner State shall be present.

No business shall be transacted at a meeting of the Board unless a quorum is present, provided that no quorum shall be necessary for a meeting previously convened and adjourned for the want of quorum or in the case of a meeting certified by the Chairman to be urgent.

In a meeting of the Board, all decisions shall be taken by a majority of the votes expressed, and in the case of an equal decision of votes, the Chairman shall use his casting vote.

No act or proceedings of the Board shall be invalid by reason only of the existence of any vacancy in, or any defect in the constitution of the Board, or any defect in the appointment of a Director.

Article 14.- Corporation's Signature.

All acts and engagements of the Corporation, the withdrawal of funds and stocks, order on the bankers, debtors, or trustees, subscriptions, endorsements, acceptances and guarantees or receipts for negotiable instruments shall be officially signed either by the Chairman, the Managing Director or by a person endowed with a special power of attorney by the Board.

Article 15.- Liabilities of the Members of the Board.

The members of the Board by virtue of their administration shall not contract any individual obligation or joint liability in relation to the engagements of the Corporation. They shall be held liable only for the execution of their duties.

Article 16.- Head Office and Other Offices.

The Corporation shall establish its head office in Teheran, Iran, and may establish offices within the Partner States and abroad if the Board so thinks fit.

The operating base and engineering facilities of the Corporation shall be located in Karachi, Pakistan.

Article 17.- Duration.

The Corporation shall be constituted for a period of 99 years, subject to its dissolution or extension, provided for under the terms of these Articles of Incorporation.

Article 18.- Investment of Funds.

The Corporation may invest its funds in any securities as may be approved by the Board.

Article 19.- Borrowing Powers.

The Corporation may, with the previous sanction of the Board and on such terms and conditions as may be approved by the Board, borrow money in any currency and in any part of the world, provided that where the loan is to be guaranteed by the Government of a Partner State, prior permission of that Government shall be obtained.

Article 20.- Audit.

Three auditors, one from each Partner State, will be appointed by the Board to audit the accounts of the Corporation. The auditors shall be chartered accountants or persons holding equivalent professional qualification. The appointment of the auditors shall be for a period of four years and they may be re-appointed for another such term. In the event of death, refusal, resignation or prevention of any kind of

one or a number of auditors, replacement shall be obtained for them by the same procedure. The auditors shall be entitled to a remuneration to be determined each year by the Board.

Each auditor will be given a copy of the annual balance sheet of the Corporation and shall examine it together with the accounts and vouchers relating thereto and shall have a list delivered to him of the Books kept by the Corporation and shall, at all reasonable times, have access to the books of accounts and other documents of the Corporation and may in relation to such accounts examine any Director or employee of the Corporation.

The auditors shall report to the Partner States through the Council of Ministers upon the annual balance sheet and accounts and in their report, they shall state whether in their opinion the balance sheet is a full and fair balance sheet containing all necessary particulars and properly drawn up so as to exhibit a true and correct view of the state of the Corporation's affairs, and in case they have called for explanation or information from the Board, whether it has been given and whether it is satisfactory.

The Board may, at any time, issue directions to the auditors or any one or two of them to report to it upon the adequacy of measures taken by the Corporation for the protection of interest of the Partner States and creditors of the Corporation or upon the sufficiency of the information and other means placed at the disposal of the auditor or the auditors in auditing the accounts of the Corporation.

Article 21.- Statement of Accounts.

A statement of the accounts audited by the auditors and an annual report of the Board on the conduct of its affairs for that year shall be furnished to the Partner States through the Council of Ministers as soon as possible after the end of every financial year.

Article 22.- Financial Year.

The financial year of the Corporation shall begin on January 1 and terminate on December 31. The first financial period shall comprise the period starting on the date of the constituting of the Corporation until December 31 of that calendar year.

Article 23.- Reserves and Dividends.

Out of its earnings, the Corporation shall establish a general reserve fund and create from time to time such

other special reserves and funds as the Board may determine.

After making provisions for bad and doubtful debts, depreciation of assets, maintenance of reserves, and any other matter determined by the Board, the Corporation may declare a dividend out of the profits accruing in a financial year.

Article 24.- Development and Operating Plan.

The Board shall, in respect of the operations of the Corporation for each successive period of five years, submit to the Council of Ministers a development and operating plan for that period and the first such plan shall be submitted to the Council of Ministers not later than one year after the establishment of the Corporation.

Every development and operating plan shall include estimates of expected traffic growth, proposals for the development of air routes and for the use and operation of aircraft and estimates of probable revenue and expenditure.

The Board may revise a development and operating plan before the expiration of the period to which it relates and shall submit such revised plan to the Council of Ministers.

Article 25.- Liquidation of Corporation.

The Corporation shall not be wound up save by a Treaty of the Partner States and in such manner as that Treaty may direct.

Article 26.- Amendment of the Constitution of Corporation.

The provisions of this Instrument are not subject to amendment, variation and change, save by a Treaty of the Partner States duly made and ratified.

Article 27.- Staff.

The Board may appoint such employees of the Corporation as may be necessary for the purposes of the Corporation under such terms and conditions, including conditions relating to discipline and dismissal, as it may think fit. When appointing higher officials, as well as in connection with the appointing and training of flight personnel, representatives abroad, technical specialists and engineers, the choice between equally qualified persons shall be made with due consideration of achieving a reasonable equality between Iranians, Pakistanis and Turks.

Article 28.- Settlement of Disputes.

The following disputes shall be settled by arbitration exclusively:

(a) Any dispute relating to the interpretation and application of these Articles of Incorporation and to rights, obligations and liabilities pertaining thereto;

(b) Any disputes between Partner States relating to Corporation's affairs or to rights of Partner States;

(c) Any disputes regarding the nullity of the Corporation or its statutory provisions;

(d) Any disputes regarding liquidation of the Corporation.

To this effect, each of the Partner State shall appoint in each case one arbitrator to the arbitral tribunal. The arbitral tribunal shall elect its own chairman and settle its own rules of procedure, including the question of where the tribunal shall sit, as well as which legal rules will apply. The award of the tribunal shall be mandatory on each of the parties and shall be subject to no appeal.

Article 29.- Rules and Regulations.

The Board may with the previous sanction of the Council of Ministers, make rules and regulations not inconsistent with the provisions of this Instrument to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Instrument.

Article 30.- Language.

The English language shall be the official language of the Corporation, and shall be used for all communications and information between the Corporation and the Partner States.

Done at _____ this _____ day of _____ in one copy, which shall remain in the archives of the Government of _____, who shall forward certified copies to all signatory States.

CHAPTER VI

FOOTNOTES

1. Information obtained by the writer from the Planning Department of PIA. See also The Aeroplane and Commercial Aviation News, December 9, 1965, which, on p. 10, credits Air Marshal M. Nur Khan as the originator of the joint airline.

2. Joint Statement by the Heads of State of Iran, Pakistan and Turkey, issued after Istanbul Summit Conference.

3. Paragraph 8 of the Decisions and Observations of the Summit Conference of Iran, Pakistan and Turkey held at Istanbul on July 21, 1964.

4. Report on the Economic Feasibility of Joint International Airlines prepared by the Subcommittee of the Air Transportation Group, pp. 1, 3, 15 and 16. See also Letter No. PLD/13.007A/64 dated 20th August 1964, by Planning Director, PIA, to the Board of Directors, PIA.

5. Minutes of the meeting of the Working Group on Air Transportation held on 29th August, 1964.

6. Report of the Regional Planning Committee, held at Teheran, September 7-9, 1964.

7. RCD Council of Ministers Joint Communique MC/I/64. Experts also agreed that such a joint airline was economically feasible. PIA's M. M. Saleem observed: "Taken together the international air traffic of three countries is so large that a combined international airline of the three countries can operate enough long-haul services to compete with foreign airlines now serving the region." See M.M. Saleem, "Role

of Air Transportation in Regional Cooperation for Development," RCD Anniversary Publication, July 21, 1965., p. 72.

8. RCD Secretariat - Background Paper for the Meeting of the Representatives of Iranair, PIA and THY, scheduled at Karachi from 19th November, 1968, pp. 3-4. See also Paragraph 6 of the Report of The Regional Planning Committee, op. cit., supra, note 6.

9. Proposals for the Operation of a Joint Airline by Turkish Alines, Iran National Airlines Corporation and Pakistan International Airlines Corporation: Prepared by Pakistan International Airlines, pp. 2,5.

10. Minutes of the Financial, Legal and Intra-Regional Subcommittee Meetings held at Karachi - 3rd to 6th November, 1964. See also Kayhan International, November 8, 1964.

11. Working Paper Including Draft Treaty and Draft Articles of Incorporation of the Turkish-Iranian-Pakistan Airlines, circulated by PIA at the meeting of the Legal Subcommittee held at Karachi from 3rd to 6th November, 1964.

12. Ibid.

13. Ibid.

14. Ibid.

15. Minutes of the Financial, Legal and Intra-Regional Subcommittee Meetings held at Istanbul, 3rd May, 1965.

16. RCD Secretariat - Background Paper for the Meeting of the Representatives of Iran Air, PIA and THY, op. cit., supra, note 8, p. 4. See also RCD Council of Ministers Joint Communiques MC/II/65, MC/III/65 and MC/IV/66.

17. Ibid., Background Paper, pp. 4-5, and RCD Council of Ministers Joint Communique MC/IV/66.

18. Report of the Regional Planning Council - Third Session, RPC-III-65, p. 18 (Restricted Circulation).

19. Report of the Committee on Air Transportation (AT-III-65).

20. Report of the Regional Planning Council - Fourth Session, RPC-IV-66, p. 29, (Restricted Circulation).

21. Background Paper, op. cit., supra, note 8, p. 5. However, the RCD Council of Ministers Joint Communique issued after the Fifth Session at Teheran does not mention the creation of this Subcommittee. See Joint Communique MC/V/66.

22. Information provided by the Planning Department, PIA.

23. Report of the Regional Planning Council - Fifth Session, RPC-V-66, p. 70 (Restricted Circulation).

24. Background Paper, op. cit., supra, note 8, pp. 5-6.

25. Ibid., p. 6. See also Reports of the Regional Planning Council - Sixte, Seventh and Eighth Sessions; RPC-VI-67, RPC-VII-67 and RPC-VIII-68, pp. 88, 39 and 53, respectively.

26. Background Peper, op, cit., supra, note 8, pp. 6-7.

27. Report of the Regional Planning Council - Eighth Session, RPC/VIII/68, p. 54 (Restricted Circulation).

28. Opening Statement by the Leader of Pakistan Delegation at the Meeting of the Heads of THY, Iranair and PIA, held at Karachi, on February 4-5, 1969.

29. Report of the Meeting of the Heads of THY, Iranair and PIA, RCD Secretariat Doc. AT/Rep/69, p. 1. See also Report of the Ramsar Summit Working Group RSC/WG/III/68, p. 24 (Restricted).

30. Report of the Meeting of the Heads of THY, Iranair and PIA, op. cit., supra, note 29, p. 2.

31. Ibid., pp. 2-3.

32. Ibid., p. 3.

33. RCD Council of Ministers Joint Communique MC/X/69, para. 32.

34. Joint Communique of the RCD Summit Conference held at Izmir on May 6-7, 1970, published in Morning News, May 11, 1970, p. 10.

35. Kayhan International, April 5, 1965.

36. Stephen Wheatcroft, Air Transport Policy, (London: 1964), p. 104.

37. See supra, note 4.

CONCLUSION

The Regional Cooperation for Development is a tripartite alliance between Iran, Pakistan and Turkey. As seen in Chapter I, this regional arrangement, whose primary objective is the economic development of the member states, has many areas of collaboration including, inter alia, air transport. Even if much has not been accomplished by this nascent alliance, a good and promising beginning has been made in certain fields. Depending upon the eventual attitude of the member states, the Regional Cooperation for Development organization has fair potential of developing into an excellent medium of collective development on regional basis.

A declared goal of the Regional Cooperation for Development (RCD) is the formation of a joint international airline in the region. Already, the region has three national airlines, one each in Iran, Pakistan and Turkey, which operate domestic and international air transport services. These airlines, Iranair, PIA and THY are at various levels of development and, as international carriers, fall

into the category of small airlines. Of these, PIA is commercially, technically and operationally most advanced, and is the only carrier with a potential to move into the era of the new advanced technology aircraft. The other two carriers have also made substantial progress, but presently do not appear to have enough resources to acquire and operate advanced technology aircraft. So far, none of the RCD flag carriers is committed to the operation of large-capacity subsonic jets, and only PIA has two delivery reservations for the yet undeveloped and troubled U.S. SST.

The aircraft technology is rapidly advancing, and the competition in the international airline industry is forcing the airlines to acquire and operate newly developed and designed aircraft. The seventies promise to be the decade of the large-capacity subsonic jets and the SST. The new aircraft are bigger, faster and much more expensive, and all airlines, especially the smaller carriers, are finding it difficult to finance them. The financial state of the airline industry is dismal, and the industry is faced with many grave problems. To overcome these problems and to embrace the economics of advanced technology aircraft, most airlines, especially the

medium-sized and small airlines, are pooling their resources and acquiring the economies of scale. In many parts of the world, there is a noticeable trend for maintenance pools and mergers; this is considered by the experts as the sole means of survival. The impetus for inter-carrier collaboration is accelerated by the presence of certain contributory factors such as common culture and history, friendly political relations, geographic proximity and economic reasons. In the case of RCD states, these factors appear to be present. An assessment of the state of air transport in this region suggests the desirability of increased cooperation in air transport, especially pooling of resources to acquire and operate advanced technology aircraft.

There are a number of existing and proposed multi-national airlines and consortia. Their existence and operation has created certain legal problems which have been solved by various multi-national arrangements in different ways. A significant development in this respect is the emerging concept of non-national registration of aircraft, which is likely to develop in the near future.

Attempts to form a strong and competitive joint airline in the RCD region have so far been unsuccessful. Never-

theless, it is being realised that a joint airline is desirable if the RCD nations have to operate large-capacity subsonic jets and supersonic transports. Although the formation of such an airline does not appear to be an imminent prospect, the economics of air transport is likely to bring the eventual formation of a joint airline; unless the RCD partners pool their air transport resources, the airline industry in the region would most probably be reduced to domestic and regional operations.

Knut Hagrup, SAS' new president advises;

> The economics of scale of airlines are getting crucial. Many airlines are already too small and will have difficulty in facing future costs, both capital and operating. Airlines must go up in size so as to bring the costs down. This may mean mergers, or arrangements such as ATLAS and KSSU.[1]

It is hoped that this expert advice will receive the highest consideration in the airline industry and the government circles in the RCD region.

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[1]Quoted in Clive Adams, "SAS Looks To Continuing Annual Growth Of Up To 20% And. . . More Consortiums," Air Transport World, March 1970, p. 19.