THE EUROPEAN CIVIL AVIATION CONFERENCE

by

Edma Stage, LL.B

Barrister-at-Law
(Gray's Inn)

A thesis submitted to the Faculty of Graduate Studies and Research in partial fulfilment of the requirements for the degree of Master of Law.

Institute of International Air Law,
McGill University,
Montreal.

April, 1960

Subject Matter

Appendices

I. Agenda of the Preparatory Committee.

II. Rules of Procedure for ECAC.

III. Resolution adopted by the 10th session of the ICAO Assembly on the relationship between ICAO and ECAC.

IV. Multilateral Agreement on Commercial Rights of Non-scheduled Air Services in Europe.

V. "Improved Utilization and Interchangeability of Aircraft" paper presented by Mr. P. Chauveau, in his capacity as Observer for the International Law Association.

VI. Draft Convention for the Unification of Certain Rules relating to International Carriage by Air Performed by a Person other than the Contracting Carrier.

VII. Multilateral Agreement Relating to Certificates of Airworthiness for Imported Aircraft.

VIII. Standard Clauses for Bilateral Agreements.

IX. ICAO Definition of an International Scheduled Service.

X. Example of an Interchange Agreement and of a Pooling Agreement.

PREFACE

I would like to thank Mr. Ray Yang of the Air Transport Bureau of ICAO for his encouragement and his invaluable help in making it possible for me to have all the documents needed to write this thesis.

In compliance with the regulations laid down by McGill University, I declare that I have written this thesis entirely on my own and without any advice and help whatsoever.

INTRODUCTION

The doctrine of national sovereignty over airspace, although not new at the time, was established in the first convention on air law in 1919:

> "The High Contracting Parties recognize that every Power has complete and exclusive sovereignty over the airspace above its territory."(1)

Consequently, States exchange commercial traffic rights to enable their airlines to operate internationally. The granting of routes forms an integral part of the exchange of traffic rights and the whole has tended to become an important political bargaining factor in air commerce.

With the technical development of the aeroplane during the second World War, it had become clear that, if given the necessary scope, civil aviation would equal in importance other forms of transport. Although the majority of countries were understandably in favour of retaining the doctrine of sovereignty over air space in its strictest interpretation, they realized that the reopening of air routes at the end of the hostilities was of primary importance. With this object in view the United States Government called a meeting of the free nations of the world to meet at Chicago in 1944.

---

(1) Article 1, of the Convention Relating to the Regulation of Aerial Navigation, signed at Paris.

Fifty four nations attended the conference to "make arrangements for the immediate establishment of provisional air routes and services" and "to set up an interim council to collect, record and study data concerning international aviation and to make recommendations for its improvement". The meeting was also invited to "discuss the principles and methods to be followed in the adoption of a new aviation convention".(2)

During the conference several solutions were proposed for the reorganization of civil air transport. The governments of Australia and New Zealand, in a joint statement, proposed ownership and operation by an international authority appointed by the States, of all aircraft employed on international trunk routes.(3) The Canadian government favoured a convention setting up an international authority and subordinate regional bodies authorized to allocate routes to be flown in international air commerce and with power to fix frequency of flight, capacity of aircraft used and rates to be charged.(4) The United Kingdom government, while not favouring such strict international control, was nevertheless in favour of international collaboration with a view to; "avoid disorderly competition with the waste of effort and money and goodwill which such competition involves"; to discourage and if possible end subsidies; to pool knowledge on technical matters; to provide fair shares for all countries in the services provided and the traffic offering; and to set up an international authority to determine capacity, frequency and rates.(5)

---

(2) Proceedings of the International Civil Aviation Conference, Chicago, Illinois, Dept. of State. Vol. I.

(3) Ibid. 2nd plenary session and committees I,III, & IV

(4) Ibid.

(5) Ibid. and John C. Cooper "Some Historic Phases of British Civil Aviation Policy". International Affairs, April 1957.

The United States government held the opposing view of free economic competition. While agreeing that an international authority was necessary to regulate the technical side of commercial aviation, it believed that "any international organization at this time, in economic and political fields must be primarily consultative, fact gathering and fact finding, with power to bring together the interested States when friction develops....."(6)

The outcome of these discussions was the signing of the "Convention on International Civil Aviation" at Chicago on December 7, 1944.(7) This Convention re-states the doctrine of national sovereignty over airspace: "The Contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory".(8) Therefore, the practice of exchanging commercial traffic rights was to continue. However, an attempt was made to reduce the degree of restriction on non-scheduled services by subjecting them to a conditional freedom to operate.

"Right of non-scheduled flight.(9)

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

---

(6) Proceedings of the International Civil Aviation Conference, Ibid.

(7) Ibid, Vol. 1 Final Act, Appendix 11.

(8) Article 1 "Sovereignty".

> Such aircraft, if engaged in the carriage of passengers, cargo or mail for remuneration or hire on other than scheduled international air services, shall also subject to the provisions of Article 7,(9a) have the privilege of taking on or discharging passengers, cargo or mail, subject to the right of any State where such embarkation or discharge takes place to impose such regulations, conditions or limitations as it may consider desirable."

"Scheduled air services.(10)

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

The only possible consequence of the foregoing was that the exchange of traffic rights and the development of air routes would have to be settled either by a separate international convention, or bilaterally or plurilaterally. This position though unsatisfactory was inevitable. The difference in political strength, economic stability and aviation development of the various countries made it imperative, if the Convention was to be adopted, that the question of traffic rights and economic controls be set aside for further deliberation.

The United States, in an attempt to settle the matter internationally, sponsored two agreements which set out the traffic privileges but excluded the economic aspect such as control of frequency, capacity and rates.

(9a) Article 7 "Cabotage" which is the commercial traffic between two points within the political territory of a State.

(10) Article 6.

The first of these agreements, "The International Air Service Transit Agreement",(11) is in effect more of an air navigation agreement as opposed to a commercial air agreement. It sets out the two traffic rights known as the "two freedoms":

> "1. The privilege to fly across a State's territory without landing.
>
> 2. The privilege to land for non-traffic purposes."

There was very little controversy over this agreement and by 1958 forty eight States had ratified.

The second agreement, "The International Air Transport Agreement",(12) is purely a commercial agreement and sets out all five traffic privileges:

Article I

> "Each contracting State grants to the other contracting States the following freedoms of the air in respect of scheduled international air services:
>
> 1. The privilege to fly across its territory without landing.
> 2. The privilege to land for non-traffic purposes.
> 3. The privilege to put down passengers, mail and cargo taken on in the territory of the State whose nationality the aircraft possesses.
> 4. The privilege to take on passengers, mail and cargo destined for the territories of the State whose nationality the aircraft possesses.
> 5. The privilege to put down passengers, mail and cargo destined for the territory of any other contracting State and the privilege to put down passengers, mail and cargo coming from any such territory.
>
> With respect to the privileges specified under paragraph (3), (4) and (5) of this section, the undertaking of contracting States relates only to through services on a route constituting a reasonably direct line out from and back to the homeland of the State whose nationality the aircraft possesses."

---

(11) Proceedings on the International Civil Aviation Conference. Ibid, Final Act, Appendix III.

(12) Ibid, Appendix IV.

Article IV:

> "Any contracting State may by reservation attached to this agreement at the time of the signature or acceptance elect not to grant and receive the rights and obligations of Article I, Section 1, paragraph (5), and may at any time after acceptance, on six months' notice, given to the Council, withdraw itself from such rights and obligations....."

Most States find no objection to granting the first four freedoms, it is the fifth freedom which causes dissent. As can be seen from the wording of the above agreement, the attempt not to impose on States the obligation to grant the fifth freedom did nothing to further the position. There was very little agreement among the States and only sixteen ratified, including the United States, but later the U.S.A. renounced and today only seven nations still adhere.

The re-opening of air routes, therefore, had to be left to bilateral agreements. In order to facilitate and speed up this trend the Conference drew up the "Standard Form of Agreement for Provisional Air Routes",(13) to be superseded by any future multilateral agreement, in which it recommends:

> "That each State undertake to refrain from including specific provisions in an agreement which grants exclusive rights of transit, non-traffic stop, and commercial entry to any other State or airline, or from making any agreement excluding or discriminating against the airlines of any other State, and will terminate any existing exclusive or discriminatory rights as soon as such action can be taken under presently outstanding agreements;"

By October 1947, sixty four of these "Chicago agreements" had been concluded.(14)

---

(13) Ibid, Section VIII, p. 127.

(14) ICAO Doc. 4798, AT/526 23/10/47.

The conflict over the question of economic controls remained insoluble and it was not until the famous "Bermuda Agreement" of 1946 between the United Kingdom and the United States governments[15] that a compromise was reached. In this bilateral, the United States government conceded a certain measure of control over economic questions, including international rates regulation by the governments concerned with provisions to settle disputes, and the United Kingdom government waived its policy of direct international control of traffic frequency and capacity. In a joint statement issued on September 19th, 1946[16] the two governments declared that the principles enuntiated in that agreement "provide the basis for a multilateral international agreement..." Most bilaterals concluded since 1946 have followed the Bermuda principles.[17]

Part II of the Chicago Convention sets up the 'International Civil Aviation Organization' - (ICAO):[18]

> "The aims and objectives of the Organization are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport so as to:

---

(15) Agreement between the United Kingdom of Great Britain and Northern Ireland and the United States of America relating to Air Services between their respective territories. ICAO Registration Nos. 81/82.

(16) ICAO DOC. 4798, ibid.

(17) For Europe see ICAO DOC. 7676 ECAC/1-WP/7.

(18) This organization became a Specialized Agency of the United Nations Organization on May 13, 1947 as contemplated in Article 64 of the Chicago Convention.

(a) Insure the safe and orderly growth of international civil aviation throughout the world;

(b) Encourage the arts of aircraft design and operation for peaceful purposes;

(c) Encourage the development of airways, airports, and air navigation facilities for international civil aviation;

(d) Meet the needs of the peoples of the world for safe, regular, efficient and economical air transport;

(e) Prevent economic waste caused by unreasonable competition;

(f) Insure that the rights of contracting States are fully respected and that every contracting State has a fair opportunity to operate international airlines;

(g) Avoid discrimination between contracting States;

(h) Promote safety of flight in international air navigation;

(i) Promote generally the development of all aspects of international civil aeronautics."

"The Organization shall enjoy in the territory of each contracting State such legal capacity as may be necessary for the performance of its functions. Full juridical personality shall be granted wherever compatible with the constitution and laws of the State concerned."(19)

The Organization is made up of an Assembly, a Council and such other bodies as may be necessary.(20)

On the technical side of air navigation ICAO has been very successful owing to the lack of political interest in such matters. In the field of international air transport, however, it has only been partly successful.

---

(19) Chapter VII, Article 43.

(20) Chicago Convention, Articles 43 to 66 incl.

The primary task undertaken, first by the Provisional International Civil Aviation Organization (PICAO) and later by ICAO was that of formulating an international agreement on commercial rights. Between 1944 and 1948, the discussions were mainly theoretical as long stage flying by civilian aircraft was still in its early phases and consequently very little data and experience had been gathered. In 1946 and again in 1947, the Air Transport Committee presented to the Assemblies of ICAO and PICAO respectively, drafts on "Multilateral Agreements on Commercial Rights in International Civil Air Transport". Despite lengthy discussions neither Assembly produced a revised text.(21) The ICAO session of 1947, however, created a "Commission on Multilateral Agreement on Commercial Rights in International Air Transport" open to all members, to review and to discuss further possibilities of a universal multilateral agreement. The meeting of the Commission took place in Geneva between the 4th and 27th November, 1947.(22) In spite of very wide differences in opinion on many questions, the Commission prepared a draft which was presented to the second meeting of ICAO in 1948. Because of the divergences of opinion, the report of the Commission together with the draft, were referred to the Member States for further study.

---

(21) ICAO DOC. A7 WP/7 EC2 26/3/53.

(22) ICAO DOC. 5230 AE-EC/10.

From 1948 to 1953, no further active steps were taken, but at the 7th session of ICAC at Brighton in 1953, the Assembly adopted a more realistic approach.(22) As the result of an invitation of the Council of Europe, the Assembly decided that, while still keeping a multilateral agreement as a desirable objective, the problem should be attempted on a regional basis.(23) The outcome of this decision was the setting up of the European Civil Aviation Conference.(ECAC).

---

(22) ICAO DOC. 5230 AE-EC/10.

(23) ICAO DOCs 7415, A7-EC/1; A7 WP/7 EC2 supra;
A7-WP/8 EC3, 10/4/53; 7456, A8-P/2 8/4/54.

PART I

Creation of the European Civil Aviation Conference.

Preliminary Steps

Reasons of prestige and national defence as well as economic considerations greatly stimulated the development of aviation in post war Europe. However, these feelings of nationalism and rivalry lead to keen competition and made the obtaining of the fifth freedom difficult. Constant overlapping of services, the existence of controls such as immigration and customs, competition in the aircraft industry(24) are only a few of the factors which have made the cost of operation so high in Europe.(25)

However, the air carriers have attempted to eliminate wasteful competition and have resorted to agreements on various aspects of commercial air transport, such as pooling agreements,(26) ground service

---

(24) Bernard Dutoit "L'Aviation et L'Europe" Lausanne, Janvier 1959.

(25) "Air Transport and European Integration" Goedhuis, J.A.L.& C., 1957. Also, ICAO Circular 28-AT/4, June 1952; M. Henri Bouché Studi in Onore di Antonio Ambrosini, Harvard Law Library, 1957, p. 286; Comparing generally Europe with USA in 1952, for equal surface areas of 6 million klms: European network covers 300,000 Kms - USA 150,000 klms; European operators offer 40 passenger seats per klm - USA 400; population in Europe 280 million - USA 150 million; individual European income 1/4 of USA but fares 50% higher.

(26) Pooling Agreement: "an agreement between air carriers for the operation by them of one service or one group of services, including the allocation of revenue derived from such operation." ICAO Circular 28-AT/4 ibid p. 37. For example see Appendix 10 hereto.

agreements, commercial agency agreements etc[27]... and although they are in a position to achieve a great deal through co-operation they are limited by the political situation. It is only on the political level that the legal restrictions can be moderated. The States realized this but it was on the initiative of the Council of Europe that the situation began to change.

The Council of Europe, a regional international consultative and deliberative organization with the object of developing the widest co-ordination possible in all aspects of European activities, became interested in 1950, in European transport. Its Consultative Assembly directed the Secretary General to consider establishing a High Authority for European transport or, failing this, to find suitable measures to ensure the necessary co-ordination.[28]

Following this, in 1951, certain proposals for co-ordination were put before the Council of Europe.[29] The Special Transport Committee submitted the "Bonnefous" plan, advocating a European Transport Authority. The co-ordination of European railways was the main object of this plan and consequently the other forms of transport are only dealt with cursorily in connection with the proposed Executive Committee.

---

(27) For the different air carrier arrangements see : Bernard Dutoit "La Collaboration entre Companies Aerienne, Ses formes juridiques." Nouvelle Bibliotheque de Droit et de Jurisprudence, Lausanne, 1957; ICAO Circular 28-AT/4, supra.

(28) Recommendation No. 7 of Consultative Assembly of the Council of Europe, 2nd Session (first part August 1950), Strasbourg 1950.

(29) ICAO Circular 28/AT/4 supra and Bernard Dutoit supra.

The proposal put forward by the Committee on Economic Questions and expounded by Mr. Van der Kief, advocated the convening of a meeting of governmental experts and airline representatives to consider the creation of a Consortium on the lines of SAS or a charter company which would lease aircraft of existing companies for traffic in Europe, against payment on a suitable mileage basis. The transcontinental services would remain outside the control of the charter company and continue to be operated by the airlines themselves. Finally Count Sforza, Minister of Foreign Affairs of Italy, proposed, in addition to setting up a European Authority, the establishment of a "European air space" within which the European airlines would enjoy complete traffic freedom for a trial period of 50 years. In order to regulate this freedom of traffic a regional multilateral agreement would have to replace the existing bilateral agreements regulating commercial operations in Europe. These plans were found unacceptable, probably because they were either premature or too idealistic. From the legal point of view the "Sforza plan" is the most interesting. Although at the time of its presentation the idea of "free space" was considered revolutionary, the European States have since then been striving to reach the same goal through different lines of approach.

On examining the foregoing proposals and reviewing transport generally the Council of Europe decided to treat air transport separately.(30)

---

(30) Recommendation No. 12 of Consultative Assembly of Council of Europe 3rd ordinary session (second part) November 1951.

Consequently, its Consultative Assembly recommended in 1952 the co-ordination of road, rail and waterways.(31) The question of air transport was taken up in March 1953 when the Committee of Ministers invited ICAO to convene a European conference subject to the following arrangements:

> "1. Invitations to the Conference should include:
>
> (a) Interested European States which are not members of the I.C.A.O. The manner of their participation shall be determined by the I.C.A.O. so as to ensure the maximum degree of co-operation.
>
> (b) The Secretary General of the Council of Europe.
>
> (c) Consumers' organizations such as the International Chamber of Commerce.
>
> 2. The Conference shall have the following agenda:
>
> (a) Methods of improving commercial and technical co-operation between the airlines of the countries participating in the Conference.
>
> (b) The possibility of securing closer co-operation by the exchange of commercial rights between these European countries.
>
> 3. The Conference shall set up a small working party including the representatives of each of the countries whose air companies are taking part in the work of the Bureau of Air Transport Research at Brussels,(32) to study the problems under examination.
>
> 4. The report on the proceedings of the plenary Conference shall be communicated to the Council of Europe."(33)

---

(31) Recommendation No. 30 Consultative Assembly of the Council of Europe 4th ordinary session, Strasbourg 1952.

(32) See post p.17

(33) Resolution adopted by the Committee of Ministers, Council of Europe, on March 19, 1953, ICAO DOC. 7447 C/868 - 16/12/53.

The Council of ICAO welcomed the opportunity for new work in air transport(34) and appointed a preparatory committee to study and recommend general subjects suitable for discussion by the proposed conference.(35) The committee prepared an Agenda which was found acceptable(36) and thereupon the Council of ICAO convened the Conference on the Co-ordination of Air Transport in Europe.(37) Nineteen European States,(38) members of ICAO were invited to attend. All member States of ICAO - Yugoslavia, a non-member - and thirteen international organizations were invited to attend as Observers.

---

(34) ICAO DOCs 7409 A7-P/2 2nd plenary meeting p. 45; 7415 A7-EC/1 15/9/53.

(35) Resolution of the Council of ICAO, 19th session 20 May, 1953 - ICAO DOC. 7447 supra.

(36) See Appendix 1 hereto.

(37) Resolution of the Council of ICAO, 20th session, 15 December, 1953, ibid.

(38)

Austria	Greece	Portugal
Belgium	Iceland	Spain
Denmark	Ireland	Sweden
Finland	Italy	Switzerland
France	Luxembourg	Turkey
Federal Republic of Germany	Netherlands	United Kingdom
	Norway	

Conference on the Co-ordination of Air Transport in Europe.

The Conference on the Co-ordination of Air Transport in Europe (CATE) met in the Assembly Chamber of the Council of Europe, Strasbourg in April 1954.(39) Out of the nineteen States invited only Greece and Finland were unable to attend. This ad hoc political conference covered all the important aspects of air transport, and laid a firm foundation for future work.(40)

On the question of setting up a permanent body to carry on its work, the Conference recommended the establishment of a "European Civil Aviation Conference" (ECAC) which would work in close liaison with other interested organizations, particularly with ICAO which should be requested to provide Secretariat services. This future conference should "function at the highest, or ministerial level when the subject matter so requires, but normally States would be represented by the administrative authorities responsible for the problems to be discussed on a given occasion."(41)

The Recommendation (No. 28) defining this proposed Conference was ultimately adopted as its constitution.(42)

---

(39) ICAO DOC. 7575-CATE/1

(40) The work of CATE will be examined in conjunction with the work of ECAC.

(41) ICAO DOC. 7575 ibid, p. 36.

(42) Ibid p. 37; ICAO DOC. 7676, ECAC/1 p. 6.

Denmark, Norway, Sweden and Finland abstained from voting on the tenuous grounds that the proposed Conference may become "too large and therefore unduly long" and that the Delegates "have had too short a time to discuss this rather important proposal.....that is not quite clear what are the real intentions behind this proposal, and that there may be basically divergent views with regard to the intended future development of the proposed organization".(43)

It was generally agreed that work carried out by the airlines would be useful to the proposed Conference and consequently CATE recommended (Recommendation No. 29) "that participating States encourage their air carriers to undertake co-operative studies aimed at promoting the orderly development of European air transport".(44) Special reference was made to the useful work contributed by the Air Research Bureau to the CATE Session. This Bureau (ARB) was set up jointly by six European airlines, but by 1958 the membership rose to twelve and accounted for about 95% of scheduled intraEuropean air traffic.(45)

In 1954, the ARB requested that it "should be considered the organization in accordance with Recommendation No. 29".(46) Action on this question was deferred.(47) In 1957 the ARB renewed its request in

---

(43) Ibid Minutes of the Plenary Session p. 59.

(44) Ibid p. 38.

(45) ICAO DOC. 7799, ECAC/2-2 WP/87 p. 387.
Members of the ARB in 1959: Aerlingus; A.F.; Alitalia; BEA; BCAC; DIH; Finnair; Iberia; Icelandair; KLM; Sabena; SAS; Swissair.

(46) Ibid, WP/16 p. 89-93.

(47) ICAO DOC. 7799, ECAC/2-1 Appendix 9 and see post p.26

different terms, namely that ECAC recognize it as representing the collective views of the European air carriers operating European scheduled services. However, ECAC found that it was not necessary to reach a formal solution in the matter since the relationship between itself and the ARB was sufficiently well defined.(47)

On more than one occasion the work carried out by the ARB has been praised by the ECAC sessions.

The European Civil Aviation Conference.

The European Civil Aviation Conference (ECAC) held its first meeting in the Assembly Hall of the Council of Europe at Strasbourg from November the 29th to December the 16th, 1955.(48)

The first problem to occupy the Delegates was the one concerning the constitution and status of ECAC. A Constitutional Commission was set up for this purpose and having considered its report the Delegates came to the conclusion that Recommendation No. 28 of CATE should be adopted as the constitution for ECAC.(49) The Delegates also debated the relationship between ICAO and ECAC: whether ECAC should be a completely independent organization with a protocol of its own signed by the member States or whether it should be integrated with ICAO as a subordinate body as anticipated in Article 55 (a) of the Chicago Convention.(50) It was decided to accept neither solution but to adopt an intermediary condition in the sense that the Conference should call its own meetings and fix its own agenda but work in close liaison with ICAO as contemplated in Recommendation No. 28 of CATE.(51)

---

(48) ICAO DOC. 7676, ECAC/1.

(49) Ibid, Resolution No. 1.

(50) "Where appropriate and as experience may show to be desirable, create subordinate air transport commissions on a regional or other basis and define groups of states or airlines with or through which it may deal to facilitate the carrying out of the aims of this Convention".

(51) ICAO DOC. 7676 supra p. 5 & 6.

Although the Delegates settled the relationship of ECAC towards ICAO this "intermediary condition" is not helpful to determine ECAC's position under international law. Since the second world war there has been a steady mushroom growth of organizations the world over. Not only has the United Nations Organization set up an impressive number with its specialized agencies, commissions and regional arrangements, but independent regional organizations have also appeared such as the Council of Europe, the Caribbean Commission, the League of Arab States, the Organization for European Economic Co-operation and many others. These regional organizations, although numerous, are still in their infancy and they have not, as yet, evolved any generally recognized characteristics or rules from which their legal status may be determined and comfortably fitted into the general pattern of international law. Each organization has to be studied separately and its legal status determined by the generally accepted (though oftern criticized) rules of international law pertaining to recognition of States and to universal international organizations.

Prima facie, an international organization only has such capacities and powers as its constitutive instrument gives it either expressly or by inference. In the case of ECAC, unlike other organizations, which are set up by a legal instrument such as a treaty, convention or protocol, its constitutive instrument is its first Resolution:

"THE CONFERENCE THEREFORE RESOLVED:

that the European Civil Aviation Conference is constituted as follows:

1) the European Civil Aviation Conference (hereinafter sometimes called the Conference) will normally meet in plenary session once a year, additional meetings to be held with the agreement of a majority of the members;

2) the Conference shall be composed of the States invited to be members of the 1954 Strasbourg Conference on Co-ordination of Air Transport in Europe, together with such other European States as the European Civil Aviation Conference may unanimously admit as members;

3) The objects of the Conference are:

   a) to continue the work of the aforesaid 1954 Conference and of its own first session, held in November-December 1955, as set forth in the Agenda and records of the proceedings of these meetings;

   b) generally to review the development of intra-European air transport with the object of promoting the co-ordination, the better utilization, and the orderly development of such air transport;

   c) to consider any special problem that may arise in this field;

4) The Conference shall bring within its scope all matters relevant to these objects and shall supersede independent and more specialized arrangements for carrying out said objects.

5) The functions of the Conference shall be consultative and its conclusions and Recommendations shall be subject to the approval of governments.

6) The Conference shall determine its own internal arrangements and procedures, including the formation of i) groups of limited membership to study and discuss matters presenting special interest to certain members only and ii) committees of experts to deal with specific aspects of intra-European air transport.

7) States should be represented at meetings of the Conference by delegations in number and rank suitable for handling the problems to be discussed, it being understood that heads of delegations would normally be officials of high level.

8) The Conference shall maintain close liaison with ICAO. It shall also establish relations with any other governmental or non-governmental international organizations concerned with European air transport.

9) The Conference will, at least at the outset, not establish a separate secretariat of its own, but requests the Council of ICAO to provide, to the extent practicable:

   a) secretariat services for studies, meetings, or otherwise;

   b) for maintenance of records of the meetings, correspondence, etc. in the ICAO Paris Office."(49)

ECAC is, therefore, a permanent conference and so far, its sessions have been held approximately every eighteen months. Membership falls into two categories, the "Original Members" chosen by ICAO numbering nineteen States,(52) and those States which may become members by the unanimous vote of the Conference. Membership is generally determined on political considerations, nevertheless it has to be subject to certain requirements in order to comply with the object and character of the organization concerned. Furthermore, it is often the determining factor as to whether the organization is independent or subjected to the control of another Body. Membership of ICAO was a prerequisite to attending the CATE conference,(53) but

---

(52) See note (38) supra.

(53) Yugoslavia, a non-member was only invited to attend as observer with the proviso that on becoming a member of ICAO it becomes a member of CATE. See Resolution of note (37) supra.

in the case of ECAC the only two requirements are statehood and a geographical position in Europe.(54) Although the heads of the Delegations are to be officials of high level, the conference and its office-holders are not invested with diplomatic immunity which would be a characteristic of independent legal personality under international law.

The objects of the conference are those envisaged right from the outset by the Council of Europe,(55) and they must have a sufficiently wide scope for ECAC to supersede independent and specialized agencies such as the Cannes conference on Facilitation held in 1953. However, ECAC is only a consultative and advisory body. Its decisions are adopted by a majority vote and are subject to Government approval. Consequently it exercises no rights or powers over the States concerned and any solution reached can only be enforced through a multilateral agreement signed and ratified by the member States. With regard to its decisions and recommendations, the States shall give notification of any measure taken to implement them.(56)

The Rules of Procedure(57) are established under clause 6 of the First Resolution and under the Second Resolution.(58) These Rules provide

---

(54) At the CATE Conference, 1954, Italy supported by Spain suggested that countries on the other side of the Mediterranean be included.

(55) Resolution of March 19, 1953 see note (33) supra.

(56) See infra Appendix 2 "Rules of Procedure", Rule 2 (1).

(57) ibid

(58) ICAC DOC. 7676 supra, p. 8.

for a President and three vice-presidents. The president is empowered in consultation with the member States and the Council of ICAO, to convene intermediary meetings and the next annual plenary meeting. Delegations may be composed of Delegates, Alternates and Advisors. Observers have the right to attend public meetings and may attend private meetings if the Conference so agrees. Voting is by the majority rule and the usual provisions for methods of voting, points of order, motions etc ... are set out.

One point of interest may be found in Rule 11 (57)

> "A majority of the States invited to be members of the Conference, having delegations registered and not known to have withdrawn the same, shall constitute a quorum for the plenary meeting of the Conference."

The "original members" are, therefore, in a privileged position. There does not seem to be any reason for this and presumably if and when new members are voted in, the rule will be changed.

The obvious reason for maintaining a close liaison with ICAC is to avoid, as far as practicable, any unnecessary duplication of work. Accordingly Rule 2 (1) of the Rules of Procedure provides that:

> "Before any meeting of the Conference, the President, in consultation with the States members of the Conference and with the Council of ICAO, shall determine the provisional agenda."(57)

Also in accordance with Rule 4, reports of the meetings are to be transmitted to ICAC.(57) At the tenth session of its Assembly, (Caracas 1956) ICAC formally accepted to maintain for its part, the close liaison

proposed by ECAC.(59) However, when the Council of ICAO had met in 1954 to discuss the convening of an European civil aviation conference pursuant to Recommendation No. 28 of CATE, certain Delegates had expressed doubts as to whether ICAO should provide permanent Secretariat services.(60) The United States Delegate had expressed the view that "before committing itself to provide Secretariat services for the European Civil Aviation Conference on a continuing basis, the Organization (ICAO) should wait until it was requested and until it was satisfied that the objectives of the Conference were compatible with its own."(61) There was agreement however, to provide such services for the first meeting.(62) When ICAO received the request for Secretariat services its Assembly, meeting in Caracas agreed to provide such services for "Studies, meetings and other related activities", and for the "maintenance of records, correspondence and the like in the ICAO Paris office", and to bear the indirect costs such as salaries of the regular ICAO staff, research and production of advanced documentation at headquarters etc.(59)

As all its member States were present at the Caracas meeting, ECAC held an intermediary meeting in situ to settle the question of financial arrangements.(63) It was decided that the direct costs incurred by ICAO

---

(59) ICAO DOC. 7720, ECAC/IM2, Annex IV.

(60) ICAO DOC. 7490 C/873, 25/10/54, p. 91 et seq.

(61) Ibid, Mr. Jones USA Representative p. 92.

(62) Ibid, the President p. 94.

(63) ICAO DOC. 7720 supra.

which are attributable to the ECAC activity shall be apportioned to the member States of ECAC in proportion to the number of units of their contribution to ICAO for the year in which such costs should fall due.(64)

To facilitate further the administrative arrangements Rule 1 (3)(57) provides for the senior member of the Secretariat of ICAO in attendance at the annual plenary meeting of ECAC, to act as Secretary General and as Secretary of any intermediary meeting.

Having set out the constitution and the relationship to ICAO, the Delegates discussed ECAC's relationship to other international governmental and non-governmental organizations.(65) After considerable discussion it was decided to distinguish between four categories:

1. International organizations directly interested in the work of the Conference as a whole and with important contributions to make to its work (the ARB falls into this category);
2. Organizations interested in the general economy of Europe, including air transport, which therefore have a claim to special consideration;
3. Member States of ICAO not members of the Conference;

These three categories should be invited to attend the meetings of the Conference as observers.

---

(64) Ibid.

(65) ICAO DOC. 7676 supra, p. 8.

4. Organizations concerned with particular aspects of the work of the Conference.

The standing of this category should be determined on an ad hoc basis.

* * *

Therefore, on examining the constitution of ECAC and its position in relation to States and international organizations the inference may be clearly drawn that it is not a legal personality or persona corporata under international law. It is in effect an independent inter-governmental organization of a consultative and advisory nature. Its establishment is unusual for, although it was a conference convened by ICAO, it became a permanent and independent organization by its own constitutive act, thus avoiding the cumbersome procedure by way of treaty of protocol. It may, therefore, be termed with that oft used and very convenient term, an organization, "suis generis".

That it has aroused great interest in the world is shown by the list of attendance. At its first meeting, ten observer States and fifteen observer organizations attended.(66) At its second and third meetings, seven observer States and eleven observer organizations such as the International Chamber of Commerce, the International Union of Aviation Insurers and the Organization for European Economic Co-operation.(67)(68)

---

(66) Ibid, Annex 1.

(67) ICAO DOCs 7799 supra, Appendix 2; 7977, ECAC/3-1 Appendix 6.

(68) In 1956 the Mexican government proposed that ICAO convene an air transport meeting in the "Middle American" region. Owing to certain circumstances, this meeting has been postponed sine die. See ICAO DOCs 7710, A10/EC/28, 1956 and 7866 A11-P/3, 1958

Methods of Work

At its second session in 1957, the ECAC Conference decided to ensure efficiency and continuity in its work by elaborating general working methods.(69) In this respect, the distinction was made between the general work program of ECAC and the agenda of each session.

It was proposed that the work program should be divided into three parts: the first and second parts would be limited to those items which the Conference had decided to study prior to the following session. The second part, however, would be comprised of subjects, the study of which would be dependent upon the fulfillment of certain well-defined preliminary conditions; the third part would consist of subjects considered important by the Conference and likely to be studied by it at some later stage, but in the meantime the member States or other organizations would be entrusted with the task of furthering such study.

The work program should be systematically revised at each session. However, if between sessions it should be found necessary to add new items or transfer existing items from one part of the work program to another, the President may only do so if he receives by correspondence the unanimous vote of the States or if a vote is taken at an extraordinary meeting of ECAC.

---

(69) ICAO DOC 7799 supra, Part IV, p. 43 et seq.

The choice of the methods for preparing and documenting questions would normally fall on the Conference but in certain cases the President may, between sessions, amend such methods. The preparation and documentation of items comprised in the first part of the work program may be undertaken by such bodies as: the ICAO Secretariat, as a whole or elements therefrom; a Member State designated to act as rapporteur; working groups composed of all or part of the representatives of Member States; committees of experts which ECAC may ask the States to place at its disposal; inter-governmental organizations other than ECAC or ICAO; any other person (individual, firm, corporation or institution) or groups of persons, as appropriate.

When preparing the provisional agenda for a session in consultation with member States and the Council of ICAO, the President should provide full information on the progress of studies and only those subjects which have been sufficiently prepared and are sufficiently matured or which may be further developed, should be retained.

The third ECAC Session in 1959, approved these methods of work but made one important innovation.(70) A Committee on Co-ordination and Liberalization (COCOLI) was set up to be convened as often as necessary by the President of the ECAC acting in consultation with the vice-presidents.

---

(70) ICAO DOC. 7977 supra, Part V p. 45 et seq.

The establishment of this committee necessitated greater flexibility in the work program and changes were made in the rigid rules for the addition and transfer of items and the choice of working methods by giving the President wider powers to act.

PART II

Survey of the Work Carried Out by the European Civil Aviation Conference.

Before attempting a survey of the work carried out by the European Civil Aviation Conference, it is essential to give an outline of the difficulties encountered in European Air Transport. Some of these relate to civil aviation in general while others are particular to Europe.

As has been seen,(71) strict adherence to the doctrine of sovereignity over air space, hampers the development of air transport. In Europe, however, where airlines of more than twenty States depend to the greatest extent on international traffic - domestic traffic being almost negligible - this doctrine has serious consequences. It has made the obtaining of the fifth freedom difficult, with the result that traffic depends on third and fourth freedoms, giving rise to overlapping of services and wasteful competition. In addition to this, the development of national airlines has been influenced by States for reasons of prestige and military strength. This influence, however, is diminishing with the increasing development of new war engines.

Underlying the political field is the economic situation prevailing in the European States. For although the problems described above are important in their own right, their solution is made more difficult by the different economic standards existing among the States. Clearly,

---

(71) See Introduction.

certain governments are wealthier than others. This in most cases affects the national airlines which are either government owned, controlled, or subsidized in some way. Furthermore, there are the wide differences in living standards of the various countries which affect the cost of production, labour, etc. that not only influence air transport but also the aircraft industry as a whole. It is not surprising therefore, that those States which have a certain degree of economic stability and air transport development are prepared to support greater liberalization for commercial aviation than other States of lesser economic standards.

There are also common problems which face European States in general. For instance, the high cost of operation in Europe. For the shorter the route, the higher the cost.(72) This is due to greater engine wear and fuel consumption at take-off and landing, waste of aircraft utilization, etc. Not only are distances relatively small in Europe, but also all the major industries are concentrated within the area between Glasgow, Barcelona, Milan and Stockholm. This high cost has influenced the air carriers to use European services as "feeder" services for their trans-continental routes. The introduction of jet transport is going to further affect the solution to this problem.

The above considerations make it all the more difficult for European air transport to meet two kinds of competition. The first of these is the

---

(72) In the USA it is generally considered that a route of less than 500 klms is uneconomical.

efficient and dense network of land transport. The second is the competition from non-European airlines, especially those from the American continent. For instance, in 1954, on the route Paris-Rome-Athens, non-European airlines carried 50% more passengers than the air carriers members of the ARB.(73)

Although the technical and economic developments in the last fifty years have pointed the way to co-operation for European economic survival, it is only in the last ten years, or so, that steps have been taken towards the achievement of an economic united States of Europe. Air transport is one of the activities striving towards that object. But nevertheless, ECAC through its relationship with ICAO, also contributes towards the development of universal air transport.

* * *

The work of the European Civil Aviation Conference is based on two fundamental aspects of air transport, as set out by the Resolution of the Council of Europe of March 1953:(74)

> "(a) Methods of improving commercial and technical co-operation between the airlines of the countries participating in the conference.
>
> (b) The possibility of securing closer co-operation by the exchange of commercial rights between these European Countries.

As the nature of this paper is predominantly legal, the subject of the exchange of commercial rights will be emphasized while only a survey will be given of the work accomplished in the commercial and technical fields.

---

(73) Example cited by Louis Cartou, "La structure juridique du transport aerien a la veille du marche commun" R.F.D.A., 12, 1958, p. 101.

(74) See ante p. 14.

Exchange of Traffic Rights

Scheduled Services[74a]

The failure at Chicago to settle multilaterally the exchange of traffic rights and economic controls resulted in commercial aviation being built up on a system of bilateral agreements. These agreements, in general, cover the exchange of traffic rights, the granting of routes, and the determination of capacity, frequency and rates. These factors of "rights", routes , and economic controls are inter-linked and the experiences of the European Civil Aviation Conference have shown that all three must be taken into consideration when attempting a multilateral solution.

Cleary, the distinctions made between the traffic freedoms affect the granting of routes. For instance, when an airline carries traffic originating in its own country and destined for another, it is exercising the third freedom; and when it carries traffic originating in another country and destined for its own, it is exercising the fourth freedom. These two freedoms of "give and take" are in general always granted in bilaterals. However, if unreasonably enforced, they may give rise to questionable results as in the following example:[75] BEA operates a service Manchester-London-Zurich. Swissair, having been refused an extension of its routes Zurich-London to Manchester, inaugurated a direct service Zurich-Manchester. Not to be outdone, BEA then operated directly Manchester-Zurich, with the result that three services exploit one route.

(74a) For ICAO Definition see Appendix 9 hereto.

(75) Stephen Wheatcroft "The Economics of European Air Transport" p. 281 Manchester University Press, 1956.

The fifth freedom which gives rise to so much controversy, is when traffic originating in one country is carried to another by the airline of a third country. For instance, on a triangle formed by London-Madrid-Rome, if BEA were to carry traffic originating in Madrid to Rome,(76) it would be exercising the fifth freedom, which would be third freedom for the Iberian Airlines and fourth freedom for the Alitalia Airlines. The economic implications, therefore, are such that before a State will grant fifth freedom traffic, it will inevitably first ensure that its own airlines will not be adversely affected, either actually or potentially.

In the exercise of these traffic rights, it was soon found that by combining the third and fourth freedoms, a State may receive additional traffic benefits which are referred to as the "Sixth Freedom". For instance, France under an agreement with Spain(77) exercises fourth freedom traffic Madrid-Paris and under an agreement with Italy(78) exercises third freedom traffic, Paris-Rome. Therefore, if a ticket for Madrid to Rome were to be sold to a passenger by Air France, this journey would form part of the traffic known as the sixth freedom. The fifth and sixth freedoms seem to stand on an equal footing except that the commercial value of the sixth freedom might be greater since there is no direct way in which its

---

(76) The Bilateral between the U.K. and Spain signed July 20, 1950 does not grant this right.

(77) Agreement signed at Paris on February 3, 1949.

(78) Agreement signed at San Sebastian August 23, 1948.

exercise can be restricted. Although this practice has been questioned by some States, it is on the whole tolerated. From the foregoing, therefore, it can be seen that a country's attitude towards the various freedoms will also be influenced by its geographical position.

Stemming from "rights" and "routes", is the question of economic control which aims at giving fair shares to all air carriers and at preventing excessive competition. Clearly, the most important is the question of capacity control of which frequency of service forms an integral part. Roughly, this control falls into two categories: predetermination of capacity and the "Bermuda Type". The latter category(79) sets out that "the provision of capacity (shall be) adequate to the traffic demands between the country of which such air carrier is a national and the country of ultimate destination of traffic". For the fifth freedom, capacity should be related:

> "(a) To the traffic requirements between the country of origin and the countries of destination.
>
> (b) To the requirements of through line operation, and
>
> (c) To the traffic requirements of the area through which the airline passes after taking into account of local and regional services."

Unfortunately, these provisions have been subject to different interpretations.(79a)

---

(79) Bilateral between U.K. and USA 1946 ICAO Registration Nos. 81/82 supra Final Act.

(79a) "The 'Bermuda' Capacity Clauses" P. Van Der Tuuk Adriani - J.A.L.& C. 1955 vol. 22 p. 406.

In 1955, the Secretariat of ICAO made a study of bilateral agreements between 67 pairs of European states.(80) On the question of capacity restriction, it was found that: thirty six agreements use the Bermuda provisions without others; eight have certain complete or partial Bermuda type provisions supplemented by Predetermination type provisions; four have other types of capacity restrictions; and nineteen have no capacity restrictions at all.

The question of rates is settled on a universal basis by the International Air Transport Association (IATA).

Consequently, the task facing the Conference on the Co-ordination of Air Transport in Europe was no mean one. The delegates, remembering the abortive attempts of ICAO, for the most part approached the solution on the basis of "partial multilateralism". However, there was a fundamental division of opinion in that most of the States of northern Europe - having to seek traffic outside their political territories - favoured complete freedom of traffic, while most of the southern States - being in a relatively weak economic position - favoured a cautious approach with carefully devised safeguards against excessive competition.

The most far reaching proposal, therefore, was put forward by Denmark, Norway and Sweden.(81) This advocated a multilateral agreement, granting to the European states, for a term of five years, complete

---

(80) ICAO DOC. 7676, ECAC/1 supra, Annex III, W/P 7.

(81) Henri Bouché, "Comment peut-on se proposer d'agir sur l'efficacité du transport aérien en europe". Studi in Onore di Antonio Ambrosini, supra.

freedom of operation within the European region. Routes, were to be left to the initiative of the air carriers, but they were to be reasonably direct. Any differences arising were to be settled by consultation between the parties. This proposal was rejected mainly on the grounds that adequate economic safeguards were not provided.

The approach suggested by the United Kingdom was based on both multilateralism and bilateralism.(81) Also, it was dependent on there being a sufficient number of adherents. On the multilateral basis, all the commercial rights were to be granted to the contracting States and the distinctions made between the various freedoms were to be eliminated. Routes, however, were to be granted bilaterally. This means, therefore, that the order is to be reversed and the "rights" are to be restricted by the "routes". Although widely discussed this proposal was retained to a limited extent only for the traffic of freight.(82)

A more limited proposal was put forward by the Netherlands.(81) This was based on plurilateral agreements for the "exchange of routes". The idea was that groups of States should permit their airlines to utilize each other's operating rights on certain given routes. This may be better explained by citing M. Bouché's example.(81) On the routes formed by the triangle London-Paris-Amsterdam, under the appropriate bilaterals, a French and English company operate on the route

---

(82) See infra p.64

London-Paris, a French and Dutch company operate Paris-Amsterdam. And an English and Dutch company operate Amsterdam-London. If the three States concerned decide to exploit these routes in common by "pooling" their commercial rights, each airline would acquire a new route. The French, London-Amsterdam, the English, Amsterdam-Paris and the Dutch, Paris-London. This system is also possible on a straight route such as London-Paris-Rome. By a process of "snowballing", that is, extending the plurilateral agreement to include other States, a more logical network of routes would develop which would improve services and might cut down costs. The exchange of routes is supported by the "Institut de Transport Aérien" which describes it as being "Un éffort de mise en commun d'un résau de routes pour l'éxploitation co-ordonée des services internationaux selon toutes les combinaisons justifiées par les besoins de traffic, d'amélioration du service public et des éxigences économiques des éxploitations particulières des états participants volontairement au système sur le résau consideré....."(83)
This proposal was not extensively discussed and the member States showed a disinclination towards adopting it.

As a result of these various proposals the CATE conference, decided on a line of action comprising two phases, one at air carrier level and the other at government level.(84) The first of these was a recommendation to the member States that they encourage their airlines to

---

(83) ITA notes de travail, No. 257 as cited by Louis Cartou, supra.

(84) Recommendations Nos. 1 and 2, ICAO DOC. 7575, supra.

undertake studies and arrangements related to particular sections of the European network. These studies should aim at developing traffic by such means as interchange of routes(84a) and other bilateral or plurilateral route arrangements. As in many instances, the collaboration of the member States will be needed, they should, as far as practicable, give effect to these arrangements by adjusting their bilateral agreements and including therein, provisions for eliminating the distinctions made between the traffic freedoms, or, if necessary, conclude new bilateral or plurilateral arrangements. Furthermore, with the support of the member States air carriers should co-operate to raise the standards of air transport in general, by improving on the one hand services to the users and on the other the productivity of the airlines and the reduction of costs by such measures as co-operation in technical, operational and commercial services, ground services, time tables, and dealing with the problems of light traffic routes. Any action taken pursuant to this recommendation should be notified to ICAO.

The second phase is in the nature of a cautious approach to multilateralism at government level, based on measures of liberalization and co-operation. Therefore, the Recommendation of the Conference was made

---

(84a) Ibid p. 5: "Interchange of routes" should be taken to mean: the operation, by companies of different nationality acting in collaboration, of a round-trip or circular service on a route or system of routes involving the territories of at least three States, each of the companies being authorized by the competent governmental authorities to exercise commercial rights pertaining to the route or system of routes".

up of general directives from which ICAO and the proposed European Civil Aviation Conference were to prepare a draft multilateral agreement. This draft had to: establish in Europe the conditions favourable to active co-operation between the air carriers to enable them to solve their problems in common by interchange of routes and other co-operative measures; aim at a progressive liberalization of air transport undertaken by European operators in the European region and particularly at the relaxation of traffic restrictions based on the distinctions at present made between the various freedoms of the air; embody in the best possible form those provisions that are common in substance to existing European bilateral agreements; embody safeguards to enable governments if necessary to prevent the development of excessive competition and to ensure fair treatment for each carrier. Routes would continue to be granted by bilateral or plurilateral negotiations between governments and the multilateral agreement was not to interfere with the fundamental principles of the sovereignty of each State over its air space.

The CATE Recommendations, therefore, did not attempt to introduce any deep changes. Collaboration between the airlines was to continue, a mild entreaty for liberalization was made and a multilateral agreement based on wide terms of references was to be attempted. However, with the wide divergences of views expressed at the Conference, it is improbable that more could have been achieved.

When the ECAC Conference met in 1955, no further active steps were taken.(85) It was realized that a multilateral agreement could not be achieved at that time and the Conference contented itself with examining further principles and methods of approach put forward by the member States.(86)

The Secretariat of ICAO had prepared a very detailed paper (working paper No. 3) covering all the aspects of international scheduled services.(87) It advocated a new multilateral approach to the problem by raising scheduled air transport within the European region from its level of complete restriction under Article 6 of the Chicago Convention,(88) to the level of conditional right to operate as enjoyed by non-scheduled services under the second paragraph of Article 5.(88) Contracting States were to be given full legal operating rights in the European area of the States actually from time to time participating in the agreement. Routes were to be determined by informal negotiations between the aviation authorities of the States concerned and refusal was to be a matter of discretion. This Agreement was to recognize the right of the States to impose regulations,

---

(85) ICAO DOC. 7676, supra.

(86) Ibid, Working Papers: 3, 29, 36, 37, 38, 41, 43, 48, 55, 56. AnnexIV

(87) At its 22nd session the Council of ICAO voted in favour of co-operation with ECAC to prepare a draft multilateral agreement and authorized the Secretary General to undertake the preparatory work.
ICAO DOC. 7490, supra.

(88) See Introduction p.3 & 4

conditions and limitations, but it was to attempt to develop a policy so as to assure these did not nullify the rights conferred. However, certain limitations were provided, such as the right of every State to refuse the unrestricted grant of the fifth freedom passenger traffic. This reservation was not to apply to inter-continental passengers travelling around Europe, freight, airmail and traffic of smaller type aircraft. The safeguards advocated were to be: non-discrimination between airlines, Bermuda type capacity provisions and IATA fares.(89)

The criticisms on this proposal were varied. Some Delegates maintained that scheduled and non-scheduled operations were fundamentally different, the latter dealing with special needs of an unusual and temporary nature and which, therefore, did not require such close and continuing negotiations.(90) Others maintained that the liberalization granted was illusory.(91) The proposal also distinguished between fifth freedom passenger traffic embarking and disembarking, giving the latter greater freedom. Differential rates for fifth freedom traffic was also suggested. Both these points were also objected to.(92)

Nevertheless, this is a noteworthy attempt by the Secretariat based on a thorough research of the problem. It has taken into account all the difficulties involved and has attempted to put them in their right perspective. Although some of the steps proposed were too far reaching to be

---

(89) For criticism of the paper see minutes of the sub-commission on commercial rights, Annex IV p. 137-143 & 148 et seq. ICAO DOC.7676, supra.

(90) Ibid, UK and Spain p. 138.

(91) Ibid, France p. 139.

(92) Ibid, France and the Netherlands, p. 149 & 150.

acceptable to some of the member States, and although details of certain suggestions need to be clarified, this paper could still form a useful basis for discussion.

The divergences of opinion were still maintained at this conference although some solutions proposed were different from the CATE session. France,(93) Belgium(94) and the Netherlands(95) however, favoured a similar proposal to that previously suggested by the Scandinavian countries.(96) This was for a multilateral agreement granting traffic rights at all airports open to international traffic in the metropolitan territories of the States, subject to the primary rights enjoyed by such States under existing bilateral agreements. Safeguards would be included such as capacity control and measures against excessive competition. Referring to this proposal, the Belgian delegate agreed that an air carrier could unilaterally establish a route of his own choosing and could use more than one airport on any one route in any one State, but that the proposal did not grant cabotage rights.(97)

Germany put forward a proposal for "partial" multilateralism which, it hoped, would leave the way open to incorporate subjects not yet covered.(98)

---

(93) Ibid. p. 111

(94) Ibid, WPs 37, 43 & 48.

(95) Ibid, WP 36.

(96) See ante p 37 - 38

(97) ICAO DOC. 7676, supra p. 127.

(98) Ibid, p. 114 & WP/41.

This suggested the inclusion in a multilateral agreement of all clauses common to bilateral agreements and in addition, the grant of the third and fourth freedoms with the possibility of serving up to two airports in each territory on every route. The fifth freedom should be negotiated bilaterally and the exchange of routes should be settled by diplomatic notes, not separate agreements.

Denmark favoured a solution(99) based on freedom of operation for certain categories of flights along the same lines as the Agreement for non-scheduled services.(100) These categories, it was suggested, might be those enumerated in the Secretariat's working paper 3. Otherwise, scheduled services in general should be treated in a liberal manner and traffic rights should be granted bilaterally.

These partial solutions advocated by Germany and Denmark do not throw any new light on the solution. They are merely in a different form, part of proposals previously suggested. But their value lies in the fact that any genuine attempt at a solution helps to clarify the issue even if the result is negative.

During the discussion in search for multilateralism,(101) the system of bilateral agreements was the subject of a great deal of criticism.(102)

---

(99) Ibid, p. 123 & WP/38.

(100) See post p.77

(101) ICAO DOC. 7676, supra Minutes of the sub-commission, Annex IV.

(102) Ibid, e.g: Portugal p. 106, France p. 108.

The observer for the ARB, however, expressed the opinion that there is a danger that a single multilateral agreement which has to cater for all differences may in fact lead to less liberalization on an overall basis, than already exists.(103) The Spanish Delegate(104) pointed out "that for the time being, and perhaps indefinitely, the multilateral agreement, gradually perfecting itself, would have to have recourse to bilateral agreements in order to resolve certain special aspects. Such agreements were by no means incompatible with the multilateral agreement; they were complimentary to it." The United Kingdom Delegate(105) agreed with Spain and expressed the view that the multilateral agreement should be an advance on the aggregation of bilateral agreements. He doubted whether incorporating all the clauses, common to bilaterals would be worthwhile and he pointed out that a similar attempt made at the Chicago Conference had ended in failure.(106)

In an attempt to reach a compromise, working paper No. 56 based mainly on the proposals of Germany and Belgium, was produced by a working group of the Conference. This proposed that while pursuing the study of a multilateral agreement, States should follow an interim policy which would have a trial period of two years. Under this policy the airline

---

(103) Ibid, WP/29 & p. 113.

(104) Ibid. p. 107.

(105) Ibid. P. 105.

(106) "The International Air Transport Agreement" see Introduction.

designated by the member States should be accorded the rights and privileges granted to those States by existing and future bilateral agreements and operating permits. In addition to this, member States should authorize each other's airlines to operate scheduled services on intra-European routes subject to the condition that if any arrangements have been completed between the air carriers, the States concerned should not prevent the implementation of such arrangements by applying the restrictive provisions of the bilateral agreements. Where the airlines have not entered into any arrangements either because they are not interested in the route or because they have failed to reach agreement, the States concerned should consult together on a bilateral or plurilateral basis. This proposal included an undertaking by the States to favour direct flights between their metropolitan territories, (that is without commercial stops in a third country) and not to oppose the establishment and operation of air services of other member States, except where they consider that those services would definitely harm their national airlines or would not serve the interests of the user.

Therefore, on the question of traffic rights, the third and fourth freedoms were to be given preference. Routes were to be left to the initiative of the air carriers, but in the case of the latter not taking any action, the governments were to make bilateral or plurilateral arrangements. The safeguard provided was that every government at its discretion may approve or disapprove the establishment of an air service.

This seems to be an unsatisfactory compromise avoiding the difficulties instead of attempting to resolve them. Although it is only suggested as an interim policy, it does not propose any active steps which might lead to a multilateral agreement. Many of the Delegates were in fact opposed to it.(107) and the Conference examined the alternate proposal submitted by the United Kingdom which did not in fact carry the matter any further.(108) The United Kingdom stressed the importance of reducing costs by the removal of economic impediments and by other suitable measures. Therefore, any arrangement with this object in view proposed by the air carriers should be given government support. In addition to this, future conferences should keep under review the possibilities of concluding at the appropriate time a multilateral agreement to give effect to the second CATE recommendation.(108a)

The discussions during the 1957 session(109) showed that member States had not changed their attitude towards the problems of scheduled air services. The suggestions put forward were, basically, a repitition of the earlier ones. The chairman of the sub-committee dealing with this agenda item, summarized the possibilities as follows:(110) formulating

---

(107) For criticism see ibid. p. 164 et seq.

(108) WP/55, for criticism p. 177 ibid.

(108a) See ante p.40 & 41

(109) ICAO DOC. 7799, ECAC/2-3, Minuted of the meetings.

(110) Ibid ECAC/2-3 p. 43

a general multilateral agreement at this session or attempting a partial solution within the framework of bilateral agreements. The alternates for partial solution seemed to be: an agreement embodying standard clauses appearing in bilateral agreements; partial solution along the lines of working paper No. 56 submitted at the previous session, or an agreement concerned with specific classes of traffic.

The Netherlands and Luxembourg,(111) supported by the Scandinavian countries, Iceland and Finland,(112) proposed a multilateral agreement superseding all existing agreements which would confer on the contracting States full commercial rights for scheduled services on all aerodromes open to international traffic. Routes would have to be reasonably direct, touch the State of the airline concerned, and only include any one aerodrome in the other participating States. Certain economic safeguards were also provided.

The other Delegates however, remained in favour of a partial solution. Two proposals were submitted by France.(113) The first of these suggested that a working group be set up to prepare, for consideration at the next session, a draft multilateral agreement based on standardized clauses from existing bilateral agreements. This suggestion received the support of Belgium, Italy, Portugal and Spain.(114)

---

(111) Ibid ibid, p. 50 et seq. and ECAC/2-2 WP/63.

(112) Ibid ECAC/2-1 p. 34.

(113) Ibid ECAC/2-2 WP/65 and ECAC/2-3 p. 53 and 56.

(114) Ibid ECAC/2-1 p. 34.

Germany's proposal,(115) favoured by Switzerland, included this French proposal and in addition advocated that with respect to traffic rights there should be liberalization of the third and fourth freedoms which would be extended to the fifth freedom at a later date.

The second French proposal - submitted earlier by Spain(116) - suggested that a working group should prepare for the next session a draft model plurilateral agreement defining the conditions of operation of routes or groups of routes by the air carriers of the interested States, especially with regard to methods of determining services, frequencies and capacity. The provisions of such agreements should permit the elimination of the distinctions between the freedoms of the air. In its working paper, Spain explained the proposal in these words:

> "The gist of that paper is that we should approach the problem of scheduled passenger air services by considering the possibility of developing a group of air services operated by more than two States in essentially the same geographical area and under the same operating conditions, even though such services, from the point of view of contractual relations, may be regulated by different bilateral agreements. As an example, we might mention the services between the Scandinavian countries and Portugal, via Central Europe or via Benelux..... Since such a co-operative agreement presupposes the consent of all parties as regards allocation of services and capacities, there would be no reason for maintaining the distinctions between freedoms in the agreement, with the consequent result that liberalization of air services on that sector of the European network would be achieved through operation on a co-operative basis." (116)

---

(115) Ibid, ibid p. 51 and ECAC/2-2 WP/71.

(116) Ibid ibid WP/53

This proposal, therefore, closely resembles the one based on the exchange of routes put forward by the Netherlands during the CATE Session.(117) However, it only received the support of Italy, Sweden and Spain.

The Belgium Delegate expressed the view that a total multilateral agreement could only be achieved by successive stages and that it would be dangerous to make regional arrangements within Europe. Furthermore it would be unwise to substitute new arrangements for the existing bilateral agreements but that on the contrary the only way was to start with the existing agreements and build on them. He then suggested starting by the carriage of freight.(118) With regard to the first French proposal, the United Kingdom Delegate reiterated his views expressed at(119) the 1955 session that merely putting together into a multilateral agreement the common provisions found in bilaterals would not achieve substantial progress. It would, in any event, leave the granting of routes to be negotiated bilaterally and the question of capacity control would remain unsolved. He again stressed the need for liberalization that would increase airline operating efficiency and reduce fares. Accordingly, he proposed a limited advance over the whole field.(120) Namely, that a working group should be set up to prepare for consideration at the next session a draft multilateral agreement. This would embody

---

(117) See ante p.38

(118) ICAO DOC. 7799 supra ECAC/2-3 p. 52.

(119) Ibid ibid p. 41 & 42.

(120) Ibid ECAC/2-1 WP/64.

standardized clauses from bilateral agreements, including capacity provisions on the lines of those in the Bermuda type agreements - although at a later date it might be possible to eliminate the distinction made between the traffic rights - and leave routes for bilateral negotiation as it would be neither wise nor practical to give airlines complete freedom of routing in Europe.

The Conference set up a working group to find a compromise but owing to disagreement on the fundamental questions of capacity and routes no solutions for liberalization and co-operation were proferred. A limited Recommendation was suggested, however, and later adopted by the Conference[121] in which it was proposed that the Secretariat should be requested to study the provisions of bilaterals (excluding those relating to routes and capacity) and to attempt to develop standard clauses in a form acceptable to all ECAC members. A study group should then be established, to consider such material prepared by the Secretariat, and to report on this matter at the next session.

An interim policy pending the achievement of a multilateral agreement was adopted by eleven votes to nil, with the three Scandinavian countries, Turkey, and the United Kingdom abstaining.[122] This policy

---

(121) Ibid ECAC/2-1 p. 35 Recommendation No. 25.

(122) Ibid ibid Recommendation No. 26. Belgium and the Netherlands proposed an interim policy (WPs/55-87) because of a division of opinion a compromise was attempted which resulted in two proposals, WPs/97 & 100. Final attempt WP/105 was put to the vote.

is based on the two CATE recommendations and, in addition, it gives preference to the third and fourth traffic rights. The establishment and operation of new intra-European air services are to be facilitated unless this would unduly affect national carriers or not serve the interests of the users. Arrangements by air carriers to improve service and reduce costs are to be encouraged and bilaterals interpreted accordingly. Finally, when necessary, member States should consult with each other bilaterally or plurilaterally.

In a formal statement,(123) the Scandinavian countries expressed the objection that the policy adopts a different attitude towards the freedoms of the air which was irreconcilable with their own. Further, the policy as recommended is open to several widely different interpretations. The United Kingdom(123) expressed the opinion that any interim measures must be on a genuinely multilateral basis supported by all member States and must be liberal in respect of all freedom categories and classes of traffic. Even more important is that, "Any interim measures based on liberal principles should not embody safeguards of a general character which could allow individual States to escape the obligations of a liberal policy."

* * *

Since this session there have been no further attempts to find a formula for a multilateral agreement. It would be appropriate, therefore, to recapitulate briefly on the various proposals:

---

(123) Ibid, ibid, Appendix 5 p. 70.

1. On the plane of universal multilateralism,

a) Complete freedom of operation within the European region. At first these operating rights were to be subject to primary rights existing under bilaterals. Later this was dropped and bilateral agreements were to be superseded. The main reason for rejection was lack of adequate economic safeguards.

b) Scheduled services were to enjoy the same conditional right of operation set out in the Chicago Convention for non-scheduled services. All traffic rights were to be granted, with a right of reservation for the unconditional grant of the fifth freedom. Various economic safeguards were proposed, but the most interesting, which has never been seriously considered by ECAC is the system of, "differential rates". In order to maintain a traffic balance, foreign air carriers - those conveying fifth freedom traffic - would charge higher fares for transportation on route sections operated by third and fourth freedom carriers. This system has its adherents(124) though one writer expresses the view

---

(124) Henri Bouché and Stephen Wheatcroft, above cited.

that differential rates should only be imposed on a temporary basis to give local carriers the opportunity to equal their competitors, and so, "avoid a situation in which a Company can simply relax in the protecting arms of its Government and take it easy".(125)

2. On the plane of partial multilateralism,

a) Exchange of routes, which is in effect also a, "pooling" of traffic rights. This would develop in the form of ever increasing plurilateral agreements. This system was never actively objected to but was quietly pushed aside.

b) A multilateral agreement granting third and fourth freedoms traffic, leaving the fifth freedom to be negotiated bilaterally.

c) A multilateral agreement granting all the freedoms but leaving routes to be negotiated bilaterally.

d) A multilateral agreement giving freedom of operation to certain classes of traffic.

---

(125) L.H. Slotemaker "European Civil Aviation Conference: Multilateralism versus bilateralism" p. 20 Centro Per Lo Sviluppo Dei Trasporti Aerei. 11 Novembre 1955, Roma.

The position at the end of the 1957 session, therefore, shows that since the CATE session very little progress towards multilateralism had been achieved by the member States. The same divisions of policy remained and the attitude of the States indicated that the rift was not likely to be bridged in the near future. At airline level, co-operative arrangements were, and still are, being concluded but these are piecemeal and inevitably within the unsatisfactory political framework. At the political level, the policy of ECAC underwent a change, and even this change caused dissension. The CATE Conference had advocated the elimination of the distinctions made between the traffic rights. By 1957 not only had it been decided to keep these distinctions but traffic rights are now to be treated differently. The third and fourth freedoms are to be given priority over the fifth freedom. It would seem that this line of action does nothing to improve the illogical network of European routes which is one of the major reasons for the unsatisfactory position of air transport in Europe. Yet this turn of events was probably inevitable owing to the difficulty in obtaining the fifth freedom and owing to the technical developments. Aircraft now fly longer distances and the longer the distance the lower the cost, therefore, more and more intermediary stops are being left out with the consequent moderation in the importance of the fifth freedom.(126) With the introduction of jet transport the European airlines will have to, sooner or later, with or without co-operative help from ECAC, take radical steps to adjust European transport

---

(126) L.H. Slotemaker, ibid.

to this new development.[127] This task, in addition to its technical aspect, will concern mainly the route pattern, which if it is to be logically rearranged must have co-operation on the level of traffic rights.

Between 1957 and 1959 economic co-operations in Europe have been taking place, such as Euratom, CEAC etc. In this respect the main ones, however, are first the European Economic Community (EEC or the "Inner Six" or the common market) which was set up, composed of the Benelux countries, France, Germany and Italy.[128] Later the European Free Trade Association (the Outer Seven) was established, composed of Austria, Denmark, Norway, Portugal, Sweden, Switzerland and the United Kingdom.[129] These outward divisions (the general aims of both these Associations seem now to be basically the same, but only the methods of achieving these aims seem to cause the dissension) of European co-operation inevitably affect all other spheres of activity in Europe. It is not surprising, therefore, to observe an attempt at closer co-operation in commercial

---

(127) "The Economic Implications of the Introduction into service of Long Range Jet Aircraft". ICAO DOC. 7894-C/907, June 1958 & "Classification by geographical area of international airports suitable for the Caravelle, Comet IV, Boeing 707 and Douglas DC-8" ITA Research Paper No. 39.

(128) Established by the Romes Treaties of March 1957.

(129) European Free Trade Association. Convention signed at Stockholm, 1959.

aviation between the countries of the common market.(130) The convention of the EEC in article 84, paragraph 2, provides that:

> "The Council acting by means of a unanimous vote, may decide whether, to what extent and by what procedure, appropriate provisions might be adopted for sea and air transport."

No action has been taken pursuant to this Article, but should this happen, the influence and prestige of ECAC may be adversely affected and European air transport in general harmed by being torn between two camps. For on both sides of the rift there is sufficient commercial air transport strength to support rivalry. Such a position, however, is the last thing Government exchequers and airlines would wish. The member States fully realize the situation and rather than pursue their search for multilateralism which seems to be openly concretizing the difference of opinion, they have adopted at the 1959 session a new and more flexible co-operative machinery.

This new approach was suggested by the United Kingdom.(131) In a statement of policy, the United Kingdom expressed the opinion that the search for multilateralism had been exhausted, and furthermore:

---

(130) On May 20-21, 1959 Belgium, France, Western Germany and Italy agreed on a joint organization for long distance flights. The intention had been to call the organization Europair but as other airlines refused to join the name was changed to Air Union. The airlines retain their identity but share all available passenger and freight traffic according to quotas based on the economic potential of each member country. It is confined to commercial questions, technical co-operation is left to a later date: Kessing's Contemporary Archives, June 13-20, 1959, p. 16853. The organization is having its difficulties but it is difficult to get any information on the matter.

(131) ICAO DOC. 7977, ECAC/3-2 WP/75.

"In our view a multilateral is pointless if it is just a formula for papering over the cracks that divide the policies of member states. It could even be harmful if it provided cover for the application by countries individually or collectively of restrictive practices".

"In fact, these restrictions, (applied to 'rights' and routes), where they exist, are the symptoms of the disease of high costs, low traffic densities and an economic structure which hovers continually on the boundary which divides profit from loss."

"There seems to us to be a strong continuing need for ECAC to perform two primary functions in the scheduled service field. It must continue during the formative and exploratory state that lies ahead to provide the machinery where:

a) the general progress made and experience gained by airlines in co-operative measures can be studied and assisted by governments;

b) the practical problems of co-operation and liberalization can be studied by governments with the assistance of airline advisers and where, by analysis and discussion, effective progress can be made towards the elimination of the factors that restrict development."

"These functions are continuing and must proceed in parallel with progress among the airlines".(132)

To carry out these activities an intergovernmental committee was suggested which would meet frequently and informally.

There was general acceptance of this new approach, but then with an alternative proposal put forward by the Netherlands,(133) which only differed from that of the United Kingdom in the structure of the committee,

---

(132) Ibid p. 421, 422, 423 & 424.

(133) Ibid, ECAC/3-1 p. 33.

differences of opinion emerged over the composition and constitutional status of this committee. Finally a compromise was reached, and it was decided[134] to set up a Committee on Co-ordination and Liberalization (COCOLI) which is now open to all ECAC members and which is composed of governmental representatives assisted, where necessary, by their airline advisers. The Committee will meet as often as necessary between sessions. Its constitutional status will be according to Rule 8 of the Rules of Procedure and so remain within the framework of ECAC.[135] Its objectives are to study in relation to the practical problems involved:

> " a) measures of a general nature that might be taken at governmental level to facilitate and encourage co-ordination and co-operation between the European airlines, with a view to improving their economic position and their efficiency; and
>
> b) the corresponding measures of liberalization;"

When considering its future work programme, the conference decided to allocate two specific subjects for study by COCOLI.[136] The first of these concerns the consequences of the introduction of jet aircraft in both medium and long range air services on the economy and operating conditions of European air transport. The necessity for such a study is obvious and the results may cause radical changes in the methods of achieving co-operation.

---

(134) Ibid ibid Resolution No. 1.

(135) See Appendix II hereto.

(136) ICAO DOC. 7977 supra Recommendation No. 43.

The second subject concerns inclusive tours. These may be described as:

> "a journey for which the passenger pays a single price in advance, this price to include both the cost of transport and any accommodation which may be required at stopping places on route together with sight-seeing facilities and other excursions which may be included. It is not essential for all the travel involved in an inclusive tour to be carried out my one means of transport."(137)

This form of travel is becoming increasingly important in Europe, and is generally carried out by charter flights. In 1958, the approximate number of passengers participating in inclusive tours was 176,000.(138) Member States were, therefore, recommended(139) to send to COCOLI their views on the operational and economical aspects of such inclusive tour services and traffic which they consider should be included in the study.

* * *

One modest achievement of ECAC may be seen at its second session when all member States finally agreed to have the provisions of bilateral agreements (excluding those relating to routes and capacity) studied with a view to drafting them in a generally acceptable form.(140) However, a difference of opinion arose among the Members of the Study Group as to whether these provisions should be developed with a view to incorporating them in a multilateral agreement or in existing and future bilateral agreements. Consequently, alternate methods of drafting were produced.(141)

---

(137) ICAO DOC. A12-WP/97, EC/19 25/6/59.

(138) ICAO DOC. 7977 supra ECAC/3-2 WP/92

(139) Ibid, ECAC3/-1 Recommendation No. 44.

(140) See ante p.

(141) ICAO DOC. 7977, supra ECAC/3-2 WP/13.

The working group of the third ECAC Session established to resolve this disagreement, decided to develop these provisions for inclusion in existing or future bilaterals, but decided that it would be impracticable to make such inclusion mandatory.(142) The Conference examined these draft clauses and made a number of amendments, some of an editorial nature others of substance. The clauses are reproduced in Appendix VIII of this work.(142a) The Conference then recommended(143) member States to include these provisions in agreements concluded after May 1st, 1959, and invited ICAO to examine them to see if they could be of value to its contracting States.

---

(142) ICAO DOC. 7977 supra ECAC/3-1 p. 35

(142a) Ibid.

(143) Ibid.

Scheduled Freight Services

Although air freight is subject to the same restrictions with regard to operating rights as passenger traffic, owing to its lesser economic importance a more liberal treatment in respect of its regulations is possible. For a number of reasons the potentials of air freight traffic are not being fully exploited in Europe and therefore the question of incentive is as important as liberalization.(144)

Freight carried on passenger services is not only more important than all-freight services - it totals more than three quarters of intra-European air freight(145) - but, clearly, it gives rise to different situations. Consequently these two methods of freight transport were at first treated differently, but at the 1959 session the mixed freight traffic was put on the same footing as the all-freight traffic.(146)

The CATE Conference(147) singled out all-freight services only, for special liberalization, the reason being that although this class of traffic has considerable potentials it was unlikely to prejudice

---

(144) For studies see: ICAO DOC. 7799, ECAC/2-2 WP/45 & ICAO DOC 7977 ECAC/3-2 WPs/42, 49, 61, 46 & Study of intra-European air cargo traffic 1953-1957, ARB/187, "Air freight without illusions" Interavia No. 2/59 p. 150: Freight traffic is steadily decreasing in Europe.

(145) ICAO DOC 7799, ibid.

(146) See post p.

(147) ICAO DOC. 7575 - CATE/1. p.9.

scheduled passenger services in the near future. Some delegates however, felt that insufficient information had been gathered to justify taking measures for liberalizing such traffic.(148) This objection was overruled and the Conference decided, (Recommendation No. 3) that for an experimental period of five years, member States were to agree not to apply the distinctions made between the traffic freedoms in existing bilateral agreements to intra-European all-freight services.(149) This means, therefore, that any operator entitled to operate a route under a bilateral agreement, may pick up or discharge at any European point specified on such a route, freight destined for or coming from any other European point. To further encourage the development of such traffic with respect to manufacturers and consignees of merchandise, the conference recommended (Recommendation No. 4) that member States should favourably consider requests for indirect routing.(150)

As has been seen(151) this line of approach is based on a proposal for passenger traffic put forward at the same session by the United Kingdom. Although the majority of delegates were in favour, France, Italy, and Norway abstained from voting on Recommendation No. 3.(152)

---

(148) Ibid p. 64.

(149) Ibid p. 9 & 10.

(150) Ibid p. 11.

(151) See ante p.38

(152) ICAO DOC. 7575 supra p. 64.

The French Delegate made a formal statement(153) in which he expressed the view that the matter had not been adequately prepared and that it should be jointly examined first by the carriers then by the governments. He agreed that the administrative regulations of all freight traffic needed reconsidering but he would not be associated with hasty measures of liberalization without co-operation. He felt that the steps taken would lead to confusion in the arrangements under bilaterals and might re-open the question concerning cabotage. Finally he expressed the view that the Delegates should await the conclusions of the proposed European Civil Aviation Conference before taking any decisions that would hold good for five years.

The Italian Delegate(154) agreed with France that the Recommendation was premature. He expressed the view that this disregard of the origin and destination of scheduled all-freight traffic was completely new and the Conference had been unable to devote sufficient thought to the full effect this may have. It might prejudice mixed schedule services (passenger freight and mail) by decreasing the potential payload and may eliminate altogether the occasional charter flight. He felt that the question should be thoroughly examined at a future date.

---

(153) Ibid, Annex II.

(154) Ibid, Addendum 11/8/54

The first ECAC session treated the subject of freight traffic within the general framework of scheduled services. Only the Secretariat, in working paper number 3,(155) set out provisions relating specifically to freight traffic, these provisions covered mixed freight traffic as well as all-freight traffic, and went further than the CATE recommendation by tentatively suggesting that it might be desirable to permit freight to be taken on in Europe for any point inside and outside Europe, and correspondingly to permit freight to be delivered to any point in Europe regardless of its origin. The French and Portuguese Delegates(156) expressed the view that since freight traffic was of great importance to the financial balance of mixed services it would be inadvisable to grant it any greater freedom than that granted to passenger services. Whereas the Delegates of Denmark, the Netherlands and Sweden, following their overall policy were in favour of full commercial rights for both mixed freight and all-freight traffic.(156)

At the 1957 Conference the Secretariat gave a review of implementation by the States of the CATE Recommendations.(157) Thirteen States had notified their intention to implement the third Recommendation. Germany, Iceland, Italy and Switzerland had not so far stated their position. France and Greece had notified their inability to implement. The fourth Recommendation for indirect routing received more definite approval as nine States notified their specific acceptance.(158)

---

(156) ICAO DOC. 7676, ECAC/1 p. 143-144. (155) See ante p. 42.

(157) ICAO DOC. 7799 ECAC/2-2 WPs/3-4.

(158) France, Germany, Ireland, Luxembourg, the Netherlands, Norway, Spain, Sweden and Turkey.

The discussions at this session first centered round the question of liberalizing all freight traffic.(159) Spain submitted a proposal(160) for a draft multilateral agreement providing States to admit freely to their territory aircraft operating services on a route authorized by the competent aeronautical authority for the purpose of taking on or discharging at any point in Europe, freight destined for or coming from any other point in Europe, such aircraft being engaged in intra-regional or extra-regional flights. However, a contracting State might require the abandonment of such activities where these would be harmful to its scheduled mixed services. The conclusion reached by the Delegates was that in view of the small amount of all-freight traffic it would be premature at this stage to develop a multilateral agreement. Consequently, on the suggestion of the United Kingdom(161) it was decided to reaffirm the third and fourth CATE recommendations and endeavour to implement their provisions liberally. In addition it was decided that the Secretariat should study further the problems of intra-European freight on the basis of the Spanish draft, the views expressed at the conference and the available statistical information.(162)

---

(159) ICAO DOC. 7799, ECAC/2-1 p. 38.

(160) Ibid ECAC/2-2 WP/54.

(161) Ibid ECAC/2-3, Min. IA/5 p. 75.

(162) Ibid ECAC/2-1 Recommendation No. 27.

On the subject of mixed passenger and freight services the Conference examined the Danish proposal(163) which recommended that for a trial period, to be determined, member States should not apply or impose any restrictions on the carriage of freight loaded or unloaded within the region. This was suggested - the Danish Delegate explained - because owing to their frequencies and numerous stopping points, mixed services had greater possibilities of developing the freight market. He stressed, however, that this recommendation was limited to scheduled mixed services regulated by bilateral agreements. In effect, therefore, under bilateral agreements - which do not in general distinguish between passenger, freight, and mail traffic - freight would be given preference by being granted freedom from restriction at all traffic stops. This would not include technical stops but only those where third and fourth traffic rights exist but fifth freedom is denied.(164) The proposal however, was withdrawn as the majority of delegates objected to it on the grounds that no distinctions should be made between the classes of traffic. Thereupon the conference decided that the Secretariat should include in its study of all-freight traffic the subject of mixed freight and passenger services.(165)

---

(163) Ibid ECAC/2-2 WP/56.

(164) Ibid ECAC/2-3 p. 59 & 62.

(165) Ibid ECAC/2-1 p. 39.

The report of the Secretariat on implementation of the third and fourth CATE recommendations presented to the 1959 session,[166] discloses that of the thirteen States which had reported: seven had implemented these provisions;[167] one was unable to do so;[168] two have not had occasion to do so;[169] one has implemented the third recommendation but has not received any requests for indirect routing;[170] and one merely notified that liberal treatment is applied to all freight services at airports open to international traffic.[171] This report is an indication of the slow development in air freight traffic. The Secretariat in its review of the whole subject[172] stated that there appears to be a substantial air freight potential that has not been tackled by European carriers, and that "liberalization of traffic rights for freight might enable airlines to carry it with greater economy, speed and reliability than at present, thus stimulating the interests of freight forwarders and other potential users."

---

(166) ICAO DOC. 7977, ECAC/3-2 WP/45

(167) Austria, Denmark, Finland, Ireland, Luxembourg, the Netherlands, Norway and Sweden.

(168) Greece.

(169) Germany and Switzerland.

(170) United Kingdom.

(171) Turkey.

(172) Ibid ibid WP/46.

In an attempt at further liberalization Belgium and the Netherlands suggested[173] that whenever a commercial or technical stop was made by a mixed or all-freight scheduled service at any European point the operator should be free to pick up or discharge freight coming from or destined for any other European point. The delegates felt, however, that freedom of traffic at technical stops might lead to abuses and hence to restrictions, consequently the proposal was withdrawn.

As it was generally agreed that the line of approach proposed by the CATE Conference was satisfactory the third recommendation was extended for another period of five years. The fourth recommendation being still in force, no action was necessary.[174]

The subject of mixed freight and passenger traffic was next considered.[175] Some delegates expressed the view that freight should not be treated differently from passengers, and also that liberalization was not really necessary, since in practice, with respect to commercial rights, the transport of freight was not subject to serious limitations. The majority, however, were in favour of liberalization, and Belgium, the Netherlands and the United Kingdom, submitted a draft reproducing the third CATE recommendation which eliminates the distinction made between the various freedoms. The French[176] and other Delegates objected to this on the

---

(173) Ibid ECAC/3-1 p. 37.

(174) Ibid ibid Recommendation No. 39.

(175) Ibid ibid p. 38.

(176) France therefore maintains her objection expressed at the CATE session see ante p. 65

grounds that in view of the diversity of capacity clauses, the terms of the recommendation were not sufficiently clear and did not provide adequate safeguards. Consequently, the matter should be referred to COCOLI for further study. The majority however, favoured the draft and the third CATE recommendation was accepted.(177)

Although freight might be considered a subsiduary class of traffic, ECAC has realized a modest achievement in this field. Clearly, the intention is that liberalization and uniformity are to be achieved through the practices of the member States. However, not only is the design of passenger aircraft being modified to carry more freight but also, since the introduction of the turbo-jet and jet aircraft, more of the old type aircraft, which can be converted for freight transport, are now on the market. Consequently with liberalization and incentive the transport of freight has at the present time greater possibilities of development. It will be interesting, therefore, to see whether with the increasing economic importance of such traffic in air transport as a whole, liberalization and uniformity will be achieved or whether restrictions and limitations will be imposed to protect scheduled passenger traffic and national freight carriers.

---

(177) ICAO DOC. 7977 ECAC/3-2 Recommendation No. 40

Airmail

The whole subject of the transport of mail is regulated by the Universal Postal Union (UPU). In air transport this class of traffic is under Government control, and it is the postal administrations which determine how and by what aircraft mail is to be dispatched.(177a)

This traffic is relatively important and it accounts for between 8.7% and 5.5% of the total revenues, and between 5.3% and 4.5% of the total ton kilometres performed. It is estimated that of the total international mail ton kilometres performed, about 80% represent carriage by airlines of mail originating in their own country.(178)

On the question of commercial rights, difficulties are encountered in practice when off-loading at destination is refused through lack of commercial rights at that point. This would seem to apply to off-loading for purposes of delivery, and not for onward dispatch by another aircraft of the same or different nationality. For in the latter case, Articles 2, and 32 of the UPU Airmail Convention, grant freedom of off-loading for transit purposes. However, these provisions only apply to the territory covered by the UPU Convention, to which most States belong.(177a)

(177a) ICAO DOC. 7799 ECAC/2-2 WP/5

(178) ICAO DOC. A12-WP/21 EC3 2/3/59

The ECAC sessions were particularly concerned with the question of dispatching airmail as rapidly as possible. At the 1955 Session the general opinion was that airmail should be carried by the most rapid services regardless of the question of traffic rights. France and Portugal, however, hesitated with respect to their position concerning the fifth freedom right.(179)

At the Ottawa Congress of the UPU in August 1957 the five Scandinavian countries and the Netherlands suggested that "every member State of the Union, guarantees to the other member States, as regard Schedule international air services, the right to take on mail destined for every other member State whatever the nationality of the aircraft." However, this proposal was withdrawn in face of strong opposition which felt that it was a matter for ICAO and not the Postal Union.(180) At the 1957 ECAC Session the Netherlands Delegate referred to this proposal and emphasized that in his opinion air mail is a completely different type of traffic from cargo, as the sender of a letter does not have control over its manner of transport. Accordingly he proposed that for airmail traffic within the Region each State should abolish or refrain from taking any measures which may hamper their postal authorities from making use of the first available aircraft, whatever its nationality, providing the most rapid and suitable means of conveyance.(181)

---

(179) ICAO DOC. 7676, ECAC/1 p. 146-147.

(180) ICAO DOC. A12 supra p. 7 & Addendum 2/6/59

(181) ICAO DOCs 7799, ECAC/2-3 p. 63 & 64, ECAC/2-2 WPs/30-84-90.

The Netherlands proposal was objected to on two main grounds: it was felt to imply that postal authorities would have to follow the practice of loading airmail on the first available aircraft, which may be contrary to their policy; distinctions between classes of traffic would be made, which was undesirable. Fears were also expressed that unhealthly competition might arise.(182) However, as two proposals put forward by France,(183) one suggesting a study of the whole subject and the other suggesting co-operation with the UPU and concentrating on the delivery of mail, were rejected, the Conference finally adopted the Netherlands proposal by nine votes to five with three abstentions.(184) The French Delegation made a formal statement endorsed by the Portuguese Delegation, in which it emphasized, "That it was unable to support the recommendation of the Conference as it implied that mail could be carried even by an airline which had not obtained commercial rights between the stops in question."(185)

The report of the Secretariat(186) to the 1959 Session discloses that out of thirteen States(187) which reported only one(188) cannot fully implement this Recommendation which on the whole seems to be followed in practice.

---

(182) Ibid ibid 65 et seq & 71-72. ECAC/2-1 p. 39

(183) Ibid ECAC/2-2 WPs/42 & 98.

(184) Ibid ECAC/2-1 p. 39 & Recommendation No. 28.

(185) Ibid ibid Appendix 5.

(186) ICAO DOC. 7977 supra ECAC/3-2 WP/51 p. 6.

(187) Austria, Denmark, Finland, Germany, Greece, Ireland, Luxembourg, Netherlands, Norway, Sweden, Switzerland, Turkey and United Kingdom.

(188) Greece.

Non-Scheduled Air Services

The commercial potentials of non-scheduled flights are not being exploited to any great extent. Although in the legal field, these services give rise to the same problems encountered by scheduled services, owing to their relative economic unimportance they have been given greater freedom of operation under the second paragraph of Article 5 of the Chicago Convention:

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

Therefore, when these "regulations, conditions or limitations" are strictly applied this prima facie right to operate becomes illusory and the non-scheduled flight is subjected to the same restrictive attitude as scheduled services.(189) With respect to the exchange of traffic rights under bilateral agreements these flights have not been singled out for special treatment although in practice they were being given greater freedom of operation than scheduled services.(190)

---

(189) For Articles 5 & 6 of Chicago Convention covering non-schedule and schedule operations see Introduction.

(190) By 1958 only four bilateral agreements had been concluded on non-scheduled operations: France-U.K., 1946; France-Spain, 1948; Italy-Spain, 1949; Switzerland-U.K., 1950.

At the CATE session, the Delegates discussed the possibility of liberalizing the operation of non-scheduled flights engaged in the carriage of passengers, cargo or mail for remuneration or hire.(191) The question was whether member States would be prepared to agree not to exert their right to impose the restrictions of Article 5 for intra-European traffic or to reduce such restrictions for certain types of operation or under certain circumstances. There was general agreement that non-scheduled flights could be allowed to operate within Europe without prior permission from governments if such flights did not compete with established scheduled services. Although this criterion would be difficult to define, the Conference decided to accept it and to determine certain classes of flights that would fall within its limits. Thereupon the Conference adopted an interim measure, based on these decisions, to be followed until a multilateral agreement be concluded(192) and, as the next stage in the development, it requested the Council of ICAO and the proposed European Civil Aviation Conference to have a draft made for such a multilateral agreement taking into account the views put forward at the Conference.(193)

The interim measure was used as a basis for the multilateral agreement developed by ICAO, which was presented at the first ECAC session,(194)

---

(191) ICAO DOC. 7575 supra p. 11

(192) Ibid Recommendation No. 5.

(193) Ibid Recommendation No. 6.

(194) ICAO DOC. 7676 supra p. 13-15.

and adopted with minor changes at the first ECAC intermediary meeting in Paris in 1956[195] under the heading of "Multilateral Agreement on Commercial Rights of Non-Scheduled Air Services in Europe".[196]

As proposed by CATE, the underlying principal of the Agreement is freedom of operation for non-scheduled flights that do not harm either actually or potentially, the operation of national scheduled services. Three categories of flights are distinguished and treated so as to comply with this criterion.[197] Those, which by their nature, can be accorded freedom of operation because they offer no real danger of harming the interests of scheduled air services (these include flights for humanitarian or emergency purposes, flights of small aircraft with a seating capacity of 6 or less; flights of aircraft entirely chartered without resale of space, and isolated flights of a frequency of not more than one a month); those that are permissable if they do not in fact harm the operations of national scheduled services, permission may be granted or withdrawn at the discretion of the State (these include all-freight transport and transport between regions not adequately served by scheduled services); other flights.

For the first two categories of flights, freedom of operation is allowed without imposing the regulations, conditions or limitations. The third category occupies the same position under the Agreement as it

---

(195) ICAO DOC. 7696, ECAC/IM1. Paris, 1956.

(196) For text of the Agreement see Appendix IV hereto, ICAO DOC 7695.

(197) Articles 2 and 3.

does under the second paragraph of Article 5 of the Chicago Convention except that the Agreement affects the form but not the nature of the "regulations, conditions or limitations" by prescribing the manner in which they are to be imposed.

The agreement does not cover technical or operational matters, but the Conference expressed the opinion, that, in this field, the treatment accorded by the member States to non-scheduled operations should not be less favourable than that accorded to scheduled services.(198)

With regard to the geographical extent, the Agreement covers all the metropolitan territories of the contracting States, with the exception of outlying islands in the ocean and islands with semi-independent status not included in the Acceptance of the States concerned. The Agreement is not, however, limited to flights having both their termini in the Region and therefore intra-European segments of longer flights are permissable.(198)

At the third session of ECAC in March 1959, it was reported that seventeen out of the nineteen member States had signed the agreement and eleven had ratified it.(199) The Conference recognized the fact that without fuller statistical information, it would be most difficult to

---

(198) ICAO DOC. 7676 supra p. 14.

(199) ICAO DOC. 7977 ECAC/3-2 WP/54. On 11/9/59 the Federal Republic of Germany ratified. The non-ratifying States: Belgium, Ireland, Italy, and Luxembourg.

reach an appreciation of the nature and extent of non-scheduled operations in the Region and therefore it decided[200] to request the Council of ICAO to give particular attention to this form of transport when considering the collection of traffic statistics in general. The difficulties inherent in any attempt at defining non-scheduled operations and traffic for statistical purposes was recognized but it was considered unnecessary for the Council of ICAO to arrive at water-tight definitions in order to produce statistics that would be useful to ECAC.

The obvious characteristic of this Agreement is its subordination to scheduled services which considerably limits its scope. In addition, with States giving different classifications of flights as scheduled or non-scheduled and with their discretion to refuse the operation of such flights, the economic importance of the Agreement has been reduced to a minimum. However, by so restricting the economic potentials, the traffic freedoms have not been brought into play and from this fact it may be observed that the doctrine of sovereignty over the airspace is sufficiently flexible to be tempered according to the susceptibilities of national economics.

Although, in practic, most States were granting the freedom of operation now covered by the Agreement, its legal importance should not be underestimated. For this is the first successful agreement which

---

(200) Ibid, ECAC/3-1 Recommendation No. 41.

grants freedom of traffic not based on the distinctions made between the traffic rights. Although it is a regional agreement, there is a possibility that it may eventually be extended to include non-European States.(201)

At the third ECAC session the European Federation of Independent Air Transport (FETAP) in its review on non-scheduled services,(202) points out that very few operators are engaged exclusively in non-scheduled operations but that all operators of scheduled services operate non-scheduled flights consequently the question basically involves types of operation and not types of operators. Furthermore, States have quite different ideas as to what constitutes a non-scheduled operation, this leads to complications and may lead to restrictions. To remove this uncertainty it suggests reaffirming the "Definition of a Scheduled International Air Service" adopted by the Council of ICAO in 1952.(203) The final important point made by FETAP is that the characteristics of scheduled and non-scheduled operations are quite different. The latter fills a particular need which cannot be fully explored without first removing the restrictions and safeguards imposed.

---

(201) The Council of ICAO is keeping under review the progress of this Agreement ICAO DOCs 7710, A10-EC/28, 1956 p. 4 & 7960 A12-P/1, 1959, p. 35 & 36.

(202) ICAO DOC 7977 supra ECAC/3-2 WP/62.

(203) See Annex IX hereto.

However, in his report to the same session the President of ECAC after reviewing the recent growth in non-scheduled services had this to say:

> "But one wonders if it would not be advisable to check on whether the normal traffic wholly agrees with the spirit that determined the signature of the Agreement, in order to avoid possible damage to scheduled traffic before it is too late". (204)

---

(204) ICAO DOC. 7977 ibid WP/55 p. 22.

Committee On Co-ordination And Liberalization

The first meeting of the Committee on Co-ordination and Liberalization (COCOLI) was held in Paris in November 1959.(205) Fifteen out of the nineteen member States attended.(206) The attitude of the meeting was that it should clarify its position and aims rather than achieve any immediate results.

On the question of the grant of traffic rights, the Committee first based its discussions on the United Kingdom proposal.(207) This suggested an exchange of views on the national policies regarding the concession of traffic rights, and, as a beginning, the United Kingdom set out its own national policy. It also suggested an approach to the practical problem of airline co-operation by organizing the market not only to improve services to the public but also the efficiency of operation. To achieve this object types of arrangement ranging from simple co-ordination of timetables to a real association of airlines as envisaged by Article 77 of the Chicago Convention were proposed. There was a wide exchange of views on this subject particularly with respect to the co-operative arrangements and it was decided that the matter should be further examined at a later date.(210)

---

(205) At the time of writing this paper only the working papers of COCOLI had been published, consequently only an outline of the decisions taken by this Committee can be given.

(206) Asutria, Greece, Iceland and Turkey were not represented: ICAO DOC. COCOLI/1 WP/34.

(207) Ibid WP/ 7 & 8.

The Committee next turned its attention on this subject to the report of the President of ECAC.(208) The President stated that the creation of COCOLI implied the deferment of a multilateral agreement on the exchange of traffic rights for the present but he suggested various methods which may eventually lead to the conclusion of such an agreement. The first two methods covered the whole field. The first was the proposal suggested by the United Kingdom but stressing the practical aspects which would enable a measure of co-ordination and co-operation to be achieved. The second, that the airlines of the member States should list the practical problems they encounter together with the solutions they feel would ensure efficient and economic operation.

The next two methods are limited to the question of routes. First, the unilateral liberalization of air routes that are not at present in normal operation. This "free network"which initially would not meet any standards might result in subsequent co-ordination. Next, airlines should present a list of routes they would wish to operate, justifying their request by economic and efficient improvements. COCOLI would then use this network planned by the airlines as a basis for its work. This would be a first example of joint planning which could be attributed to ECAC.

---

(208) Ibid WP/18.

With regard to these suggestions it was agreed that the President gather sufficient documentation, including the views of the member States, for presentation at the next meeting.(210)

Finally the President proposed that the form of the "Code of Liberalization of Exchange" of the Organization for European Economic Co-operation be adopted. This would be similar to a multilateral agreement but it would not be an authentic convention as it would consist of a series of standards for the progressive liberalization of air transport on the basis of co-operative operation. The Secretariat has prepared the draft which will be presented at the next COCOLI meeting in April, 1960.

The question of the legal implications resulting from the application of bilateral agreements in cases where airlines protected by these agreements enter into or form part of an Association was examined.(209) The SAS Consortium was considered, but, as it was created before the Scandinavian countries had concluded most of their bilateral agreements, it was found not to be a fair example. The cases under consideration aimed at uniting companies which enjoy different rights, by virtue of different bilateral agreements, without prejudice to such rights. As this question gives rise to serious difficulties it was decided that the study should be continued at a future COCOLI meeting.(210)

---

(209) Based WP/16 ibid.

(210) Ibid WP/34.

The operation of non-scheduled services was also reviewed. It was decided not to embark on the difficult task of giving a definition of non-scheduled operation but instead to establish a "morphology" on non-scheduled flights. The list of classifications is to remain open and to be added to and the list set up in working paper 3 was offered as a starting point. At the conclusion of the discussions on the whole field of non-scheduled operations it was decided that the subject should be further studied, including the application of regulations, conditions and limitations in particular to the implications they may have on the economy of national scheduled services.(210)

As requested by the third session of ECAC, the Committee examined the subjects of jet aircraft and inclusive tours. The discussions on the consequences of the introduction of jet aircraft on the economics and on the operating conditions of air transport in Europe resulted in the ARB being requested to study the matter and to report on the operational conditions with such deductions as may be possible in relation to the economic aspects.(211) The scope of this study is to be more limited than the one carried out by ICAO in June 1958(212) and is to decide on the region and the type of air transport to be considered and is to cover the period 1960-1964.

---

(211) Ibid & WP/4.

(212) ICAO DOC. 7894 and see note 127 supra.

Many studies on the subject of inclusive tours were presented to the Committee.(213) The development of this type of activity was considered to be interesting and potentially beneficial to the development of air transport provided it did not prejudice scheduled air services. Consequently the study on this subject is to be continued.(210)

During its review of air transport in September 1959, the Consultative Assembly of the Council of Europe brought up the question of the aircraft manufacturing industry in Europe. The Secretariat of ICAO following this up, presented a working paper dealing with the possibility of convening an international conference on the integration of the aircraft industry in Europe.(214) It suggested that in preparation for this Conference the Committee should investigate the possibilities and desirabilities for ECAC to study the problem of the aircraft industry and to decide which organizations should attend the conference. The President of ECAC reporting to COCOLI on this question(215) expressed the opinion that it was not entirely within the scope of ECAC but that nevertheless, ECAC may play "catalyst" between operators and the aircraft industry. He, therefore, proposed that the members of the Committee

---

(213) ICAO DOC. COCOLI/1 WPs/: from ITA 12; from member States - 2, 5, 6, 9, 10, 11, 13, 14, 25, 26, 27, 33.

(214) Ibid WP/19. Based on a study of the Secretariat of the Council of Europe, "Recent developments in the aircraft industry." See also Bernard Dutoit "L'Aviation et l'Europe" supra.

(215) ICAO DOC. COCOLI/1 WP/18.

should answer at a later stage a list of specific questions. For example: to what extent the question of aircraft industry in Europe is of direct interest to commercial air transport operators?

* * *

From this brief outline of the first COCOLI meeting, it may be observed that there is a "breaking down" of the main problems which ECAC attempted to solve and incorporate into a multilateral agreement, into "sub-problems" or divisions which will be resolved individually for, presumably, ultimate inclusion in a multilateral agreement. The most important object, however, would seem to be the solving of difficulties and this demands a degree of unification in the attitudes and practices of the member States. The unification need not necessarily be achieved by a multilateral agreement. Indeed it is possible that such an agreement would, as the ARB has suggested,(216) lead to less liberalization. Consequently, a steady progress towards unification by adopting the necessary measures to meet each problem seems the most satisfactory answer. Although it is too early to speculate on the course COCOLI will adopt, its present work seems to point in that direction. The revolution which air transport is undergoing with the introduction of the jet aircraft necessitates re-organizing air transport in Europe.(216a) This regional

---

(216) See ante note (103) p.46

(216a) Not only are supersonic airliners to be used but hypersonic rocket propelled airliners travelling at 10,000 mph are forecast for the not too distant future: Interavia No. 1/1960. Some experts, however, are against the use of jets and prefer turbo-jets for economical operation: "Fares, Propellers and Jets", Frank Robertson, Interavia No. 1/1960.

transport will have to provide for two types of traffic, the intra-European as such, and the "feeder" traffic for the trans-continental airliners. ECAC and in particular COCOLI provide an invaluable meeting ground for the member States to "thrash" out the inevitable problems, and unification and liberalization will ensue from this as a natural consequence. A multilateral agreement may be concluded when, and if, necessary.

Interchangeability of Aircraft

The value of the operation known as interchangeability of aircraft is that it leads to better utilization of aircraft and to closer co-ordination and mutual assistance between airlines.(217) The problems encountered in interchange of aircraft, are of a technical (217a) and legal nature. The technical difficulties arising from national regulations and practices relate mainly to such matters as equipment, operating standards and procedures, aircraft maintenance and personnel licensing.

Although interchangeability of aircraft has been discussed since 1925(218) it has no generally accepted definition, therefore, to further its discussions the CATE Conference decided on a definition which has been accepted by ECAC:

> "For the purpose of this agenda, the word "Interchangeability" should be taken to refer to the ability of an airline operating internationally, under governmental agreement and authorization, to use an aircraft belonging to a foreign airline and registered in a foreign State, with or without the aircraft's crew."

---

(217) For an example see Appendix X hereto.

(217a) ICAO DOC+ 7575 supra WP/7 "Technical and administrative aspects of the interchangeability of aircraft between European airlines", & WP/40 "'Interchangeability of Aircraft': considerations of the technical and administrative aspect of the interchangeability of aircraft between European airlines."

(218) In 1925 it was put on the work programme of the Comité international technique d'éxperts juridiques aériens (CITEJA). For a review see ICAO DOC. 12/GC/Cha working draft No. 1 and C-WP/1848.

Such an interchange will normally be effected by means of a charter or hire (these terms also have no accepted definition) and the problems arising from "Hire Charter and Interchange" are encountered in the domains of both public and private international law.(219)

Under the Chicago Convention difficulties may be encountered, for instance, under Article 12 (Rules of the Air) which covers the obligations of the State of Registry for its aircraft, and under Article 33 dealing with the recognition of certificates of airworthiness and licenses of the crew. The question of the exchange of traffic rights may also affect interchange, for these commercial rights are attached to the aircraft, and not to its State or Registry.

Under private international law,(219) problems may arise relating to the legal responsibilities of the owner or other person from whom the actual operator hired or chartered an aircraft the operation of which has caused damage to passengers, third parties on the surface, passengers on another aircraft, cargo owners, or members of the crew.

The CATE Conference discussed the subject matter from its various aspects.(220) In the legal field it based its deliberations on a paper

---

(219) Eg: Convention for the Unification of Certain Rules Relating to International Carriage by Air, 1929 (Warsaw Convention) and its Protocol of 1953; Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, Rome 1948.

(220) ICAO DOC. 7575 supra p. 15 & 16.

presented by Professor Clauveau, the Observer for the International Law Association, which is reproduced in Appendix V of this work. On the matter of Policy, the Conference expressed the hope that the exchange of traffic rights would not restrict interchange agreements concluded by the airlines. The difficulties arising in the technical and administrative fields were also examined.

It was finally decided[221] that with the help of the States concerned, airlines should study the possibilities and advantages of interchanging aircraft and should conclude interchange agreements. Such agreements are to be subject to the approval of the States concerned which are recommended to interpret their bilateral agreements to give effect to such interchange arrangements.[222] Member States were further recommended to study their existing laws and regulations, including the ones on such matters as personnel licensing, operating standards and procedures and maintenance of aircraft with a view to facilitating interchange agreements.

On the subject of chartering and hiring aircraft, the opinion was expressed that an international definition of the legal rules applicable thereto and the responsibilities arising therefrom would facilitate the development of interchangeability. It was recommended, therefore,

---

(221) Ibid Recommendations 7,8,9,10 & 11.

(222) Ibid Minutes of the Plenary Session p. 54: The French Delegate expressed the opinion that a State which was merely flown over or used for non-traffic stop purposes need not be required to approve the interchange arrangement in question.

(Recommendation 12) that the Council of ICAO should study the need for an international convention on the charter and hire of aircraft and the problems associated with its preparation.(223)

The first session of ECAC examined the subject in relation to the Chicago Convention only.(224) On the question of interchange without crew, the legal implications of Article 12, Annex 6 (Operation of Aircraft) and Annex 8 (Airworthiness of Aircraft) were examined, particularly with respect to cases where the State of Registry wishes to transfer some of its functions under the above provisions to the State of the operator. For although these functions may be effectively transferred, such a transfer is not binding on a third State over which the aircraft in question may be operating. It was ultimately agreed that member States should, nevertheless, facilitate interchange agreements by means of the transfer of such functions but that the Council of ICAO should study the legal implications arising therefrom.(225)

---

(223) Ibid, Recommendation No. 12. On March 22, 1955, the Council of ICAO decided that the Chairman of the Legal Committee should be asked to set up a sub-committee to make a preliminary examination of the problems raised by Recommendation No. 12; ICAO DOCs 1C/GC/cha draft No. 1 supra; 7921-LC/143-1. The sub-committee met at The Hague in 1955, Caracas in 1956, Madrid in 1957 and it will meet in Paris in 1960.

(224) ICAO DOC. 7676 supra p. 16-17.

(225) Ibid Recommendation No. 3.

The question of interchange of aircraft with crew was also examined but it was agreed that no multilateral action was required although a study of the whole matter would prove useful.

The possibility of automatically validating crew licenses (Article 33) was discussed but it was decided that a multilateral agreement to that effect would not only be difficult to achieve at the present time, but also it would need to be based on detailed unification of licensing requirements which would tend to prevent the raising of the licensing standards. Any problems arising under Article 30 with reference to radio equipment was considered to be covered in practice by relying on the licenses issued by the Atlantic City Telecommunication Convention to which, it was assumed, all States likely to conclude interchange agreements would probably belong.

On the general agreement that a multilateral solution of the problems raised by the Chicago Convention and its Annexes in connection with the interchange of aircraft is desirable, the Conference recommended (Recommendation No. 4) that a study group be set up to undertake a comparative study of national practices in implementing Annex 1 (Personnel Licensing) and Annexes 6 and 8.(226)

Reports received at the second ECAC session indicated that the Recommendations of the two previous Conferences had been, to a large extent, implemented and a number of interchange agreements had been concluded in the European region.(227)

---

(226) Ibid Recommendation No. 4.

(227) ICAO DOC 7799 supra ECAC/2-2 WP 8 & 9.

The legal sub-committee of ICAO on hire, charter and interchange reported[228] that although the study on the trasnfer of function under the Chicago Convention had not been completed it had nevertheless reached certain conclusions. These were to the effect that interchange with crew raised no difficulties. On the other hand interchange without crew raised difficulties but the sub-committee felt that these could be met by practical solutions and therefore it would be unwise to try to amend the Convention until experience showed this to be necessary. Statement made by the legal adviser of IATA reached the same conclusion.[229]

The report of the study group set up pursuant to Recommendation No. 4 of the previous session was then examined.[230] The nature of this report is practical rather than legal and, as proposed, is a comparative study of the national practices under Annexes 1, 6 and 8 and, in addition, Annex 13 (Aircraft Accident Inquiry). But it did envisage the possibility of some form of international multilateral action to deal with some of the practical problems. Consequently, based on this report, the Conference passed Recommendations No. 19 -20 - 21 and 22.[231] With respect to Annex 1 certain procedures were proposed for the validation of crew members licenses; with respect to Annex 6 it was suggested that the State

---

(228) Ibid ECAC/2-1 p. 28 & ECAC/2-3 p. 121.

(229) Ibid ibid p. 122.

(230) Ibid ECAC/2-2 WP/19 & ECAC/2-3 p. 105: interchange will have even more advantages with introduction of jet and turbo-jet.

(231) Ibid ECAC/2-1 p. 29-31.

of Registry should, to the extent considered necessary, delegate its functions to the State of the operator; in the event of an accident involving an interchanged aircraft, the State of the operator is recommended to supply to the State of Registry all information required by it in compliance with Annex 13, and the State of Registry should allow observers and representatives to be appointed by the State of the operator in accordance with Article 26 and should communicate to the latter the report and finding of the accident inquiry; member States should inform the President of ECAC of their acceptance of the above Recommendations and of the procedures they have adopted for the validation of personnel license referred to in Recommendation No. 19.

Having paved the way for practical uniformity, the Conference proposed that the Secretariat, in consultation with the governments of ECAC States, should prepare a draft for a multilateral agreement on the technical aspects of aircraft interchange taking into account Recommendations 19 to 22, and should circulate this draft to member States before the next session of the Conference.(232)

In addition to the draft prepared by the Secretariat,(233) the government of Denmark, Norway and Sweden prepared a paper containing a

---

(232) Ibid Recommendation No. 23 p. 32.

(233) Circulated twice to the member States: "Draft multilateral agreement relating to certain aspects of the international operation of civil aircraft registered in one State and operated by the airline of another State" ICAO DOC 7977 ECAC/3-2 WP/12.

standard form of multilateral agreement on interchange of aircraft with a report on the measures taken by the SAS system.(234) The third session of ECAC considered these two drafts but decided that the conclusion of a multilateral agreement was not justified for the present and that the work on its development should be discontinued.(235)

This decision was probably influenced by the report of the Secretariat on implementation of the Recommendations 19-20 and 21 of the previous session.(233) The report indicates that these Recommendations are generally acceptable to the member States and provide solutions to the major problems encountered in aircraft interchange. Accordingly it was decided that States should continue to solve their problems bilaterally in accordance with these Recommendations, and that all the relevant working papers, particularly the ones produced by the Scandinavian countries should be collected and circulated to the member States for their guidance.(236) The Delegates agreed, however, that if at a later date a sufficient number of problems had arisen, the question of developing a multilateral agreement might be taken up again.

The legal aspect of interchangeability of aircraft by means of charter and hire was left to the Legal Committee of ICAO. The Committee examined the subject with respect to both public and private international

---

(234) Ibid WP/72.

(235) Ibid ECAC/3-1 p. 26.

(236) Ibid Recommendation No. 33.

law and reached the conclusion that a solution by means of a multilateral agreement is only necessary in respect of problems arising under the Warsaw Convention in cases of charter or hire of aircraft with crew. Such a solution was found necessary because the Warsaw Convention in its original form and as amended by the Hague Protocol leaves uncertain:

(a) The respective liabilities of the owner (which includes any other person entitled to charter or hire out the aircraft) and the charterer or hirer under the convention in respect of passengers, baggage and cargo;

(b) The question whether those provisions of the convention which refer to the "carrier", the owner or the hirer is the person meant.

The Committee, accordingly, drafted the "Convention for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Othan Than the Contracting Carrier".(237) Although this draft was prepared in response to the recommendations of the first ECAC session, it is intended for universal application.(238)

---

(237) See Appendix VI hereto.

(238) For a survey of the work of the Legal Committee see ICAO DOC. 7921 LC/143-1.

Certificates of Airworthiness

The second session of ECAC discussed as a separate item the question of validation of certificates of airworthiness of aircraft constructed in a State other than that of registration.(238a) The majority of the Delegates were in favour of a multilateral agreement on the subject,(239) and as there was no opposition, the Conference decided that steps should be taken to develop such an agreement for adoption at the next session. Accordingly, the Secretariat was requested to prepare a draft using as a basis the draft provisions submitted by the United Kingdom(240) and taking into account the views expressed at the conference.(241) A study group was then to examine the draft in order to develop a text to be considered at the next session and to be recommended for signature.

The Secretariat prepared such a draft which was presented at the third session of ECAC.(242) A number of drafting changes were made but two points gave rise to controversy.(243) The first of these was whether the agreement should be limited to ECAC States only. Some delegates felt

---

(238a) For discussion of the Delegates see minutes of commission 1B ICAO DOC 7799 ECAC/2-3.

(239) Denmark, the Netherlands and Sweden expressed the opinion that a multilateral agreement was unnecessary. Ibid p. 43.

(240) Ibid ECAC/2-2 WP/ 34 & 103.

(241) Ibid ECAC/2-1 Recommendation No. 24.

(242) ICAO DOC. 7977 ECAC/3-2 WP/6.

(243) Ibid ECAC/3-1 p. 27-28.

that if the agreement were opened for signature in a general way, member States of ECAC as well as non-member States would benefit, especially in cases where aircraft constructed in a non-member State are exported from one ECAC State to another. On the other hand, some Delegates objected to this on the ground that the agreement was developed with a view to covering the European region only. Also, as it was untried it might have faults that should be corrected before opening it for adherence in a general way. It was ultimately decided that the agreement should, in the first place, be open for signature by ECAC States only, but that after a period of two years, it might be open for adherence by all contracting States of ICAO.

The second point giving rise to controversy was whether the agreement should cover all aircraft or whether it should exclude the smaller type under 12,500 pounds. The three Scandinavian countries stated they might not be able to accept the agreement if it included the smaller type of aircraft. It was decided that the President should discover whether other member States had similar reservations.

Three Recommendations concerning certificates of airworthiness were finally passed. The first of these(244) proposes that the Secretariat study from the legal point of view, the draft multilateral agreement relating to certificates of airworthiness for imported aircraft. This study must then be examined for comment by member States, whereupon the Secretariat or if necessary, a drafting committee of legal experts from member

---

(244) Ibid Recommendation No. 34.

States, will prepare a final draft which is to be opened for signature at the ICAO Paris Office as of Sept. 18, 1959. This final draft has been completed and is reproduced in Appendix VII of this work.

The second Recommendation covers the certification of accessories and component parts that are imported as separate items.(245) The Conference decided that since these items are so closely related to the import and export of aircraft, the Secretariat prepare a paper setting out the present procedures used by member States dealing with the certification of airworthiness of such items. Thereafter, a study group is to be established to develop a uniform procedure governing the approval of the member States for the import and export of such items.

Finally, the Conference recommended(246) that the Secretariat prepare a paper on the legal implications arising from certificates of airworthiness for export and another paper setting out factual information regarding the categories and subdivisions for certificates of airworthiness used in member States. On the completion of this work, a study group is to be established to develop proposals for achieving uniformity in these matters.

---

(245) Ibid Recommendation No. 35.

(246) Ibid Recommendation No. 36.

Helicopter Services

In 1954, helicopter services in Europe were only just beginning, consequently CATE examined the subject with a view to the future.(247) It was suggested that member States safeguard adequate sites for the provision of heliports, as central as possible and likely to permit interconnection with other means of transport. Furthermore, it was suggested that the members of CATE and the proposed European Civil Aviation Conference should study the problems associated with helicopter services with a view to facilitating their introduction and development. It was also proposed that the same study might be undertaken in the future for any other type of aircraft to satisfy similar economic needs.

At the first meeting of ECAC the technical and practical aspects of helicopter services were examined first. The Conference had before it three reports. The two first were submitted by the German Delegation, and by BEA and SABENA, respectively, dealing with the development of heliports and helicopter services in Europe.(248) The third report was a review given by the Belgian Delegation of the possibility of government action to assist the development of these services.(249) The Conference recognized that such development depends on the technical progress of helicopter design in such matters as operating economy, safety, all weather

---

(247) ICAO DOC. 7575 supra p. 18.

(248) ICAO DOC 7676 supra WPs/16-17 & p. 20 & 21.

(249) Ibid WP/32 & p. 20 & 21.

operations and noise reduction. However, it was agreed that governments could assist helicopter services in various ways some of which would be especially relevant to western Europe.

The Conference also considered the necessity of standardizing helicopter regulations within the framework of the Chicago Convention and its Annexes, and it was thereupon proposed that the next ICAO Air Navigation Meeting, dealing with the EUMED Region should give special attention to this matter. The Conference then confirmed the CATE suggestion with reference to heliports.(250)

Helicopter services with respect to the grant of traffic rights was the next question examined by the Conference.(250) It was noted that States do not give special treatment to these services as they consider the helicopter to be merely one of a variety of classes of aircraft engaged in air transport. However, in the field of non-scheduled operation, the helicopter is particularly adapted to certain types of emergency and humanitarian flights which are given special freedom of operation under the "Multilateral Agreement on Commercial Rights of Non-scheduled Services in Europe".(251)

The question of facilitation was only touched upon.(250) It was pointed out that as helicopters travel short ranges, border delays are proportionately more serious. It was noted that some States had already

---

(250) Ibid p. 21.

(251) See ante p.77

taken a number of measures in this respect and that the Facilitation Division had requested that this matter should be kept in mind.

In the field of scheduled services, the Secretariat's working paper number 3 proposed to allow the exercise of full traffic rights by aircraft of less than 150 miles' speed and/or less than 300 miles' range. This provision was intended for helicopters and was thus limited because the European Civil Aviation Authorities had indicated their unwillingness to grant special permanent rights to helicopter services as such, owing to the possibility that these aircraft may develop in the near future and so become competitive with certain conventional aircraft now used by scheduled airlines. Consequently, the Conference merely stated that it may be possible for governments to assist "by introducing a certain amount of elasticity into the operating rights accorded the helicopter services".(252)

Finally, the Conference recommended that member States should continue to study the problems related to helicopter services with a view to facilitating their development.(253)

The question of helicopter services has not formed part of the agenda of any of the subsequent ECAC sessions. This is not surprising as Belgium is still the only country operating international scheduled helicopter services. However, BEA plans to open a cross-channel service London-Paris-Brussels-Amsterdam, in 1962.(253a)

---

(252) ICAO DOC 7676 supra and see ante p.

(253) ICAO DOC. 7676 Recommendation No. 5.

(253a) Interavia No. 2/1960 p. 200.

Work of ECAC in the Facilitation and Air Navigation Fields

Although ECAC has achieved important improvements in the Facilitation and Air Navigation fields, as it is predominantly technical and administrative only an outline of the work will be given here.

Facilitation (FAL)

Facilitation in international air transport refers to the simplification of government control over such matters as the clearance of aircraft, passengers, baggage and cargo on board, whenever an aircraft arrives or departs from an airport.

At CANNES in May 1953, an informal meeting on facilitation in Europe was convened on the initiative of the French government and was attended by fourteen European States. The Conference passed various recommendations on such matters as sanitary control, establishing liberal regulations for non-scheduled services, establishing national FAL Committees etc. The final report of that Conference was reviewed by CATE and it was observed that for the majority of recommendations, practically all European States had indicated that they had either implemented these provisions or were about to do so.(254)

---

(254) ICAO DOC. 7575 supra p. 24-31 & p. 56.

Furthermore, the CATE Conference reviewed the facilitation field in the European region(255) and passed twelve recommendations.(256) One of these requested the Council of ICAO to amend Article 29 of the Chicago Convention (documents carried in aircraft) to cut down the list of documents carried on board an aircraft, or if such amendment would not be practicable to study other means to achieve this object. Other recommendations cover such matters as: visas, custom examination and embarkation and disembarkation cards for passengers; custom clearance formalities for non-scheduled flights; means of reducing ground stop time of aircraft etc...

The Conference then expressed the view that in order to achieve multilaterally the maximum degree of facilitation the member States should implement unilaterally - as from a certain date to be determined - the Standards and Recommended Practices of Annex 9 (Facilitation) of the Chicago Convention, without waiting to determine that reciprocal treatment is being given by any other State. However, certain methods would still have to be handled bilaterally as they might have the disadvantages of either being developed on the basis of the "lowest common standards" or being too inflexible to be dealt with multilaterally or taking too long to conclude.(257)

---

(255) Ibid p. 20-32.

(256) Ibid Recommendations 13-24 incl.

(257) Ibid p. 31 & 32.

It was not until 1957 that the subject of facilitation was taken up again.(258) The Conference reviewed the status of implementation within Europe of the CATE recommendations as well as the status of implementation of Annex 9 and it was seen that most member States either already had or would soon be able to attain a relatively high degree of such implementations. Nevertheless it was suggested that it would be helpful if more Customs, Immigration, Health and other Control Authorities could participate in future ECAC facilitation meetings.

The Conference then passed fourteen Recommendations(259) dealing with the following: abolition of visas; acceptance of identity cards or expired passports; airport health control; trans-shipment of cargo; bonded stores facilities; exemption of children from the government regulations; clearance procedures for traffic flow and/or installation arrangements at international airports; temporary importation of non-scheduled aircraft; use of clearance documents for statistical purposes; and provisions for adequate hotel facilities for the jet age.

Although considerable progress was achieved by member States in implementing the above recommendations, the third session of ECAC noted that a great deal more remained to be done.(260) Accordingly,

---

(258) ICAO DOC. 7799 ECAC/2-1 p. 4-19.

(259) Ibid Recommendations 1-14.

(260) ICAO DOC. 7977 ECAC/3-1 p. 10-24.

twenty one Recommendations were passed.[261] Five of these arose out of the review of the recommendations adopted at the previous session and dealt with health control arrangements, identity documents for travellers, abolition of passenger manifests, and simplification of inbound baggage for examination. Seven dealt with procedures to simplify measures for the import and export of cargo. Three covered means to reduce delay at airports, particularly for passengers. The remaining Recommendations included the elimination of embarkation and disembarkation cards; use of the General Declaration with regard to crew and passengers; implementation of the Annex 9 provisions on a multilateral basis; and the checking of technical documents on a periodic basis only. Finally the Conference invited the cooperation of other European intergovernmental organizations to secure implementation of ECAC FAL Recommendations and the provisions of ICAO's Annex 9, as being the principal means of achieving further European progress in the facilitation of civil aviation.

---

(261) Ibid Recommendations 12-32.

Air Navigation Facilities

The CATE Conference decided only to discuss air navigation facilities in Europe generally as otherwise they would duplicate the work of ICAO as set out in its Regional Plan.(262) The outcome of the deliberations resulted in the Conference recommending that the States within the European-Mediterranean Region should hasten to implement the ICAO Regional Plan.(263) Two further Recommendations were passed requesting ICAO to examine the subjects of radio-telephony and aeronautical information.(264)

The first session of ECAC did not deal at any length on the purely technical side of aviation and only made recommendations with regard to helicopter operations.(265)

At its second session, ECAC reviewed the foregoing recommendations and concluded that no further action was needed for the time being.(266) With the advent of jet transport extensive changes in aircraft control will be necessary. Therefore, the Conference expressed the opinion that it would be premature for ECAC to take any positive action on the pooling of

---

(262) ICAO DOC. 7575 supra p. 33-35.

(263) Ibid Recommendation No. 25, 26.

(264) Ibid Recommendation No. 27.

(265) See ante p.101

(266) ICAO DOC. 7799 supra, p. 20-21.

European air traffic control facilities until, through the special EUM/RAC Meeting in October 1957 and the EUMED Regional Air Navigation Meeting in January 1958, new methods of air traffic control had been adopted.(267) On the question of aircraft maintenance under interline agreements it was recommended that States eliminate difficulties caused to airlines by the application of national regulations, and that they communicate to each other, through ICAO, detailed information of their national regulations governing aircraft maintenance.(268) On the question of the basic training of flight personnel and air navigation ground service personnel study groups should be set up to consider and report on European co-operation in such matters.(269) Finally, States should communicate, through ICAO, information on any difficulties encountered due to lack of uniformity in regulations governing air traffic and technical operation of aircraft with a view to solving the serious difficulties.(270)

---

(267) Ibid, p. 21.

(268) Ibid, Recommendation No. 15.

(269) Ibid, Recommendation No. 16, 17.

(270) Ibid, Recommendation No. 18.

When the Conference met again in 1959, no further important steps were taken. The policy of achieving co-operation by interchange of information and unification of regulations was continued. Recommendations were passed(271) covering such matters as: maintenance of aircraft away from the State of Registry; exchange of information on difficulties with a view to standardizing regulations; training of flight and ground personnel; standardization of curricula and the encouragement of foreign students.

---

(271) ICAO DOC. 7977 ECAC/3-1 Recommendations 1-11.

APPENDIX I

AGENDA

The basic agenda, as established by the Committee of Ministers' resolution of 19 March 1953, are:

(A) Methods of improving commercial and technical cooperation between the airlines of the countries participating in the Conference.

(B) The possibility of securing closer cooperation by the exchange of commercial rights between these European countries.

These items have been developed and expanded by the Council, on the advice of the Preparatory Committee, into the following form, to be used for working and reference purposes.

1. Scope for Expansion of Air Transport in Europe

(a) Exchange of traffic rights:

(i) Examination of existing bilateral agreements and authorizations for schedules services, with a view to suggesting the elimination or modification of those provisions which particularly tend to restrict the development of air transport within Europe (for any type of traffic); and thereby to enable air transport better to meet the requirements of the European economy, taking into account the interests of the users as well as of the airlines, and to promote the objectives of the Chicago Convention;

(ii) Examination of the desirability of taking special action with regard to non-scheduled services; recommendation of specific measures where feasible;

(iii) Interchange of routes.*

(b) Examination of all means whereby better utilization of aircraft could be obtained, particularly by "interchangeability"** of aircraft.

(c) Other questions:

(i) Exchange of views on transport by helicopter or by other types of aircraft adapted to relatively short European stages and/or to aerodromes with less developed facilities;

(ii) Consideration of special problems affecting routes of low traffic density.

---

* For the purposes of this Agenda, the phrase "interchange of routes" should be taken to mean: the operation, by companies of different nationality acting in collaboration, of a round-trip or circular service on a route or system of routes involving the territories of at least three States, each of the companies being authorized by the competent governmental authorities to exercise commercial rights pertaining to the route or system of routes.

** For the purposes of this Agenda, the word "interchangeability" should be taken to refer to the ability of an airline, operating internationally under a governmental agreement or authorization, to use an aircraft belonging to a foreign airline and registered in a foreign State, with or without the aircraft's crew.

2. "Interchangeability*" of Aircraft

Consideration of the technical and administrative aspects of the "interchangeability" of aircraft between European airlines and of the steps necessary to facilitate such "interchangeability", leading to such agreements or recommendations as the Conference may find desirable in respect of aircraft, aircraft equipment, operational methods and personnel qualifications.

3. Facilitation and Related Questions

(a) Examination of measures necessary in order to achieve the maximum degree of facilitation within Europe; in particular,

(i) The implementation of the recommendations of the Cannes Conference;**

(ii) Adaptation of customs regulations to permit better cooperation between airlines for the maintenance and operation of aircraft, and especially the free circulation and exchange of spare parts and aircraft equipment within the framework of agreements that the airlines may conclude among themselves;

---

* See second footnote on previous page.

** Held 26-30 May 1953; an informal meeting on facilitation in Europe convened on the initiative of the French Government and attended by fourteen European States.

(iii) Examination of any other measures calculated to reduce ground-stop time.

(b) Examination of the methods to be used in order to achieve the foregoing ends, particularly the utilization of formal agreements.

4. Air Navigation Facilities in Europe

Consideration of existing air navigation facilities in Europe with a view to drawing the attention of the Council of ICAO to any delays in the implementation of ICAO Regional Plans for air navigation facilities which are having a particularly adverse effect on the economics of European air transport, and to the need for improved operation of the facilities in question.

5. Methods of Organizing Future Work

Follow-up action required to implement the recommendations of the Conference and to continue its work.

APPENDIX II

RULES OF PROCEDURE

RULE 1

Officers - Meetings

1) The Conference, as soon as practical after the commencement of any plenary meeting, shall elect its President and three Vice-Presidents, upon whom the functions of the President will devolve in order of seniority during any unavailability of the President. These officers shall hold office until their successors are appointed, which will normally be at the next annual plenary meeting. The President will preside at any intermediate meetings and is empowered to convene, in consultation with the States members of the Conference and with the Council of ICAO, any such meetings during the time he is in office and to comvene the next annual plenary meeting.

2) The Conference shall, simultaneously with the election of the President, elect the Chairmen of Committees of unlimited membership which the Conference establishes in accordance with Rule 8.

3) The senior member of the Secretariat of the International Civil Aviation Organization in attendance at any annual plenary meeting shall act as Secretary General thereof and as Secretary of any intermediate meeting.

RULE 2

Provisional Agenda

1) Before each meeting of the Conference the President, in consultation with the States members of the Conference and with the Council of the International Civil Aviation Organization, shall determine the Provisional Agenda.

2) The first item on the Provisional Agenda of any plenary meeting shall be the discussion of the measures taken by States members of the Conference to implement the conclusions and recommendations of previous meetings of the Conference. The Provisional Agenda shall be made available to all States members of the Conference not less than two months before the date of each plenary meeting of the Conference.

3) In the case of an intermediate meeting as provided by Rule 1, the Provisional Agenda shall be circulated as far in advance as possible and in any event at least one month before each meeting.

RULE 3

Final Agenda

1) The Conference shall fix the Final Agenda upon the convening of a plenary or intermediate meeting.

2) The Conference may, furing a meeting, modify the order of items on the Agenda for the better conduct of its work, and may include additional items at any time.

RULE 4

Reports

Reports drawn up by the Conference shall be distributed to States members of the Conference, to the ICAO Council, and to other bodies as decided by the Conference.

RULE 5

Delegations

Delegations of States members of the Conference may be composed of delegates, alternates and advisers. One of the delegates shall be designated as Head of the Delegation and he may designate another member of his Delegation to serve in his stead during his absence. States and Organizations invited to attend meetings, and not in membership of the Conference, will be represented by observers.

RULE 6

Credentials

1) Every member of a Delegation shall be provided with credentials from the State or organization concerned, duly authenticated and specifying his name and status. The credentials shall be deposited with the Secretary General of the Conference or his representative.

2) The Secretary General of the Conference shall examine the credentials and report thereon to the Conference without delay.

RULE 7

Eligibility for Participation in Meetings

Delegates, alternates, advisers and observers shall be entitled, pending the presentation of a report on credentials by the Secretary General and action thereon by the Conference, to attend meetings and participate in them subject, however, to the limits set forth in these Rules. The Conference may debar from further

participation in the Conference any delegate, alternate, adviser or observer whose credentials it finds to be defective.

RULE 8

Committees and Subordinate Organs

1) The Conference may establish such committees open to all States members of the Conference, groups of limited membership and committees of experts as it may consider to be necessary or desirable, with such functions as it may specify. Groups of limited membership and committees of experts shall appoint their own chairmen, and, if necessary, vice-chairmen.

2) A Committee or group may establish such subordinate organs as it may deem fit.

RULE 9

Public and Private Meetings

Plenary meetings of the Conference shall be held in public, and meetings of its committees, groups and subordinate organs in private, unless in either case the body concerned decides otherwise.

RULE 10

Participation of Observers

Observers shall have the right to attend all public meetings and such private meetings as the Conference, or, in the absence of a decision by the Conference, as the private meeting may decide.

Observers shall have the right to participate in discussions of the meetings that they are allowed to attend and to present documents, but not to vote or to make or second proposals.

RULE 11

Quorum

1) A majority of the States invited to be members of the Conference, having delegations registered and not known to have withdrawn the same shall constitute a quorum for the plenary meetings of the Conference.

2) The Conference shall determine the quorum for the committees and groups if, in any case, it is considered necessary that a quorum be established for such bodies.

RULE 12

Powers of the Presiding Officer

The presiding officer of the Conference or of any body concerned shall declare the opening and closing of each meeting, direct the discussion, ensure observance of these Rules, accord the right to speak, put questions and announce decisions. He shall rule on points of order and, subject to these Rules, shall have complete control of the proceedings of the body concerned and maintain order at its meetings.

RULE 13

Speakers

1) The presiding officer shall call upon speakers in the order in which they have expressed their desire to speak. He may call a speaker to order if his observations are not relevant to the subject under discussion.

2) Generally, no Delegation may speak a second time on any question, except for clarification, until all other Delegations have had an opportunity to do so.

3) At plenary meetings of the Conference, the Chairman of a committee or group of experts may be accorded precedence for the purpose of explaining the conclusions arrived at by the body concerned. In meetings of a committee or group of experts, similar precedence may, for the same purpose, be accorded to the Chairman of any other organ of the Conference.

RULE 14

Time Limit on Speeches

A presiding officer may limit the time allowed to each speaker, unless the body concerned decides otherwise.

RULE 15

Points of Order

1) Notwithstanding the provisions of Rule 13, a delegate may at any time raise a point of order, and the point shall immediately be decided by the presiding officer.

2) Any delegate may make a motion appealing against such decision. In that case, and subject to the provisions of Rule 16, the procedure specified in Rule 17 (2) shall be followed. The decision given by the presiding officer under paragraph 1) shall stand unless overruled by a majority of the votes cast.

RULE 16

Motions and Amendments

1) A motion or amendment shall not be discussed until it had been seconded.

2) Motions and amendments may be presented and seconded only by members of the Delegations of States members of the Conference.

3) No motion may be withdrawn if an amendment to it is under discussion or has been adopted.

4) Proposals for formal action shall not be discussed until 24 hours after they shall have been submitted in writing, except in the absence of objection to earlier discussion.

RULE 17

Procedural Motions

1) Subject to the provisions of Rule 16, any delegate may move at any time the suspension or adjournment of the meeting, the adjournment of the debate on any question, the deferment of discussion on an item, or the closure of the debate on an item.

2) After such a motion or one under Rule 15 (2) has been made and explained by its proposer, only one speaker shall normally be allowed to speak in opposition to it and no further speeches shall be made in its support before a vote is taken. Additional speeches on such motion may be allowed at the discretion of the presiding officer. A delegate speaking on such a motion may speak only on that motion and not on the substance of the matter which was under discussion before the motion was made.

RULE 18

Order of Procedural Motions

The following motions shall have priority over all other motions, and shall be taken in the following order:

a) to suspend the meeting;

b) to adjourn the meeting;

c) to adjourn the debate on an item;

d) to defer the debate on an item;

e) for closure of the debate on an item.

RULE 19

Reconsideration of Proposals

Reopening within the same body of a debate already completed by a vote on a given question shall require two-thirds of the number of States members of the Conference currently required to constitute a quorum for a plenary meeting under the provisions of Rule 11, in the

case of a body on which all States members of the Conference are entitled to sit; or a majority of the full membership, in any body of limited membership. Permission to speak on such a motion shall normally be accorded only to the proposer and to one speaker in opposition, after which it shall be immediately put to vote. Additional speeches may be allowed at the discretion of the presiding officer, who shall decide the priority of recognition. Speeches on a motion to re-open shall be limited in content to matters bearing directly on the justification for reopening.

RULE 20

Discussions in Subordinate Organs

A subordinate organ established by a committee or group of experts may conduct its deliberations informally, save that it may at any stage decide that these Rules shall be observed at its meetings.

RULE 21

Voting Rights

Each State member of the Conference, if duly represented, shall have one vote at meetings of the Conference, committees, groups of experts or subordinate organs of which it is a member.

RULE 22

Voting of Presiding Officer

Subject to the provisions of Rule 21, the presiding officer of the Conference, committee, group of experts or subordinate organ shall have the right to vote on behalf of his State.

RULE 23

Majority Required

Except as otherwise provided in these Rules, decisions shall be by a majority of the votes cast; provided that the affirmative votes of a majority of those present in the meeting where the vote is taken are required for the approval of recommendations and conclusions. An abstention shall not be considered as a vote.

RULE 24

Method of Voting

1) Subject to paragraph 2) hereof, voting shall be by voice, by show of hands, or by standing, as the presiding officer may decide.

2) In meetings of the Conference and its committees there shall be a roll-call vote if requested by two States members of the Conference. The vote or abstention of each State participating in a roll-call vote shall be recorded in the minutes.

RULE 25

Division of Motions

On request of any delegate, and unless the meeting otherwise decides, parts of a motion shall be voted on separately. The resulting motion shall then be put to a final vote in its entirety.

RULE 26

Voting on Amendments

Any amendment to a motion shall be voted on before a vote is

taken on the motion. When two or more amendments are moved to a motion, the vote should be taken on them in the order of their remoteness from the original motion, commencing with the most remote. The presiding officer shall determine whether a proposed amendment is so related to the motion as to constitute a proper amendment thereto, or whether it must be considered as an alternative or substitute motion.

RULE 27

Voting on Alternative or Substitute Motions

Alternative or substitute motions shall, unless the meeting otherwise decides, be put to vote in the order in which they are presented, and after the disposal of the original motion to which they are alternative or in substitution. The presiding officer shall decide whether it is necessary to put such alternative or substitute motions to vote in the light of the vote on the original motion and any amendment thereto. Such decisions may be reversed by a majority of the votes cast.

RULE 28

Tie Vote

In the event of a tie vote, a second vote on the motion concerned shall be taken at the next meeting, unless the Conference or body concerned decides that such second vote be taken during the meeting at which the tie vote took place. Unless there is a majority in favour of the motion on this second vote, it shall be considered lost.

RULE 29

Languages

English and French shall be the working languages of the Conference. Spanish interpretation and interpretation from other languages will be supplied in so far as resources permit.

RULE 30

Records of Proceedings

1) Minutes of the plenary meetings of the Conference shall be prepared by the Secretariat and approved by the Conference.

2) Proceedings of committees, groups of experts and subordinate organs shall be recorded in summary form, except where the Conference directs otherwise in the case of committees dealing with matters of high importance.

RULE 31

Amendment of the Rules of Procedure

These Rules may be amended, or any portion of the Rules may be suspended, at any time by the Conference in plenary meeting by a majority of the members present.

APPENDIX III

RESOLUTION ADOPTED BY THE 10TH SESSION OF THE ICAO ASSEMBLY ON THE RELATIONSHIP BETWEEN ICAO AND ECAC*

Agenda Item A10-5: Relationship of ICAO with the European Civil Aviation Conference

WHEREAS the Assembly notes:

1) that, at the instance of the Council of Europe and as a result of action by ICAO, 19 European States, presently members of ICAO, have constituted the European Civil Aviation Conference (ECAC) - whose constitution, objectives, and rules of procedure are set forth in ICAO Document 7676, ECAC/1 - with the particular purpose, among other things, of promoting the co-ordination and better utilization of intra-European air transport;

2) that ECAC has sought close liaison with ICAO in order, through regional co-operation, to help achieve the aims and objectives of ICAO as set forth in the Convention on International Civil Aviation;

3) that ECAC does not intend, at least at the outset, to establish a separate secretariat of its own, but desires the Council of ICAO to provide, to the extent practicable;

i) secretariat services for studies, meetings (plenary meetings normally to take place annually) and other related activities, and

---

* This text is the same as that adopted by the Executive Committee in A10-WP/111.

ii) maintenance of records, correspondence and the like in the ICAO Paris Office;

4) that specific aspects of the relationship to be developed between ECAC and ICAO, at the request of the former, include consultation as to dates of and agenda for ECAC meetings, distribution of ECAC reports to the ICAO Council, performance by ICAO of various functions relating to ratifications, entry into force, adherences, denunciations safekeeping, etc., of agreements on commercial rights and the like developed by ECAC and also the interchange of documentation and studies on technical aviation subjects;

5) that ICAO's work in the Joint Financing field under Chapter XV of the Convention has developed a practice under which the direct costs (such as travel, subsistence, cost of accommodations and supplies at meetings, cost of temporary personnel engaged for meetings, etc.) are charged to the States participating in the particular project involved; and indirect costs (such as salaries of the regular ICAO staff, research and production of advance documentation at headquarters, etc.) are borne by ICAO;

and further notes that the work programme of ECAC is consistent with, and should usefully complement, the work that ICAO is pursuing in the air transport field, particularly along the lines laid down by ASSEMBLY RESOLUTIONS A7-15 and 16, and is in furtherance of the objectives of ICAO as defined in the Convention;

THE ASSEMBLY RESOLVES:

1) To assume, on behalf of ICAO, the responsibilities that will devolve upon the Organization as a result of acceding to the request of ECAC, and to declare ICAO's readiness to maintain, for its part, the close liaison proposed by ECAC;

2) To direct the Council to provide, always taking into account the over-all work-load of the ICAO Secretariat, the Secretariat and other services requested by ECAC to the extent necessary for its proper functioning;

3) That indirect costs attributable to the ECAC activity hereunder shall be borne by ICAO;

4) That the direct costs attributable to the ECAC activity shall be the responsibility of the member States of ECAC, but may be advanced by ICAO, in which event they shall be recovered from the member States of ECAC in such proportions as may be agreed upon by such States within the framework of ECAC.

APPENDIX IV

MULTILATERAL AGREEMENT

ON COMMERCIAL RIGHTS OF NON-SCHEDULED AIR SERVICES IN EUROPE

THE UNDERSIGNED GOVERNMENTS,

CONSIDERING that it is the policy of each of the States parties to the Agreement that aircraft engaged in non-scheduled commercial flights within Europe which do not harm their scheduled services may be freely admitted to their territories for the purpose of taking on or discharging traffic.

CONSIDERING that the treatment provided by the provisions of the first paragraph of Article 5 of the Convention on International Civil Aviation drawn up at Chicago on 7 December 1944 (hereinafter called "the Convention") - which applies to the international movements of private and commercial aircraft engaged in non-scheduled operations on flights into or in transit non-stop across the territories of the States parties to that Convention and to stops therein for non-traffic purposes - is satisfactory, and

DESIRING to arrive at further agreement as to the right of their respective commercial aircraft to take on and discharge passengers, cargo or mail on international flights for remuneration or hire on other than international scheduled services, as provided in the second paragraph of Article 5 of the Convention,

HAVE CONCLUDED this Agreement to that end.

ARTICLE 1

This Agreement applies to any civil aircraft

(a) registered in a State member of the European Civil Aviation Conference, and

(b) operated by a national of one of the Contracting States duly authorized by the competent national authority of that State,

when engaged in international flights for remuneration or hire, on other than scheduled international air services, in the territories covered by this Agreement as provided in Article 11.

ARTICLE 2

(1) The Contracting States agree to admit the aircraft referred to in Article 1 of this Agreement freely to their respective territories for the purpose of taking on or discharging traffic without the imposition of the "regulations, conditions or limitations" provided for in the second paragraph of Article 5 of the Convention, where such aircraft are engaged in:

(a) flights for the purpose of meeting humanitarian or emergency needs;

(b) taxi-class passenger flights of occasional character on request, provided that the aircraft does not have a seating capacity of more than six passengers and provided that the destination is chosen by the hirer or hirers and no part of the capacity of the aircraft is resold to the public;

(c) flights on which the entire space is hired by a single person (individual, firm, corporation or institution) for the carriage of his or its staff or merchandise, provided that no part of such space is resold;

(d) single flights, nooperator or group of operators being entitled under this sub-paragraph to more than one flight per month between the same two traffic centres for all aircraft available to him.

(2) The same treatment shall be accorded to aircraft engaged in either of the following activities:

(a) the transport of freight exclusively;

(b) the transport of passengers between regions which have no reasonably direct connection by scheduled air services;

provided that any Contracting State may require the abandonment of the activities specified in this paragraph if it deems that these are harmful to the interests of its scheduled air services operating in the territories to which this Agreement applies; any Contracting State may require full information as to the nature and extent of any such activities that have been or are being conducted; and

further provided that, in respect of the activity referred to in sub-paragraph (b) of this paragraph, any Contracting State may determine freely the extent of the regions (including the airport or airports comprised), may modify such determination at any time, and may determine whether such regions have reasonably direct connections by scheduled air services.

ARTICLE 3

The Contracting States further agree that in cases, other than those covered by Article ", where they require compliance with regulations, conditions or limitations for the non-scheduled flights referred to in the second paragraph of Article 5 of the Convention, the terms of such regulations, conditions or limitations will be laid down by each Contracting State in published regulations, which shall indicate:

(a) the time by which the required information (with a request for prior permission if one is required) must be submitted; this shall not be more than two full business days in the case of a single flight or of a series of not more than four flights; longer periods may be specified for more extensive series of flights;

(b) the aviation authority of the Contracting State to which such information (with the request if one is required) may be made direct without passing through diplomatic channels;

(c) the information to be furnished, which, in the case of permission for a single flight or of a series of not more than four flights, shall not exceed:

(1) name of operating company;

(2) type of aircraft and registration marks;

(3) date and estimated time of arrival at and departure from the territory of the Contracting State;

(4) the itinerary of the aircraft;

(5) the purpose of the flight, the number of passengers and the nature and amount of freight to be taken on or put down.

ARTICLE 4

(1) If any dispute arises between Contracting States relating to the interpretation of application of the present Agreement, they shall in the first place endeavour to settle it by negotiation between themselves.

(2) (a) If they fail to reach a settlement they may agree to refer the dispute for decision to an arbitral tribunal or arbitrator.

(b) If they do not agree on a settlement by arbitration within one month after one State has informed the other State of its intention to appeal to such an arbitral authority, or if they cannot within an additional three months after having agreed to refer the dispute to arbitration reach agreement as to the composition of the arbitral tribunal or the

person of the arbitrator, any Contracting State concerned may refer the dispute to the Council of the International Civil Aviation Organization for decision: No member of the Council shall vote in the consideration by the Council of any dispute to which it is a party. If said Council declares itself unwilling to entertain the dispute, any Contracting State concerned may refer it to the International Court of Justice.

(3) The Contracting States undertake to comply with any decision given under paragraph (2) of this Article.

(4) If and so long as any Contracting State fails to comply with a decision given under paragraph (2) of this Article, the other Contracting States may limit, withhold or revoke any rights granted to it by virtue of the present Agreement.

ARTICLE 5

(1) This Agreement shall be open to signature by States members of the European Civil Aviation Conference.

(2) It shall be subject to ratification by the signatory States.

(3) The instruments of ratification shall be deposited with the International Civil Aviation Organization.

ARTICLE 6

(1) As soon as two of the signatory States have deposited their instruments of ratification of this Agreement, it shall enter into force between them three months after the date of the deposit of the second instrument of ratification. It shall enter into force, for each State which deposits its instrument of ratification after that date, three months after the deposit of such instrument of ratification.

(2) As soon as this Agreement enters into force it shall be registered with the United Nations by the Secretary General of the International CivilAviation Organization.

ARTICLE 7

(1) This Agreement shall remain open for signature for six months after it has entered into force. Thereafter, it shall be open for adherence by any non-signatory State member of the European Civil Aviation Conference.

(2) The adherence of any State shall be effected by the deposit of an instrument of adherence with the International Civil Aviation Organization and shall take effect three months after the date of the deposit.

ARTICLE 8

(1) Any Contracting State may denounce this Agreement, by notification of denunciation to the President of the European Civil Aviation Conference and to the International Civil Aviation Organization.

(2) Denunciation shall take effect six months after the date of receipt by the International CivilAviation Organization of the notification of the denunciation.

ARTICLE 9

(1) The Secretary General of the International Civil Aviation Organization shall give notice to the President and all States members of the European Civil Aviation Conference.

(a) of the deposit of any instrument of ratification or adherence and the date thereof, within thirty days from the date of the deposit, and

(b) of the receipt of any denunciation and the date thereof, within thirty days from the date of the receipt.

(2) The Secretary General of the International Civil Aviation Organization shall also notify the President and the States members of the European Civil Aviation Conference of the date on which the Agreement will enter into force in accordance with paragraph (1) of Article 6.

ARTICLE 10

(1) Not less than twenty-five percent (25%) of the Contracting States shall be entitled, by request addressed to the International Civil Aviation Organization given not earlier than twelve (12) months after the entry into force of this Agreement, to call for a meeting of Contracting States in order to consider any amendments which it may be proposed to make to the Agreement. Such meeting shall be convened by the International Civil Aviation Organization, in consultation with the President of the European Civil Aviation Conference, on not less than three months' notice to the Contracting States.

(2) Any proposed amendment to the Agreement must be approved at the meeting aforesaid by a majority of all the Contracting States, two-thirds of the Contracting States being necessary to constitute a quorum.

(3) The amendment shall enter into force in respect of States which have ratified such amendment when it has been ratified by the number of Contracting states specified by the meeting aforesaid, and at the time specified by said meeting.

ARTICLE 11

This Agreement shall apply to all the metropolitan territories of the Contracting States, with the exception of outlying islands in the Atlantic Ocean and islands with semi-independent status in respect of which

any Contracting State, at the time of the deposit of its instrument of ratification or adherence, may declare that its acceptance of this Agreement does not apply.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have affixed their signatures on behalf of their respective Governments.

DONE at Paris, on the thirtieth day of the month of April of the year one thousand nine hundred and fifty-six, in duplicate in three texts, in the English, French and Spanish languages, each of which shall be of equal authenticity. This Agreement shall be deposited with the Internation CivilAviation Organization which shall send certified copies thereof to all its Member States.

APPENDIX V

IMPROVED UTILIZATION AND INTERCHANGEABILITY OF AIRCRAFT

(presented by Mr. P. Chauveau,
in his capacity as Observer for
the INTERNATIONAL LAW ASSOCIATION)

1. The operation known as "Interchangeability" of aircraft is designed to enable aircraft to be better utilized. Various other advantages are described in working paper CATE-WP/39 (3).

It is understood that, in practive interchangeability will be based upon agreements negotiated between companies, and that the latter will be at liberty to conclude such agreements or not, as the case may be. When drafting them, useful lessons may well be learned from experience gained in the U.S. The problem, however, presents a different aspect in Europe, because the proposed agreements will be concluded between companies of different nationalities and in respect of international services, instead of being confined to domestic services.

It is necessary to list the difficulties which these agreements will encounter at the international level, and to determine under what conditions they can be implemented, in order to facilitate them, if need be. The present note is restricted to stating a number of questions of international law.

1. (1) It will certainly not be idle to speculate, first of all, how the projected operation, hitherto described from a purely practical standpoint, will be viewed and analysed from the legal angle. It is submitted that, at least as long as the companies concerned retain

their individuality, agreements concluded between them in respect of aircraft will be on a hire or charter basis for the period of utilization by the non-proprietary company, against remuneration in cash, or in return for some other benefit. It seems that this will apply whether the operation comprises a change of crew or not. Maritime law makes similar provision for bare hull charters without crew, and also for Time Charters, with crew.

The proposed aircraft charterings will raise various problems in regard to public law, particularly in its international aspects, and in regard to private international law.

2. International Public Law - the difficulties in this field were the first to be noticed. They mainly concern the application of provisions of an administrative, statutory or technical nature. Working papers Nos. 7, 40 and 47 are wholly or partially devoted to these points. It is not felt that any useful purpose would be served by enlarging upon them here. It is merely suggested that any necessary adjustments, which will primarily depend on the good will of governments, are unlikely to meet with insuperable obstacles.

2. (1) The working papers mentioned are, however, discreetly silent on whether such charterings are compatible or not with international conventions on commercial rights. Since the resolutions which the present Conference may adopt are not known, briefly examined the question will be in the light of the existing situation.

The answer is certainly in the affirmative if the charter party is between two companies both of which are holders of commercial rights over the proposed route. It is more doubtful in cases where the proprietary company has no commercial rights over the projected route, such rights being held by the chartering company alone.

The opinion will be expressed that chartering is still compatible with existing bilateral agreements, on condition, however, that the contract between the companies is such that the chartered aircraft becomes an instrument, or means of execution placed at the disposal of the chartering company, on whose account and under whose responsibility the commercial rights must continue to be exercised, and transport carried out. This implies that, while the technical and aeronautical control of the aircraft may remain in the hands of the owner, its commercial management, at any rate, must be the responsibility of the charterer, under whose orders the captain and crew will be transferred in operations of this kind. Yet, this is not the necessary consequence of the terms of every charter-party.

2. (2) On the same assumption, where the Company owning the aircraft holds no commercial rights over the route served, it will probably be necessary to envisage a traffic control document, certifying that the foreign aircraft is operating a service on behalf of the authorized airline.

3. Private International Law The working papers so far distributed are also silent regarding the difficulties which may be raised by such charter operations in the field of private law. The French paper, CATE/WP/39, is the only one to make a brief reference to these difficulties in its concluding lines, and it is therefore feared that they might be overlooked.

No doubt it was considered that their solution was entirely contingent upon agreements to be concluded between companies. Although this point of view is perhaps justifiable in respect of domestic traffic, it may well amount to an over-simplification in the international field.

Obviously there are some questions which will depend on individual agreements between companies, such as the duration of the charter, proposed methods of utilization, determination of rental charges, etc. But there are others, which will come under the more or less imperative provisions of the law. Attention is drawn, by way of, to all questions of liability likely to arise as the result of an accident: liability towards passengers and consignors, towards third parties on the surface towards members of the crew or towards the heirs or assigns of all these persons; here it is no longer the airlines alone which are concerned. These questions will be further complicated by the problem of possible legal proceedings between the proprietary company and the charterer.

The effects of charter agreements in this field need to be examined and clarified. The relevent provisions of national legislation often appear inadequate, or else, their interpretation is doubtful. Moreover, since these charter agreements are to be concluded between airlines of different nationalities and for international services, it would not be easy to find satisfaction in domestic legislation alone. There would be constant hesitation as to which national legislation to apply.

The interested parties would be uncertain of their rights and liabilities, and insurance against the risk involved would, thereby, be made difficult. Clear and uniform solutions in this field are likely to be just as useful as was the unification of certain rules concerning international air transport achieved at Warsaw.

At first sight it might be thought that the Warsaw Convention and the Rome Convention of 1952, assuming that it is ratified, are sufficient to solve all these diverse questions. Closer examination, however, leads to a less optimistic viewpoint. Interchangeability will raise special questions which are not covered by the terms of these conventions, as may be seen from the examples given in the Attachment.

4. It is not the purpose of the present paper to supply the solution to all these questions, of which it does not even aspire to provide a complete list. It modestly endeavours to draw attention to one aspect

of the operation known as "interchangeability" and the expediency of studying it.

We do not intend to forecast the conclusions to which such a study might lead. It may well show that there is advantage in concluding an international Convention on the unification of certain rules relating to the chartering of aircraft. In that case, it will be recalled that this question was broached during the Warsaw Conference as early as 1929. In the archives of that Conference it would certainly be possible to find a number of preparatory studies, the credit for which must be given to the Italian delegation.

Although at that time the question appeared premature and was not found to be of immediate urgency it may well be asked whether the time has not come to re-examine it.

APPENDIX VI

DRAFT CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL CARRIAGE BY AIR PERFORMED BY A PERSON OTHER THAN THE CONTRACTING CARRIER

ARTICLE 1

In this Convention the expression "the Convention" means the "Convention for the Unification of Certain Rules relating to International Carriage by Air" signed at Warsaw on 12 October 1929, or that Convention as amended at The Hague on 28 September 1955, according to whether the carriage under the agreement referred to in Article II is governed by the one or by the other.

ARTICLE II

The "contracting carrier" referred to in this Convention is the party to the agreement for carriage made with the passenger or the consignor, or with a person acting on behalf of the passenger or consignor.

ARTICLE III

If carriage governed by the Convention or any part of such carriage is performed by a person other than the contracting carrier (which other person is hereinafter called "the other person") then, except as provided in this Convention, the rights and obligations of the other person shall, in respect of the carriage which he performs, be those of a carrier under the Convention.

ARTICLE IV

The aggregate of the amounts recoverable from the other person and the contracting carrier shall not exceed the highest amount which may be awarded against either of them hereunder or under the Convention.

ARTICLE V

Subject to the provisions of Article IX hereof and of Article 23 of the Convention, in the case of the carriage of cargo the extent of the liability of the other person, his servants and agents, shall be determined by reference to the agreement between that other person and the contracting carrier.

ARTICLE VI

The acts and omissions of the contracting carrier his servants and agents, in relation to the carriage performed by the other person shall be deemed to be also those of such other person. Nevertheless, this provision shall not apply so as to deprive the other person of the limitation of liability under the Convention, nor shall it apply to any special agreement under which the contracting carrier assumes obligations not imposed by the Convention, or waives rights or agrees to an increase in the limits of liability established by the Convention, unless agreed to by the other person.

ARTICLE VII

Subject to the provisions of Article V, the servants and agents of the other person shall be entitled to invoke the defences and the limits of

liability which would be applicable under the Convention if the other person had been the contracting carrier.

ARTICLE VIII

(1) For the purposes of this Convention, the acts and omissions of the other person, his servants and agents, in relation to the carriage performed by such other person, shall be deemed to be also those of the contracting carrier.

(2) Any declaration or complaint made, or order given, to the other person shall have the same effect as if it had been made or given to the contracting carrier.

ARTICLE IX

Any provision purporting to exclude or diminish the liability of the contracting carrier or of the other person or to infringe the rules laid down in this Convention shall be null and void, but the nullity of any such provision shall not involve the nullity of the whole contract.
In the case of carriage of cargo governed by the provisions of this Convention arbitration clauses are allowed if the arbitration is to take place in one of the jurisdictions specified in Article XI and in accordance with that Article.

ARTICLE X

In respect of the carriage performed by the other person, an action for damages may be brought, at the option of the plaintiff, against the contracting carrier or against the other person or against both together.

ARTICLE XI

(1) An action for damages under this Convention against the other person must be brought, at the option of the plaintiff, before a court having jurisdiction over the contracting carrier under Article 28, paragraph 1, of the Convention, or before a court having jurisdiction where the other person is ordinarily resident or has his principal place of business. The action may only be brought before a court which is situated in a territory to which this Convention applies.

(2) If, in accordance with paragraph 1, an action is brought against the other person in respect of the carriage performed by him, an action in respect of that carriage may also be brought before the same court against the contracting carrier.

ARTICLE XII

Nothing in this Convention shall affect the provisions of Article 30 of the Convention.

APPENDIX VII

MULTILATERAL AGREEMENT

relating to

CERTIFICATES OF AIRWORTHINESS FOR IMPORTED AIRCRAFT

THE STATES SIGNATORY HERETO,

CONSIDERING that the Convention on International Civil Aviation, signed at Chicago on 7 December 1944, contains certain provisions concerning certificates of airworthiness.

CONSIDERING that there is, however, no multilateral agreement for the issue and validation of certificates of airworthiness for aircraft imported from one State to another, and

CONSIDERING that it is desirable to make such arrangements in respect of certain aircraft,

HAVE AGREED as follows:

ARTICLE 1

This Agreement applies only to civil aircraft constructed in the territory of a Contracting State and imported from one Contracting State to another, provided that such aircraft:-

(a) have been constructed in accordance with the applicable laws regulations and requirements relating to airworthiness of the State of construction;

(b) comply with the applicable minimum standards relating to airworthiness established pursuant to the Convention on International Civil Aviation;

(c) can comply with the requirements of the operating regulations of the State of import; and

(d) comply with any other special conditions notified in accordance with Article 4 of this Agreement.

ARTICLE 2

(1) If a Contracting State receives an application for a certificate of airworthiness in respect of an aircraft imported or being imported into its territory and subsequently to be entered on its register, it shall, subject to the other provisions of this Agreement either:-

(a) render valid the existing certificate of airworthiness of such aircraft, or

(b) issue a new certificate.

(2) However, if that State elects to issue a new certificate, it may, pending the issue thereof, render valid the existing one for a period not exceeding six months or for the unexpired period of the existing certificate, whichever is the lesser.

ARTICLE 3

Each application for the issue or validation of a certificate or airworthiness referred to in Article 2 shall be accompanied by the documents specified in the Schedule to this Agreement.

ARTICLE 4

A Contracting State to which an application has been made pursuant to Article 2 of this Agreement shall have the right to make the validation of the certificate dependent on the fulfilment of any special conditions which are for the time being applicable to the issue of its own certificates of airworthiness and which have been notified to all Contracting States. The exercise of such right shall be subject to prior consultation:-

(a) with the State that provided the aircraft concerned with its current certificate of airworthiness; and

(b) if requested by that State, also with the State in whose territory the aircraft was constructed.

ARTICLE 5

(1) Each Contracting State reserves the right to defer the issue or validation of a certificate of airworthiness in respect of any aircraft imported or being imported into its territory if such aircraft:-

(a) is believed, in practice, to have been maintained below the standards of maintenance normally accepted by that State;

(b) is believed to have features unacceptable to that State;

(c) is believed to have failed to comply with the applicable laws, regulations and requirements relating to airworthiness of the State where the aircraft was constructed; or

(d) being an aircraft to which sub-paragraph (c) of Article 1 of this Agreement refers, is not for the time being able to comply with the requirements of the operating regulations of the State of import.

(2) In the cases referred to in sub-paragraphs (a), (b) and (c) of paragraph (1) above, each Contracting State may also with hold the issue or validation of a certificate of airworthiness after consultation with the State which provided the existing certificate of airworthiness and, if requested by the latter, also with the State in the territory of which the aircraft was constructed.

ARTICLE 6

A Contracting State which validates a certificate of airworthiness pursuant to the provisions of Article 2 of this Agreement shall, upon expiry of the period of such validation, either revalidate the existing one under conditions consistent with those applied by it to the renewal of its own certificates, or issue a new certificate. Nevertheless, such State may, prior to such action, refer to the State in the territory of which the aircraft concerned was constructed or to any Contracting State in which the aircraft was previously registered.

ARTICLE 7

Each Contracting State shall, to the greatest extent practicable, keep other Contracting States fully and currently informed of its laws, regulations and requirements relating to airworthiness, including any complementary operating regulations, and any changes therein effected from time to time. It shall also, upon request by a Contracting State which proposes to apply the provisions of Article 2 of this Agreement supply, as far as practicable, details of its laws, regulations and requirements relating to airworthiness on the basis of which it had issued or validated a certificate of airworthiness.

ARTICLE 8

A Contracting State in whose territory an aircraft is constructed and from which it is exported to another Contracting State that subsequently provides that aircraft with a valid certificate of airworthiness pursuant to Article 2 of this Agreement, shall:-

(a) communicate to all other Contracting States particulars of mandatory modifications to, and mandatory inspections of, that type of aircraft which may at any time be prescribed by it; and

(b) on request, provide, as far as practicable, to any Contracting State information and advice on:-

i) the conditions on which the certificate of airworthiness was originally issued for that aircraft; and

ii) major repairs which cannot be dealt with by the repair schemes included in the maintenance manual relating to that type of aircraft, or by the fitment of spare parts.

ARTICLE 9

The procedure to be followed in the application of the provisions of this Agreement may be the subject of direct communication between the competent authorities concerned with the issue and validation of certificates of airworthiness in each of the Contracting States. The decision of a Contracting State in regard to interpretation or application of its own laws, regulations and requirements relating to airworthiness shall, for the purposes of this Agreement, be final and shall be binding upon any other Contracting State.

ARTICLE 10

(1) This Agreement shall be open for signature by States members of the European Civil Aviation Conference.

(2) It shall be subject to ratification by the signatory States.

(3) The instruments of ratification shall be deposited with the International Civil Aviation Organization.

ARTICLE 11

(1) As soon as two of the signatory States have deposited their instruments of ratification of this Agreement, it shall enter into force between them on the thirtieth day after the date of deposit of the second instrument of ratification. It shall enter into force, for each State which deposits its instrument of ratification after that date, on the thirtieth day after the date of deposit of such instrument.

(2) As soon as this Agreement enters into force, it shall be registered with the United Nations by the Secretary General of the International Civil Aviation Organization.

ARTICLE 12

(1) This Agreement shall remain open for signature for six months after it has entered into force. Thereafter, it shall be open for accession by any non-signatory State member of the European Civil Aviation Conference. After two years from its original entry into force, it shall be open also for accession by member States of the International Civil Aviation Organization that are not members of the European Civil Aviation Conference.

(2) The accession of any State shall be effected by the deposit of an instrument of accession with the International Civil Aviation Organization and shall take effect on the thirtieth day after the date of the deposit.

ARTICLE 13

(1) Any Contracting State may denounce this Agreement by written notification to the President of the European Civil Aviation Conference and to the International Civil Aviation Organization.

(2) Denunciation shall take effect on the thirtieth day after the date of receipt by the International Civil Aviation Organization of the notification of denunciation and shall affect only the denouncing State, except that:-

(a) the provisions of Article 8 of this Agreement shall continue in force for five years after the effective date of denunciation in respect of aircraft for which a certificate of airworthiness has been validated or issued in accordance with the terms of this Agreement;

(b) the provisions of Articles 1 to 7 and 9 shall continue in force for two years after the denunciation in respect of aircraft for which application has been made before such date for the validation or issue of a certificate of airworthiness in accordance with the terms of this Agreement.

ARTICLE 14

The Secretary General of the International Civil Aviation Organization shall give notice to the President and all States members of the European Civil Aviation Conference, and any other State acceding to this Agreement:

(a) of the deposit of any instrument of ratification or accession, and of the date thereof, within fifteen days from the date of deposit; and

(b) of the receipt of any notification of denunciation, and of the date thereof, within fifteen days from the date of receipt.

(2) The Secretary General of the International Civil Aviation Organization shall also notify the President and the States members of the European Civil Aviation Conference of the date on which this Agreement enters into force in accordance with paragraph 1 of Article 11.

ARTICLE 15

(1) Not less than twenty-five percent (25%) of the Contracting States shall be entitled, by request addressed to the International Civil Aviation Organization given not earlier than twelve months after the entry into force of this Agreement, to call for a meeting of Contracting States in order to consider any amendments which it may be proposed to make to the Agreement. Such meeting shall be convened by the International Civil Aviation Organization, in consultation with the President of the European Civil Aviation Conference, on not less than three months' notice to the Contracting States.

(2) Any proposed amendment to the Agreement must be approved at the meeting aforesaid by a majority of all the Contracting States, two-thirds of the Contracting States being necessary to constitute a quorum for the purpose of holding the meeting.

(3) The amendment shall enter into force in respect of States which have ratified such amendment when it has been ratified by the number of Contracting States specified by the meeting aforesaid, or at such time thereafter as may have been specified by the meeting.

ARTICLE 16

This Agreement shall apply to all the metropolitan territories of the Contracting States. Any Contracting State may, at the time of the deposit of its instrument of ratification or accession, specify by declaration addressed to the Secretary General of the International Civil Aviation Organization the territory or territories which shall be considered to be its metropolitan territory for the purposes of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed the present Agreement.

DONE at Paris, on the twenty-second day of April one thousand nine hundred and sixty in a single copy in the English, French and Spanish languages, all three texts being equally authoritative.

This Agreement shall be deposited with the International Civil Aviation Organization, and the Secretary General of the Organization shall send certified copies thereof to all its member States.

SCHEDULE OF DOCUMENTS

The Documents required to be produced in accordance with Article 3 of the Agreement to which this Schedule is appended shall be:

(a) a certificate of airworthiness issued, renewed or validated within a period of sixty days immediately preceeding the date of the application made pursuant to Article 2 of the Agreement.

(b) the flight manual pertaining to the particular aircraft, or such substitute therefor as is permitted in respect of certain categories of aircraft by the relevant Annex to the Convention on International Civil Aviation, giving the data in a form which will permit the aircraft to comply with the operating rules, and with any limitation complementary to those rules, in force in the State on whose register the aircraft is to be entered unless this requirement is specifically waived by that State.

(c) the maintenance manual pertaining to the particular aircraft prepared in a form which will provide adequate information for the maintenance of the airworthiness of the aircraft;

(d) a weight schedule showing the ascertained "empty weight" of the particular aircraft and the corresponding centre of gravity, together with the limits between which the centre of gravity may be permitted to move. Such "empty weight" shall include the weight of all fixed ballast, unusable fuel, undrainable oil, total quantity of engine coolant, total quantity of hydraulic fluid, and the weight of all accessories, instruments equipment and apparatus (including radio apparatus and wrappings and other

parts regarded as fixed and irremovable). The weight schedule shall also include a list of accessories, equipment, apparatus and other parts regarded as removable, together with details of their respective weights and distance from the centre of gravity datum; and

(e) such inspection and maintenance records as are required to enable the State on whose register the aircraft is to be entered to establish that the aircraft can achieve the standards of airworthiness of that State.

APPENDIX VIII

STANDARD CLAUSES FOR BILATERAL AGREEMENTS

ARTICLE 1

Each Contracting Party grants to the other Contracting Party the rights specified in the present Agreement, for the purpose of establishing scheduled international air services on the routes specified (in an Annex hereto or in exchanges of notes). Such services and routes are hereafter called "the agreed services" and "the specified routes" respectively. The airlines designated by each Contracting Party shall enjoy, while operating an agreed service on a specified route, the rollowing rights:

(a) to fly without landing across the territory of the other Contracting Party;

(b) to make stops in the said territory for non-traffic purposes.

(c) (Here insert a description of the traffic rights granted
(d) in the particular bilateral agreement.)
etc.)

ARTICLE 2

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

2. On receipt of such designation, the other Contracting Party shall, subject to the provisions of paragraphs (3) and (4) of this Article, without delay grant to the airline or airlines designated the appropriate operating authorizations.

3. The aeronautical authorities of one Contracting Party may require an airline designated by the other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by such authorities in conformity with the provisions of the Convention on International Civil Aviation (Chicago, 1944).

4. Each Contracting Party shall have the right to refuse to grant the operating authorizations referred to in paragraph 2 of this Article, or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 1, in any case where the said Contracting Party is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in its nationals.

5. When an airline has been so designated and authorized, it may begin at any time to operate the agreed services, provided that a tariff established in accordance with the provisions of Article 7 of the present Agreement is in force in respect of that service.

ARTICLE 3

1. Each Contracting Party shall have the right to revoke an operating authorization or to suspend the exercise of the rights

specified in Article 1 of the present Agreement by an airline designated by the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of these rights:

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

(b) in the case of failure by that airline to comply with the laws or regulations of the Contracting Party granting these rights, or

(c) in case the airline otherwise fails to operate in accordance with the conditions prescribed under the present Agreement.

2. Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph 1 of this Article is essential to prevent further infringements of laws or regulations, such right shall be exercised only after consultation with the other Contracting Party.

ARTICLE 4

1. Aircraft operated on international services by the designated airlines of either Contracting Party, as well as their regular equipment, supplies of fuels and lubricants, and aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempt from all customs duties, inspection fees and other duties or taxes

on arriving in the territory of the other Contracting Party, provided such equipment and supplies remain on board the aircraft up to such time as they are re-exported.

2. There shall also be exempt* from the same duties and taxes, with the exception of charges corresponding to the service performed:

(a) aircraft stores taken on board in the territory of either Contracting Party, within limits fixed by the authorities of said Contracting Party, and for use on board aircraft engaged in an international service of the other Contracting Party;

(b) spare parts entered into the territory of either Contracting Party for the maintenance or repair of aircraft used on international services by the designated airlines of the other Contracting Party;

(c) fuel and lubricants destined to supply aircraft operated on international services by the designated airlines of the other Contracting Party, even when these supplies are to be used on the part of the journey performed over the territory of the Contracting Party in which they are taken on board.

---

* The means of giving effect to exemption may vary from country to country; for example taxes may have to be paid to be refunded afterwards.

Materials referred to in sub-paragraphs (a), (b) and (c) above may be required to be kept under Customs supervision or control.

ARTICLE 5

The regular airborne equipment, as well as the materials and supplies retained on board the aircraft of either Contracting Party may be unloaded in the territory of the other Contracting Party only with the approval of the customs authorities of such territory. In such case, they may be placed under the supervision of said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

ARTICLE 6

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

ARTICLE 7

1. The tariffs to be charged by the airlines of one Contracting Party for carriage to or from the territory of the other Contracting Party shall be established at reasonable levels due regard being paid to all relevant factors including cost of operation, reasonable profit, and the tariffs of other airlines.

2. The tariffs referred to in paragraph 1 of this Article shall, if possible, be agreed by the designated airlines concerned of both

Contracting Parties, in consultation with other airlines operating over the whole or part of the route, and such agreement shall, where possible be reached through the rate-fixing machinery of the International Air Transport Association.

3. The tariffs so agreed shall be submitted for the approval of the aeronautical authorities of the Contracting Parties at least thirty (30) days before the proposed date of their introduction; in special cases, this time limit may be reduced, subject to the agreement of the said authorities.

4. If the designated airlines cannot agree on any of these tariffs, or if for some other reason a tariff cannot be fixed in accordance with the provisions of paragraph 2 of this Article, or if during the first 15 days of the 30 days' period referred to in paragraph 3 of this Article one Contracting Party gives the other Contracting Party notice of its dissatisfaction with any tariff agreed in accordance with the provisions of paragraph 2 of this Article, the aeronautical authorities of the Contracting Parties shall try to determine the tariff by agreement between themselves.

5. If the aeronautical authorities cannot agree on the approval of any tariff submitted to them under paragraph 3 of this Article and on the determination of any tariff under paragraph 4, the dispute shall be settled in accordance with the provisions of Article 13 of the present Agreement.

6. Subject to the provisions of paragraph 3 of this Article, no tariff shall come into force if the aeronautical authorities of either Contracting Party have not approved it.

7. The tariffs established in accordance with the provisions of this Article shall remain in force until new tariffs have been established in accordance with the provisions of this Article.

ARTICLE 8

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

ARTICLE 9

In a spirit of close co-operation, the Aeronautical Authorities of the Contracting Parties shall consult each other from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of the present Agreement and the Annexes thereto.

ARTICLE 10

1. If either of the Contracting Parties considers it desirable to modify any provision of the present Agreement, it may request

consultation with the other Contracting Party; such consultation, which may be between aeronautical authorities and which may be through discussion or by correspondence, shall begin within a periof of sixty (60) days of the date of the request. Any modifications so agreed shall come into force when they have been confirmed by an exchange of diplomatic notes.

2. Modifications to routes may be made by direct agreement between the competent aeronautical authorities of the Contracting Parties.

ARTICLE 11

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

ARTICLE 12

Either Contracting Party may at any time give notice to the other Contracting Party of its decision to terminate the present Agreement; such notice shall be simultaneously communicated to the International Civil Aviation Organization. In such case the Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by agreement before the expiry of this period. In the absence of acknowledgement of receipt by the other Contracting Party, notice shall be deemed to have been received fourteen (14) days after

the receipt of the notice by the International Civil Aviation Organization.

ARTICLE 13

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of this present Agreement, the Contracting Parties shall in the first place endeavour to settle it by negotiation.

2. If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body, or the dispute may at the request of either Contracting Party be submitted for decision to a tribunal of three arbitrators, one to be nominated by each Contracting Party and the third to be appointed by the two so nominated. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty days from the date of receipt by either Contracting Party from the other of a notice through diplomatic channels requesting arbitration of the dispute and the third arbitrator shall be appointed within a further period of sixty days. If either of the Contracting Parties fails to nominate an arbitrator within the period specified, or if the third arbitrator is not appointed within the period specified, the President of the Council of the Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case requires. In such case, the third arbitrator shall be a national

of a third State and shall act as president of the arbitral body.

3. The Contracting Parties undertake to comply with any decision given under paragraph 2 of this Article.

APPENDIX IX

DEFINITION OF A SCHEDULED INTERNATIONAL AIR SERVICE

(ICAO DOC. 7278-C/841)

"A scheduled international air service is a service of flights that possess all the following characteristics:

(a) it passes through the airspace over the territory of more than one State;

(b) it is performed by aircraft for the transport of passengers, mail or cargo for remuneration, in such a manner that each flight is open to use by members of the public;

(c) it is operated so as to serve traffic between the same two or more points, either:

(1) according to a published time table, or

(2) with flights so regular or frequent that they constitute a recognisably systematic series."

APPENDIX X

EXAMPLE OF AN INTERCHANGE AGREEMENT

On October 6th, 1958 SAS and Swissair concluded an agreement regarding extended co-operation and considerable expansion of their jet fleet.

Their combined jet fleet during 1960 - 1961 is to be 31 planes;

10 Douglas DC 8 (7 SAS - 3 Swissair)

5 Convair 880 (2SAS - 3 Swissair)

16 Sud-Aviation Caravelle (12 SAS - 4 Swissair)

It has been decided to completely standardise these three types of aircraft. This will be the basis for further agreements to establish a joint organization for maintenance and overhaul of aircraft. SAS is to be responsible for the maintenance for the DC8s and Caravelles chartered by Swissair and vice versa.

EXAMPLE OF A POOLING ARRANGEMENT FOR A SPECIFIC ROUTE

On the route London - Stockholm, early afternoon is the better commercial time and both SAS and BEA operated aircraft leaving at the same time. A pooling agreement was concluded and BEA now operates the less attractive morning service but this disadvantage is off-set by the pooling of revenue and the public has now the choice between a morning and an afternoon service.

BIBLIOGRAPHY

ICAO Documents

No.	7575 CATE/1	1954
	7676 ECAC/1	1956
	7696 ECAC/IM1	1956
	7720 ECAC/IM2	1956
	7799 ECAC/2-1,2&3	1957
	7977 ECAC/3-1,2&3	1959
	COCOLI WPs/1 to 34	
	4798 - AT/526	23/10/47
	Circular 28-AT/4	1952
	7409 A7-P2	1953
	7415 A7-EC/1	1953
	7447 - C/868	22/12/53
	7490 - C/873	25/10/54
	7456 A8-P2	8/4/54
	7708 A10-P/17	1956
	7710 A10-EC/28	1956
	7695	1956
	7866 A11-P/3	1958
	7921-LC/143-1	1958
	7894 - C/907	1958
	AT-WP/579	27/1/59
	A12-WP/20-EC/2	13/3/59
	A12-WP/140-EC/28	2/7/59
	ECAC SBC/WG-WO/1	9/10/59
	AT-WP/608	7/10/59
	7960 A12-P/1	1959

Books

"Proceedings of the International Civil Aviation Conference" Chicago, Illinois - Department of State, Vol. 1 & 2.

Bernard Dutoit "La collaboration entre compagnies aériennes. Ses formes juridiques" Nouvelle Bibliothèque de Droit et de Jurisprudence, Lausanne, 1957.

Bernard Dutoit "L'Aviation et l'Europe" Lausanne, Janvier 1959.

Kurt Gronfors "Air Charter and the Warsaw Convention" The Hague, Nijhoff, 1956.

Oliver Lissitzyn "International Air Transport and National Policy" Council on Foreign Relations, New York, 1942.

Stephen Wheatcroft "The Economics of European Air Transport" Manchester University Press, 1956.

"Studi in onore di Antonio Ambrosini" Harvard Law Library, 1957.

Gosztonyi "Some Constitutional Problems of the Regional Organizations" McGill University, Montreal, 1953.

Georg Schwarzenberger "A Manual of International Law", London, Stevens & Sons Ltd, 1952.

Articles

"Role of Air Transport in European Integration" Dan Goedhuis JAL&C Vol. 24, 1957, p. 273.

"L'idée europeenne dans l'aviation de transport et l'accord multilateral sur les droits commerciaux pour les transports aériens non-reguliers en europe" M. Lemoine RFDA, Vol.11, 1957, p. 1.

"European Civil Aviation Conference: Multilateralism versus Bilateralism" L.H. Slotemaker, Centro per lo svilupo dei trasporti aerei, 11 novembre, 1955, Roma.

"Study of Intra-European Pool Traffic 1951-1955" Air Research Bureau/111.

"La structure juridique du transport aérien à la veille du marche commun" Louis Cartou, RFDA, Vol.12, 1958, p. 12.

"The 'Bermuda' Capacity Clauses" P. Van Der Tuuk Adriani JAL&C 1955, Vol. 22, p. 406.

"Liberté et Co-ordination du transport aérien en europe" Coulet, RGA, 1958, p. 107.

"Regionalism and Political Pacts" E.N. Van Kleffens AJIL 1949, Vol. 43, p. 669.

"Fares, Propellers and Jets" Frank Robertson, Interavia 1/1960.

"Air Freight without Illusions" Interavia No. 2/150 1959

"The Aims of Europair" Interavia No. 5/524 1959.

"What's Wrong with European Air Transport?" Dr. Ing. F. Petzel, Interavia No. 12/1538 1959.

"European Air Transport is Indivisible" M. Hymans No. 2 1947