AIR TRANSPORT IN THE CARIBBEAN

CO-OPERATION AMONG GOVERNMENTS AND AMONG AIRLINES

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ABSTRACT

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[illegible] operating markets. These policies are affecting the national airlines negatively and they become dependent on governments' subsidies.

The actual institutions for cooperation in civil aviation lack the appeal to encompass the whole Caribbean region. This dissertation proposes a [illegible] for cooperation among the Caribbean governments, as well as [illegible] cooperation among the Caribbean airlines.

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La situation [illegible] notament empêché d'élaborer une politique [illegible] d'aviation civile et les ont plutôt poussé à endosser [illegible] politiques des marchés générateurs de trafic aérien [illegible]

[illegible] dernières ont [illegible]

De plus, les institutions de coopération en matière d'aviation civile n'englobent pas toutes les îles faisant partie des Caraîbes.

Cette thèse suggère d'une part la création d'une seule Commission responsable d'assurer la coopération parmi les différents gouvernements des Caraîbes et d'autre part, la création d'une seule association regroupant exclusivement les compagnies aériennes des Caraîbes.

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[illegible] I wish [illegible] express [illegible] Professor [illegible] for his [illegible] support and [illegible] the research undertaken.

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And last but not least, Mrs M. D'Am[illegible] deserves words of thanks for typing the manuscript.

It is understood that the author [illegible]

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INTRODUCTION OF AIR TRANSPORT IN THE CARIBBEAN

I. Civil Aviation and the Caribbean

The history of the Caribbean region is full of interesting economic, political and social events. Since the discovery of America the Caribbean became a strategic point. (See Annex I for delineations of the region.) This is the reason that the West European powers wanted to have a position in this centre piece. Trade and traffic from the Caribbean islands were directed towards the North. The intra-regional relations did not develop accordingly. Events in the North sooner or later were to echo in the Caribbean.

The stronger the position of the Americas became in the world the more activities we saw in the Caribbean. The islands were used as stepping stones for those who wanted to reach North, Central or South America.[1] Also those who wanted to go from North to South America or vice versa found a Caribbean stop very suitable. On many occasions the Caribbean has been caught by spheres of influences without it being a principal actor. In its strong desire to develop, like other countries of the world, it has been willing to cooperate; but progress was not always assured.

Political dependency was reduced but economic dependency increased. Through the years dependency has been shifting

from Europe to North America. The colonial rivalries still survived, with British, Dutch, French and American inherited local administrations controlling their own little parishes.

Under these circumstances aviation was introduced in the Caribbean. Under these circumstances aviation has been developing in the Caribbean.

1. The Airlines

a. Compañía Aérea Cubana

Cuba, with its sugar boom which encouraged the creation of the company, was the first island to have an airline: the Compañía Aérea Cubana. The planes sent by ship from France were assembled in Cuba. The activities of the airline were not on a scale large enough to sparkle more initiatives in the region. With the collapse of the sugar boom in 1921 the airline disappeared in financial difficulties.

b. Sociedad Colombo-Alemán de Transporte Aéreo

International aviation was to be introduced in the Caribbean from South and North America. Under the Treaty of Peace of 1919[2] it was forbidden for Germany to manufacture military aircraft. Thus the Germans concentrated on the development of commercial air transport and its technical development.[3]

In an effort to find a market for their aircraft the Germans sponsored several airlines in South America. One of these airlines was the Sociedad Colombo-Alemán de Transporte Aéreo, SCADTA which was founded in 1919 in Colombia. The Company used hydroplanes In 1925 the airline made a survey flight to Aruba, Curaçao and la Guaira in Venezuela and bought a small island in the harbour of Curaçao to establish a sea-plane station.

Negotiations carried on by the airline to include the Dutch Antilles in its international schedule ended negatively.[4]

SCADTA flew via Central America and Cuba to Florida. The intention was to negotiate in Washington for landing rights in the Canal Zone and in Florida. The State Department denied the request. For the U.S. Government this was an opportunity to try to halt the spreading of foreign influence in Latin America.[5]

SCADTA's international air routes did not develop sufficiently to Colombia's neighbouring countries and with the loss of aircraft the airline came into financial problems. By 1931 SCADTA became a subsidiary of PANAMERICAN Airways.[6]

c. West Indian Aerial Express

In June 1927 the West Indian Aerial Express (WIAX) was incorporated in the Dominican Republic. By February 1928 WIAX had services to Haiti, Puerto Rico, the U.S. Virgin Islands and Cuba.

In March 1928 it competed with the newly established PANAMERICAN Airways for the U.S. air mail contracts in the Caribbean. It lost and in August the same year PANAM agreed to buy the company which was dissolved in December 1928.[7]

d. PANAMERICAN Airways

PANAMERICAN Airways was an association of three airlines.[8] Having the air mail contract from the U.S. Government and having eliminated possible competition in the Caribbean, executives of PANAMERICAN persuaded governments in this region to sign air mail contracts with the airline.

From its seaport in Miami the airline serviced Central America, the Caribbean, Colombia, Venezuela, the Guyanas and the north coast of Brazil with its seaplanes. Where there was a national airline established it became a subsidiary of PANAM, or local airlines were established to serve as feeder airlines to assemble passengers and mail in central cities to link up with PANAM's international flights.[8]

By 1930 PANAM was flying through the Caribbean not always serving the islands. The Governor of Antigua at that time noted:

> While we welcomed the facilities given by PANAM Company it was obvious that they were only using Antigua as a stopping place on their long route to South America, to suit their own convenience. ....Although the planes alighted in the Antigua harbour twice a week, they were of no use to

> myself or any one else to get to any other island in the Colony, and in consequence I never once used them.[9]

By 1940 PANAM became involved in the war preparations. Fearing that the Germans would try to invade Brazil from West Africa (Senegal) the U.S. President asked PANAM to build a series of landing strips linking Florida with the hump of Brazil.

The U.S. Government exchanged with the British Government fifty obsolete destroyers for a concession to build and use landing bases in the Bahamas, Jamaica, Antigua, St. Lucia, Trinidad and British Guyana.[10]

In the 1950's these airports served as a springboard for the tourists coming to the Caribbean. Because of lack of accommodation the U.S. President urged PANAM to build more hotels in Latin America «so that the people there could earn more dollars to import U.S. goods».[11]

PANAM carried a great deal of U.S. influence and policy over the waters into the Caribbean islands and the South and Central American States.

e. Koninklijke Luchtvaart Maatschappij

The Royal Dutch Airlines, K.L.M. had already regular service to the East Indies when it flew for the first time to the West Indies in 1934. The Dutch colonies in the Caribbean

became more and more important due to the establishment of two oil refineries in Curaçao and Aruba.

Pan American Airways cancelled its flights to Curaçao, and plans of the French Compagnie Générale Aéropostale to fly into Curaçao from South America and the French West Indies were never realized.

The goal of K.L.M.'s management was

> to establish a regular service between Amsterdam and the Netherlands territories in America as soon as suitable planes for this purpose became available; this idea still stood and it sounded reasonable to try to gradually build up a local feeder net around Curaçao that would serve as the Western bridgehead for the future span over the Atlantic.[12]

Except from Venezuela it was relatively easy for KLM to obtain the necessary concession to land on many of the Caribbean islands and Central and South America. In 1937 the U.S. Government refused to grant permission to KLM to service Miami. The reason was that adequate service was already being provided by PANAM.

Apparently the U.S. Government feared a possible establishment of transatlantic lines by the Europeans.[13]

By 1950 «Curaçao became a hub of a vast spider web of airlines all over the Caribbean.»[14] The short haul routes of KLM were not profitable and the Government of Curaçao had to subsidize the airline on those routes.

In 1969 this West Indies division of KLM went over to the Government of the Netherlands Antilles which thought that not having an airline would not benefit the economy and that it was risky to depend on foreign airlines. Although the new airline, ALM is for 96% owned by the Netherlands Antillian Government, KLM's influence is still significant.

f. Compagnie Générale Aéropostale

The French Compagnie Générale Aéropostale established an air-sea-air service over the South Atlantic in 1928.[15] The Company planned to have regular services between South America and the French Caribbean. Already by 1933 Aéropostale abandoned its plans and what was left over of the airline was taken over by the Government of Venezuela.

It was not until 1953 that Air France began to have regular service to these Départements d'Outre Mer in the Caribbean.

g. British West Indies Airways

The first airline in the British West Indies was established in 1936 in the Bahamas. Its range of operation was limited and soon it became a subsidiary of PANAM. As was the case with France, Great Britain was too busy with pre-war events in Europe and the British West Indies felt they were abandoned

by their mother country. The air link with the West Indian colonies was not on the priority list of Imperial Airways.

By 1940 Trinidad had its own airline company established by a New Zealander.[16] The airline, British West Indies Airways, received exclusive rights to carry passengers and mail between the British islands.[17]

The Government of Trinidad acquired part of the stocks and later BWIA became a subsidiary of British South America Airways that in 1949 merged with BOAC. It was not until 1961 that Trinidad bought back 90% of the shares of the airline

With the failure of the West Indies Federation in 1962 and the lack of air services facilities, the British West Indies Airways was hindered to become the international airline for the British West Indies.

2. International Aviation Organizations

The first independent nations in the Caribbean, Cuba, the Dominican Republic and Haiti, participated already in the beginning of international aviation activities in conventions on air transport. The first convention was the Habana Convention in 1928.[18] Here all the American States participated, except the West Indies colonies and Canada.

In 1944 at the Chicago Convention, Cuba, the Dominican Republic and Haiti were present and the last two nations signed the Convention the same day it was concluded. From the ICAO members in the Caribbean only Trinidad and Tobago and Jamaica, each in its turn, have been members of the ICAO Council till the 26th Assembly in 1986.

In general it can be said that the Caribbean states have frequent contact with several departments of the ICAO headoffice, although there is an ICAO regional office in Mexico City.

The creation of the new International Air Transport Association (IATA) took place in Habana in 1945. The members of this association are airlines operating scheduled services. The associate members[19] operate national rather than international air services.

Despite the fact that IATA's decision-making rules are «designed to protect weaker aviation nations», of the large number of airlines in the Caribbean only few are members of IATA.[21]

The Latin American Civil Aviation Commission (LACAC) was created in 1973. It is open to all states located in Central and South America including Mexico and the nations of the Caribbean. Caribbean membership in LACAC has been held till now only by Cuba, the Dominican Republic and Jamaica, although other islands have participated in the conferences as

observers. There seem to be reasons why more independent nations of the Caribbean are not members of LACAC.

3. International Aviation Policies

The Bermuda Agreement I between the United States and the United Kingdom was «not merely a bilateral agreement between the two major air transport nations, but a general philosophy on the way in which the economic regulation of the industry should be achieved.»[22] This philosophy got a long way.

The introduction of wide-bodied aircraft, the decrease of traffic demand, the liberalization of charter rules in the United States combined with the energy crisis brought the airlines in economic difficulties. From the United States, the deregulation policy is projected as the promise for a bright future in air transport for those who are willing to accept that policy.

The European Economic Community is in the process of liberalization of air transport regulations. At the same time LACAC and ICAO are denouncing deregulation and defending a restrictive policy that would create order in international air transport and would be to the benefit of the airlines.

The Caribbean nations find themselves amidst several developments. Whatever happens in North America, South America and Europe will affect air transport in the Caribbean.

It is impossible for a Caribbean island to have its own aviation policy. The external powers are too powerful for it. For not to get drowned in the waves that are rolling in from the north and the south, the Caribbean nations should cling to each other, find themselves and make an effort to agree on a common Caribbean air transport policy. Co-operation may be the only way for the airlines in the Caribbean to survive while healthy. Co-operation can best be achieved in an organization. The organization can only be established if there is a need for it, and it can only be productive if the members work in harmony with each other. The members of the organization can work in harmony with each other if they do not consider each other as competitors but as equal partners striving for the benefit of them all.

In such a situation the fences of «the little parishes» have to be pulled down so that the nations can see what they all have in common.

CHAPTER I - FOOTNOTES

1. The Caribbean has been an important link to historical events in North and South America, eg.

   - the discovery of the Americas;
   - trade from South America with Europe;
   - slave trade from Africa to North, Central and South America;
   - weapons and clothing from France and the Netherlands for the U.S. independence war;
   - establishment of South American freedom fighters to build up activities against the Spanish Governments;
   - the U.S. military bases in the British West Indies during World War II;
   - the confrontation of capitalist and socialist ideology in Cuba, Nicaragua, and Grenada has lead to intranquility that spills over in the region.

2. Treaty of Peace, Versailles, June 28, 1919, Section III, Air Clauses at p. 198-202.

3. In 1924 the Kondor Syndikat was established in Berlin for the exclusive purpose of promoting the sale of German commercial aircraft overseas.

4. Apparently the Americans having their own interests in the islands, because of the American oil refinery in Aruba, pressured the government not to let SCADTA in the Dutch Antilles.

5. By mid-1927 South American air transport was under sponsorship of the Kondor Syndicat.

6. When PANAM got to Colombia the executives signed an agreement to carry air mail and passengers while it reached a gentlemen's agreement with SCADTA that it will withdraw from all international routes in exchange of infusion of capital in the airline. Later when the Government of Colombia took over the majority of stocks the name of the airline was changed to AVIANCA.

7. «PANAM in the Caribbean The Rise and Fall of an Empire», A.L. Padula, Caribbean Review, Winter 1983, Vol. XII, No. 1, Florida Int'l University, p. 24.

8. Davies, R.E.G., Airlines of the United States Since 1914, Smithsonian Institute Press, Washington, D.C. 1984, Table 14, p. 609, 611.

9. St. Johnston, Reginald, From a Colonial Governor's Notebook, The Athenaeum, London, 1936, p. 186.

10. U.S. Executive Agreement, No. 235, U.S. Stat. L. 1560.

11. Idem note 7, p. 25.

12. Bouwman, F., KLM's Caribbean Decade 1934-1944. The Story of the Operations of the Royal Dutch Airlines in the West Indies since December 1934, Rogers-Kellog-Stillson Inc., New York, 1944, p. 15.

13. Burden, William A.M., The Struggle for Airways in Latin America, Council of Foreign Relations, New York 1943, p. 61.

14. Idem note 12, p. 90.

15. The planes flew to West Africa and than put on a ship to South America where the flight continued overland.

16. Lowell Yerex was invited to Trinidad to set up an airline in 1939 because of his success with Taca - Airline in Central America.

17. Archer, Ian Dev., Multinational Co-operation in Air Transport in the Commonwealth Caribbean, LL.M. Thesis, McGill University, 1968, p. 14.

18. The importance of the Habana Convention has been Art. XXI (agreement on traffic rights) and Art. XXII (restriction for cabotage).

19. As per July 1, 1986, the active members are Caribbean Air Cargo Company, British West Indies Airways and Cubana. Trans Jamaica is associate member. For the

Interline Agreement there are twelve signatories: Antillian Airlines (ALM), Bahamas Air, Caribbean Airways, Caribbean Express, Cayman Airways, Compañía Dominicana de Aviación, Cubana, Grenada Airways, Guyana Airways, Lineas Aereas del Caribe, Suriname Airways and Trans Jamaica. To be able to participate in the Interline Agreement the schedules of the airline have to be available to the public and it has to be a viable airline. It is not required to be a member of IATA. Source: IATA.

20. Jönsson, Christer, «Sphere Of Flying: The Politics of International Aviation», International Organization 35, No. 2, 1981, p. 301.

21. Wheatcroft, Stephen, Air Transport Policy, London (Michael Joseph), 1964, p. 70.

22. Idem, note 20, p. 285.

CHAPTER II

THE NON-INDEPENDENT CARIBBEAN AND BILATERAL NEGOTIATIONS

I - THE AUTHORITY OF THE NON-INDEPENDENT TERRITORIES TO NEGOTIATE BILATERAL AIR TRANSPORT AGREEMENTS

As soon as aviation became international there emerged the need for some regulatory measures. These measures were in the public and private field and dealt with the technical, economic, and legal aspects of aviation. They were «codified» in agreements and conventions at the international level and in laws and statutes at the national level.

It is well established that aviation policy and regulation are relative to the factors of defence, political and socio-economic objectives, which also form the basis for international comity and cooperation among states. Contemporary political developments and prevailing socio-economic conditions have a profound influence upon the nature and scope of air transport regulation.[1]

Since the conception of air transportation as an instrument of trade the impact of transnational factors upon domestic ones has gradually increased. This is more the case when a small state is dependent for its air connection with another state on the facilities provided by a bigger state.[2]

The needs and interests of the big state have then considerable influence on the regulation taken in the small state.

Accordingly in the majority of cases the national interest and the stage of aviation industry dictate the rules for the public ownership and control of national airlines and all other aspects of air transport regulation.

In the circumstances that most of the Caribbean has been in, being colonies, the situation is clearer. The Caribbean islands are colonies of Britain, France, the Netherlands and the U.S.A. The aviation policy of these islands was and is strongly influenced by the interests in the colonial country. All aviation matters of the colony have to fit in the policy or at least should not have any negative effects on the airline or possible interests of the mother country. The local government has some room to make its own regulations, but has no authority to negotiate with other states any bilateral transport agreement. Even if it is in its best interests, but could affect the operation of the mother country's airline, negotiations between the colony and other states will be unlikely to start because the official contact with the other state has to be made by the Ministry of External Affairs. In this case a bilateral agreement is a treaty between two sovereign governments. Governments of colonies or semi-autonomous territories are not recognized officially and internationally. Formal contact will not be made if the government in the home country is not convinced that the results will be to its advantage.

The only way that the colony can handle its own affairs is to become independent. But even then, as we see in the Caribbean, the influence of the colonial government remains. The influence is there in the form of technical and financial assistance. It becomes more difficult now for the individual Caribbean states, ex-colonies, to «bite the hands that feed them».[3]

In the next chapter we will analyze the extent of the authority of non-independent states in the Caribbean to negotiate their own air transport agreement with a third state. For the independent states it can be assumed that they are completely free to make the necessary arrangements for negotiations through their Minister of External Affairs. It can also be assumed that in the negotiations with a foreign state the independent states follow and defend only their national interests, although we know that independence is sub-serviant to their economic situation. Legally these states have unlimited power to negotiate.

The position of the negotiators is dictated by the weight they put on the interests of the national airline(s) and the demands for air transportation for the public. Very often the national economy has more weight.

II - NEGOTIATION OF BILATERAL AIR TRANSPORT AGREEMENTS AND THE NETHERLANDS ANTILLES

Air transport regulation in the Netherlands Antilles has been influenced by several factors including:

- the development of air transportation in the territory;
- the interest of the Royal Dutch Airlines, K.L.M.;
- the developments in the international aviation field; and
- the economic situation of the islands.

The aeronautical relationship between the Netherlands and the Netherlands Antilles was/is based on the treatment of the interests of K.L.M. by the Antillean authorities. The first set of public laws was published in 1935,[4] nine months after the arrival of the first flight of the K.L.M. from Europe to Suriname and the Netherlands Antilles.

Although the laws were for the internal regulation of aviation in the colonies, they were issued by the Minister of State for the Colonies in the Hague. Yet some power was delegated to the Governor as local representative of the Government in the Hague. Art. 11 of the Air Transport Law of July 30, 1926[5] for the Kingdom stipulated that as long as nothing has been previously agreed upon, a company that deals exclusively or otherwise in the carriage of persons or goods by air between two or more points within the Kingdom or uses

a place within the Kingdom as point of origin, destination or transit, has to have a licence from the Government or its representative, if the company has its office within the Kingdom and a permit from the Minister in case the office is situated outside the Kingdom.

In the Curaçao Air Transport Decree of 1935 the Governor was authorized to act in case of international air transportation in this part of the colonies. Art. 7, ss. 3 says that the Governor is authorized to grant special permission for air transportation within the territory of Curaçao (i.e. the Netherlands Antilles) to airline companies belonging to a country which is not a party to the Paris Convention of 1919 or with which the Netherlands has no air transport agreement that is applicable to Curaçao.

Art. 14 of the same decree says that as long as the contrary has not been stipulated by a treaty, a permit from the Governor is required to start an international air service using a place within the territory of Curaçao as point of origin, destination or transit. Some conditions may be attached to the permit.

The ordinance of 1965[6] brought some changes in this. Here the Government of the Netherlands Antilles stipulates the law applicable for non-scheduled and scheduled air transport. Art. 14, ss. 2 says that if it has not been determined by an international agreement, non-scheduled air transport of persons,

animals, goods and post between two or more points within the Netherlands Antilles or between a point in the Netherlands Antilles as a place of origin, destination or transit station is prohibited for a company doing this as a business or for renumeration except if the Government grants particular authorization. Art. 14, ss. 3 continues:

> As long as it is not stipulated by international agreement, scheduled air transport of person, animals, goods and post between two or more places within the Netherlands Antilles or between a place in the Netherlands Antilles as place of origin, destination or transit station by a company doing business or as subsidiary business or for renumeration is prohibited except if permission is granted after taking into consideration .Art. 54 of the Charter of the Kingdom.

These articles show some change in policy but were also implementing the Chicago Convention of 1944. When the participants at that Convention failed to agree on a multilateral agreement for exchange of commercial traffic rights, states began to stipulate their own rules.

The Netherlands Antilles and Suriname[7] were part of the Kingdom of the Netherlands and also among themselves they stipulated the rules of conduct. These rules of conduct were set out in the Charter of the Kingdom.[8] In this Charter it is set out which matters were to be considered internal affairs and which were common Kingdom affairs. The authority for Kingdom affairs remains with the Government in the Hague.

One of the most controversial issues at the negotiation of the Charter was air transport. Should it be considered an internal affair or a Kingdom affair? The Government of the Netherlands defended this latter point of view vehemently. The Government of the Netherlands Antilles, to the contrary, thought it should be an internal affair. At the end of the discussions the two parties reached an agreement. This is why air transport is not incorporated in Art. 3 of the Charter where Kingdom affairs such as Defense and External Affairs are listed.

The agreement mentioned above was set out in two articles of the Charter: Art. 37, ss. 1, 2(f) and Art. 54. Art. 37, ss. 1 says that the Netherlands, (Suriname) and the Netherlands Antilles shall to the greatest extent possible consult each other on all matters concerning the interests of these countries or of any two of them.

Art. 37, ss. 2(f) states these matters shall be:

> matters related to air transport including the policy for non-scheduled air transport. After one party has consulted the others it takes its own decision and this decision does not have to include the wishes of the other parties.

Art. 54 stipulates that as Kingdom matters are also considered the setting of conditions for participation in the granting of and the request of rights for scheduled air service as long as this is not internal transportation done by companies established in the Kingdom.

Art. 54, ss. 2 says that after a lapse of ten years, after the signing of the Charter, except in the case of prolongation by mutual agreement, the Governments of Surinam and/or that of the Netherlands Antilles can declare, by giving the reason that maintaining this situation can cause harm to its country, that it will denounce this regulation. In that case this regulation will expire two years after the declaration is made.

Using this clause the Government of the Netherlands Antilles in 1965 handed over the official denounciation of this article. In 1967 Art. 54 was suspended. Can the Netherlands Antilles now have its own air transport policy independent from the Netherlands? The Netherlands Antilles can stipulate its air transport policy independently, but cannot apply this under all circumstances.

The formal part of an air transport agreement with a third country asks for the intervention or participation of the Government of the Netherlands. Bilateral agreements are concluded between sovereign states. In this case the Kingdom is the sovereign representative of the colony.

The request to start negotiations and the signing of a bilateral agreement with a third country are considered external affairs matters and these are Kingdom matters according to Art. 3, ss. 1(b). De jure the Dutch Minister of External Affairs should act only as «messenger». De facto this is not always the case. In cases where the Dutch and Antillean interests

do not correlate there will be some friction. The intervention of the Netherlands Minister of External Affairs has a negative effect and in case of these conflicts on interest the contacts with third countries will be postponed until the Kingdom partners reach a consensus.

But fortunately there are other ways to exchange traffic rights. Landing rights can also be agreed upon in the form of an administrative agreement. This air transport agreement is signed by the directors of the Civil Aviation Departments of the respective countries. The weak point of such agreements is that it is not as official as a bilateral air transport agreement. Denunciation of bilateral agreements is considered as an unamical act of the denunciator. Other subjects such as transfer of revenues from sales of tickets, immigration and custom regulations can not be included in an administrative agreement because only the Minister of Transport or the Minister of External Affairs can make an agreement regarding such matters.

For Aruba, being an equal partner in the Kingdom, the situation has not changed.[9] But as Cathalina[10] puts it there are countries that have difficulty understanding the «hybrid status» of the Netherlands Antilles within the system of the Charter of the Kingdom and prefer an agreement with the Kingdom.

III - NEGOTIATION OF BILATERAL AIR TRANSPORT AGREEMENTS AND THE UNITED STATES TERRITORIES

By the Treaty of Paris of 1898, Art. II,[11] between the United States and Spain the former got control over Puerto Rico. Two years later the Government of the U.S. introduced the Foraker Act of May 1, 1900, also called the First Organic Act of Puerto Rico. Section 14 stated:

> That the statutory laws of the United States not locally inapplicable, except as herein before or otherwise hereinafter provided, shall have the same force and effect in Puerto Rico as in the United States, except the internal revenue laws:
> Provided....

This Organic Act was clearly meant to bring Puerto Rico under U.S. jurisdication. The Organic Act of March 2, 1917 (Jones Act) as amended had as subtitle: «An Act to provide a civil government for Puerto Rico and for other purposes.»

Section 9 of the Jones Act reads the same as Section 14 of the Foraker Act mentioned above. In the same year, the Government of the United States bought the Virgin Islands from the Government of Denmark. These islands came under the jurisdiction of the U.S. Government, administered by the Department of Interior, though the position of Puerto Rico and the U.S. Virgin Islands were different. The Government was never sure of the relationship between Puerto Rico and the United States.

With the rapid developments in aviation in the U.S. there was a need to introduce regulations. Several states were already introducing some laws and regulations, but it was felt that the regulation of air transport must be at the Federal level. The basis for the Federal Government to regulate aviation was found in the Commerce Clause of the Constitution. Art. 1, Section 8, Clause 3 grants to Congress the power «to regulate commerce with foreign nations and among the several states, and with the indian tribes.» Under this Clause the Government introduced the Air Commerce Act of 1926.[12]

One of the purposes of this Act was:

> to study the possibilities for the development of air commerce and the aeronautical industry and the trade in the United States and to collect and disseminate information relative thereto and also as regards the existing state of the art.[13]

Air commerce was defined as:

> transportation in whole or in part by aircraft of persons and property for hire, navigation of aircraft in furtherance of a business, or navigation of aircraft from one place to another for operation in the conduct of business.[14]

In ss. 6(b) it was stipulated that:

> /F/oreign aircraft not part of the armed forces of the foreign nation shall be navigated in the United States only if authorized as hereinafter in this section provided.

If they are authorized they will fall under the Regulatory Powers of the Secretary of Commerce.

In Section 9 under the heading Definitions it states:

> The term «United States» when used in a geographical sense, means the territory comprising the several states, territories, possessions, and the District of Columbia (including the territorial waters thereof), and the overlying airspace; but shall not include the Canal Zone.[15]

Although it does not say that this Act was applicable to the U.S. Virgin Islands and Puerto Rico it follows from U.S. law that this was the case. The reasons are that it mentions «territories, possessions» and because of the Jones Act of March 1917 that made continental or Federal regulations applicable to Puerto Rico and the Virgin Islands.

In 1938 the U.S. Government came with an Act[16] to create «a Civil Aeronautics Authority, and to promote the development and the safety and to provide for the regulation of civil aeronautics.» This Act was to revise the Air Commerce Act of 1926 and the Civil Aeronautics Authority would have all the powers to regulate the many, and especially the economic, aspects of air transport. «Air transport» was defined as meaning interstate, overseas, or foreign air transportation or the transportation of mail by aircraft.[17]

Before being able to engage in overseas or foreign air transportation or transportation between places in the same territory or possession, the carrier must have the approval of the President of the United States.[18] These «possessions of the U.S.» include the U.S. Virgin Islands. In this new

Act «possessions of the United States» means: (a) Puerto Rico; and (b) all other possessions of the United States.[19]

Because the Authority did not have power of its own to directly contact a foreign government, Section 802 states that:

> /T/he Secretary of State shall advise the Authority of and consult with the Authority concerning the negotiation of any agreements with foreign governments for the establishment or development of air navigation, including air routes and services.

In the Puerto Rico Federal Relation Act of 1950,[20] Section 9 of the Jones Act has been repeated so that laws of the U.S. would be applicable in Puerto Rico. This means to include the Civil Aeronautics Act of 1938. The Federal Aviation Act of 1958 under which resorted the Civil Aeronautics Board did not bring any change in the legislative power of the states to regulate their own air transportation.

Section 802 was amended to direct the Secretary of State to advise and consult with the administrator, the Board, and the Secretary of Commerce, as appropriate, concerning the negotiations of any agreement with foreign Governments for the establishment or development of air navigation including air routes and services.

Section 1(35) of the Act says that «United States» means the several territories and possessions of the United States. In the same section, under (29), possession of the United States means:

(b) all other possessions of the United States. Where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, references in this Act to possessions of the United States shall be treated as also refering to the Commonwealth of Puerto Rico.

On December 17, 1975 a Bill was passed in Congress to approve the «Compact of Permanent Union between Puerto Rico and the United States».[21] Under heading 2 «Jurisdiction and Authority of the Free Associated State of Puerto Rico» it states:

(d) The United States will have responsibility for and authority with respect to international relations and defense affecting the Free Associated State of Puerto Rico.

The Free Associated State may participate in international organizations to make educational, cultural, health, sporting, professional, industrial, agricultural, financial, commercial, scientific or technical agreements with other countries consistent with the functions of the United States, as determined by the President of the United States and the Government of the Free Associated State on a case-by-case basis.

Section 12 of this same Bill says under «Applicability of Federal Laws»:

(a) the laws of the United States applicable to the Free Associated State on the date of approval of this compact shall continue in effect except to the extent repealed or modified by this compact, or incompatible with it, and except as hereafter modified, suspended or repealed in accordance with law.

Although the Government of the Commonwealth of Puerto Rico has some freedom to act on its own it does not have enough authorization to act independently when it wants to negotiate with a third party on aviation matters. The official contact has to go through the Secretary of State in Washington. The Virgin Islands have even less power to act at the international level because their status is still that of a territory, under complete jurisdiction of the U.S. Government.

Bilateral air services negotiations concerning the island of Puerto Rico still come under the jurisdiction of the Department of Transport which is next in line after the Secretary of State, who is in charge of the external affairs of Puerto Rico.

IV - NEGOTIATION OF BILATERAL AIR TRANSPORT AGREEMENTS AND THE DEPARTEMENTS D'OUTRE MER

France, as was the case with the United Kingdom, Spain, and the Netherlands had many possessions in America, Africa and Asia. The status of these possessions changed with the political developments during this century. For France these possessions were called colonies in the beginning, and later with changes in France, they became territories of the Republic. Around the middle of this century the territories became part

of «l'Union française». After becoming independent the new states formed a community with France. The community consists of the Republic and other member states. The Republic consists of metropolitan France, the Départements d'Outre Mer (D.O.M.) and other overseas territories.[22]

The D.O.M. (including Guadeloupe, Martinique, Guyana, St. Martin) falls completely in the assimilation policy of France. Their status resembles very closely that of the departments in continental France. Consequently, the authority of the D.O.M. to regulate their own international aviation policy is under strict control of the Government in Paris. The regulation of air transport in and over French territory was clearly stipulated in the law concerning air transport of May 31, 1924.[23]

Art. 8 states:

> Les aéronefs de nationalité étrangère ne peuvent circuler au-dessus du territoire français que si ce droit leur est accordé par une convention diplomatique ou s'ils recoivent a cet effet une autorization qui devra être spéciale et temporaire.

Art. 82 of the same law stipulates that this law will be made applicable in the colonies and protectorates by decrees countersigned by the Minister for Colonies and the Minister of Public Works according to the needs created by the extension of air transport in those countries.[24]

In 1930 the Government of France introduced a modification to the law of 1924. This modification was only for Art. 9. The first paragraph says that previous to the establishment of international air routes and the establishment and exploitation of international scheduled services, the Government must grant authorization.[25]

By the Order of October 18, 1945,[26] Art. 2 the Minister of Air was charged to establish, to lay out, to equip and to maintain the imperial network and to assure the safety of navigation and circulation on this network. In the same way the Minister has to take care of the local network.

Art. 1 defines the imperial network as consisting of the necessary installations for air transport to connect metropolitan France with the different territories or group of territories under the Minister of Interior or the Minister of Colonies, and among themselves or to a foreign territory.

The local network is for inter-territorial connection. Art. 14 stipulates that the administrative control of the imperial civil aviation is performed in agreement with the Minister of Air and the Minister responsible for the territory concerned, by one or the other body of control at the disposal of the Minister.

The post of Regional Director was created but he is responsible to the Minister for imperial matters and to the local government for local civil aviation services.[27]

After World War II the French territories in the Caribbean were admitted as Départements of France. Art. 2 of that law of 1946[28] says that the laws and decrees presently in force in metropolitan France and which are not yet applicable in these colonies, shall by decree, be applicable to these new departments before January 1, 1947.

In 1947 the Government issued a decree[29] whose first article states that the provisions of the decrees to adjust the metropolitan legislation concerning civil aviation in the colonies, protectorates or territories under mandate that are under the Minister of French overseas will remain temporary in force in Guadeloupe, French Guyana, Martinique and Réunion until the reorganization of this legislation.

Analogous to the U.S. Civil Aeronautics Board, the Government of France created by decree no. 51-376 of July 9, 1951 a «Conseil supérieur de l'aviation marchande».[30] This Council is authorized to give advice on all matters concerning commercial aviation that have been submitted to it by the Minister of Public Works, Transport and Tourism or by one of the Ministers or Secretaries of State who countersigned this decree or on matters which have been brought before it by one of its members.

The topics specifically mentioned in the decree and on which the Council will be consulted upon are the needs for air transport, the material, the enterprises and the conditions

for exploitation. One of the members of this Council is the Director of Economic Affairs of the Ministry for overseas territories. To apply the authority of this Council, i.e. regulating air transport, Art. 1 of the decree of November 12, 1954[31] stipulated that the authorization to exercise an activity of air transport as mentioned in Art. 2 of the decree of September 26, 1953[32] is granted by decision of the Minister in charge of commercial aviation after receiving advice from the Superior Council of commercial aviation, especially on the moral, financial, and technical garantees presented by the company concerned and upon the opportunity to create a new air transport service. This decree was declared applicable to the territories under the Minister of French overseas.[33]

The Regional Director of civil aviation for the French Antilles and Guyana was put in charge of civil aviation on these D.O.M.[34] He will be consulted for the establishment or exploitation of international air routes with connections to the departments under his direction. But his power is limited by Art. 3: The regional director of civil aviation in the departments is the representative of the Secretary General of Civil Aviation. He works according to a plan set up by the Minister of Public Works after consultation with the Minister in charge of the D.O.M. He is directly responsible to the Minister of Public Works and Transport (Secretary General for Civil Aviation).[35]

In October 1978 the Minister of Transport came out with a decision concerning the reorganization and functions of the central administration of the general direction of civil aviation.[36] Art. 3 gives the Director General of Civil Aviation, head of the department, the power to exercise his authority on the external services of civil aviation according to the conditions of the existing texts and specifically Art. 2 of the decree of June 28, 1960.[37]

The department consists of a direction for air navigation,[38] a direction for civil aeronautics programmes,[39] a department for air bases,[40] a department for air transport,[41] for aeronautical training and technical control,[42] and a department of personnel and management.[43]

The article that is most interesting to this discussion is Art. 7: The air transport department is charged to do the necessary studies, to define the needs and the programmes for the development of civil aviation, to control and coordinate (from the administrative, economic, and commercial point of view) the exploitation and the equipment of aeronautical activities and to participate in all «preparation and negotiations on the international level concerning civil aviation».

Under subsection (c) of the same article it states under the heading of international activities: [This air transport department will]

- prepare, define and execute the French policy in international aviation matters including the departments and overseas territories;

- prepare and negotiate the international agreements for exchange of air traffic rights which define and control the terms under which these rights will be exercised, also agreements concerning international cooperation on aeronautical matters.

The last point of the article is that the department will control the activities of the French and foreign companies performing scheduled or non-scheduled international service. As in the case of Puerto Rico the Federal (here French) Government takes away all the authority for the D.O.M. and institutes a very centralistic system to regulate the aviation matters that have international implications. The Regional Director for aviation in the D.O.M. has some input, but this input will only reach the international level through the Director General of Civil Aviation in Paris. The regional policy is incorporated in national policy, and negotiations on the international level can only officially start with intermediation of the Minister of External Affairs of the French Government.

V - NEGOTIATION OF BILATERAL AIR TRANSPORT AGREEMENTS AND THE BRITISH DEPENDENT TERRITORIES

The Civil Aerial Transport Committee of the U.K., in its final report,[44] emphasized the importance of uniform legislation, so far as possible throughout the British Empire on aeronautical matters, and of avoiding any appearance of dictating

to the Dominion[45] or of infringing in any way their local autonomy.

The Air Navigation Act of 1920 was:

> to enable effect to be given to a Convention [i.e. Convention of Paris of 1919] for regulating Air Navigation, and to make further provision for the control and regulation of aviation.

Chapter I General Principles of that Convention, Art. 1 says:

> The High Contracting Parties recognize that every Power has complete and exclusive sovereignty over the air space above its territory. For the purpose of the present Convention the territory of a State shall be understood as including the national territory both that of the mother country and of the colonies, and the territorial waters adjacent thereto.

To determine the organ of the Government responsible to regulate air navigation internally, section 3 of the Air Navigation Act of 1920 stipulates that, without prejudice, an Order in Council[46] may make provision:

> (e) as to the conditions under which aircraft may be used for carrying goods, mails and passengers;
>
> (f) as to the conditions under which aircraft may pass, or goods, mails, or passengers may be conveyed by aircraft into or from the British Islands, or from one British Island to another.

The recommendation of the Civil Aerial Transport Committee was adopted in section 4 that says that His Majesty may make an Order in Council to extend the provisions of this Act to

any British possessions other than the Dominions. In fact, the Dominions had a greater measure of autonomy to regulate their own affairs.

In 1936 the British Government legislated the Air Navigation Act, 1936. Section 5 deals with licencing of air transport and commercial flying. The first paragraph authorizes His Majesty in Council to make provision:

> (a) for securing that aircraft shall not be used: (i) for carrying passengers and goods for hire or rewards; and (ii) for such flying undertaken for the purpose of any trade or business, except under the authority of and in accordance with a licence granted by the licencing authority;
>
> (b) as to the circumstances in which a licence under the Order may or shall be granted, refused, revoked, or suspended and also as to the matters which the licencing authority has to take into account when deciding to grant or refuse a licence.

This Act was made applicable to the colonies by the Colonial Air Navigation (Application of Acts) Order 1937.[47]

Using section 5 in conjunction with Art. 3 and para. 15 of the First Schedule of the 1937 Order, the Governor of Barbados, with the approval of the Secretary of State, made regulations prohibiting the use of any aircraft in the Colony for carrying passengers or goods for hire or reward except under a licence granted by the Governor-in-Executive Committee to that person.[48] But these regulations were only applied to journeys upon which passengers or goods are both embarked and

landed within the Colony or embarked in the Colony and landed in the Dominions or embarked in the Dominions and landed in the Colony.[49] The application for a licence had to be addressed to the Colonial Secretary.

The reasoning a contrario suggests that the local government has no authority to make any regulations for international journeys (i.e. carriage of passengers or goods to or from the Colony, from or to a third country for hire or reward). Though these regulations were only applicable to Barbados the Second Schedule of the 1937 Act listed all the other West Indies islands where the Colonial Air Navigation Order, 1937 has effect.

For Trinidad and Tobago such a regulation was enacted in 1951.[50] Although stated in other words, the meaning was the same. It was not lawful for any person to use any aircraft for the carriage of passengers, mail or cargo for hire or reward on scheduled journeys between two place of which at least one is in the Colony, without a licence granted by the Licence Authority (whose members are appointed by the Governor). Again, these regulations are not to be applied in the case where the journeys are performed in accordance with the provisions of an agreement between the Majesty's Government in the United Kingdom and the Government of the foreign country.[51]

In 1949 the Civil Aviation Act was enacted. This Act repeals and re-enacts the whole of the Air Navigation Acts, 1920 and 1936.

Part I, section 1 stipulates that His Majesty will institute the Ministry of Civil Aviation and the Minister shall be charged with, among others, the general duty of organizing, carrying out and encouraging measures for development of civil aviation. Section 66, para. (1) in conjunction with Part II of the Ninth Schedule of this Act made section 1 applicable to the colonies.

The situation did not change much until the deliberations for the West Indies Federation in 1958. As part of his general responsibilities for the British territories, which have not yet achieved self-government, the Secretary of State for Colonies acts in close consultation with the Ministry of Civil Aviation to assist in the development of civil aviation in the British Colonies, Protectorates and Mandated Territories.

In the deliberations as to the formation of the Federation of the West Indies there were two lists specifying the subjects that would come under the Federal legislative powers and those that would be left to the Unit Territories. The legislative powers of the Federation were set out in an Exclusive Legislative List and a Concurrent Legislative List. Both the Federal and the Territorial Legislatures were authorized to legislate for subjects on the Concurrent List, but in the case of conflict Federal legislation would take precedence.

The governments of the islands agreed at the Constitutional Conference in 1961[52] that the Government of a Unit

Territory may enter into negotiations with any foreign government or international organization with a view to agreement on any matter within the legislative competence of the Unit Territory concerned.[53] The Federal Government must, however, be kept informed of the course of the negotiations and no agreement shall have effect unless consented to or ratified by the Federal Government.

The legislative subject of Civil Aviation and ancillary services including ancillary transport services and safety of aircraft was put on the Concurrent Legislative List.

The Unit Governments have the right to control and operate inter-territorial aviation services and the aerodromes.[54] Furthermore, in case of an air service between the Federation and a third country a Unit Government has the right to apply to the Federal Government to have a carrier of its own designated as national carrier. This is the case where the Unit Government has conducted the negotiations with a third country for an air service agreement. Unfortunately this set-up could not be put in practice because the Federation-machinery never got underway and the Federation failed in 1962.

In 1966 there was a conference of the Windward Islands (Dominica, St. Lucia, St. Vincent and Grenada) to settle the details for the Associated States with the United Kingdom. The Draft Despatch[55] proposed that the British Government would seek the fullest consultation with the Government of the

Territory when carrying out their general responsibilities for the external affairs of the Territory. Her Majesty's Government delegated executive authority over some subjects to the Territorial Governments with respect to their external relations with other countries. For example, the territorial government will have authority to negotiate and conclude certain types of international agreements. The same section 2(c), however, says:

> Agreements affecting the Territory relating to civil aviation and shipping will continue to be dealt with in accordance with present practice whereby the British Government engage in the fullest consultation with the Government of the Territory and invite their participation in such negotiations as are necessary.

In similar negotiations between the Government of St. Kitts/Nevis/Anguilla the Government of the islands maintained that the rights for civil aircraft to enter and leave the Territory should be negotiated only in accordance with the wishes of the Territory. This means that the island governments wanted more authority to decide in matters concerning its civil aviation relations with third countries.

This was not accepted by the United Kingdom.[56] The same clause applicable for the other islands was made applicable for St. Kitts/Nevis/Anguilla. The situation remained like that till the islands acquired their independence. With this independence the island governments received all the power to regulate its own affairs, external as well as internal.

With the establishment of the Organization of Eastern Caribbean States in 1981 came the reorganization of the Directorate of Civil Aviation. The first Director of Civil Aviation for the Windward and Leeward Islands was appointed in 1957. Part of the responsibilities of the new Directorate became: to advise the Ministers and Civil Aviation authorities on all matters pertaining to civil aviation in the region; planning for continuing development; and implementation of policy in accordance with ICAO requirements with respect to operating standards. It also coordinates policy in civil aviation matters.[57]

Although they cooperate through this Directorate the Eastern Caribbean States have the ability to negotiate air service agreements in their own right.

For the British Dependent Territories in the Caribbean the Civil Aviation Act of 1949 (Overseas Territories) Order 1969, No. 592 remains the basic legal structure for civil aviation legislation. What this means is that the power for regulation of civil aviation is with Her Majesty's Government in London, through Orders in Council.[58] The Governor may, with the approval of the Secretray of State, make regulations for licencing of air transport and commercial flying.[59]

Based on these two regulations, the fact that these islands are not independant and that an international agreement is signed by sovereign states and that the British Government

in London is responsible for the external affairs of these territories, it is accepted that the British Government on the international level handles their aviation matters and negotiates bilateral air transport agreements with third countries on their behalf.

VI - THE EFFECTS OF INDEPENDENCE ON THE EXISTING BILATERAL AGREEMENTS

There are still several islands in the Caribbean that have not achieved their independence. The mother country has, up until now, negotiated bilateral air transport agreements with third countries on their behalf. There are certain agreements or clauses in agreements that are not to the advantage of the islands, but which, nevertheless, are accepted by the mother country in exchange for more favourable rights for the mother country's airline. It is also possible that after independence the situation of the island could change such that the clauses of the bilateral agreements become unfavourable for it. Can the island governments after independence reject the bilateral or multilateral agreements that its predecessor state has signed and agreed to as locally applicable?

There is a principle in international law that states that a newly emerging state is not bound by any political treaty entered into by the state of which it was part or by

which it was represented in its international relations before independence. The majority of writers believe that this is also the case with commercial treaties. This is the clean-slate theory.[60]

Rabus[61] suggests that the successor state should issue a declaration (note of succession) that it wants to adhere to the multilateral agreement. For bilateral agreements this unilateral declaration is not acceptable on the grounds that third states can not be bound without their consent. In that case both states have to declare that they wish to be bound by the agreement.

The application of the above-mentioned principle of international law can cause many inconveniences. The relations among states are regulated by a network of treaties and agreements. Especially in case of a bilateral agreement signed by state A and state C, a strict application of this principle could leave one party at a disadvantage. An example will clarify this. State A and state C agreed that by granting certain rights to state A, state C would receive rights in the independent territory of state A. At independence the new state B is formed with a clean-slate. State C will lose its rights in relation to B, while A would retain its rights with C.

To prevent such a situation a second rule has developed. This stipulates that when a part of the territory of a state breaks off and becomes a separate state, and an international

person itself, succession takes place with regard to such international rights and duties of the predecessor, as are locally connected with the part of the territory broken off.[62] This rule suggests that when the predecessor state has signed away rights of the successor state and that the latter will have to adopt those clauses of the agreement because in practice the execution of the agreement has direct effect in the successor state. If this is so, the duties in the agreement could infringe the national sovereignty of the successor state and should not be imposed upon it without the new state's specific consent.

This devolution practice is characteristic for the decolonization procedure of the British colonies in the Caribbean. In the devolution agreement between the Governments of the United Kingdom and Jamaica, section 46 states that the Government of Jamaica will conclude an exchange of notes with the British Government under which the new Government will assume all treaty obligations and rights relating to it entered into on its behalf prior to independence by the British Government and the Government of the Federation of the West Indies.[63]

The agreement with Trinidad and Tobago had an additional clause saying that:

> the new government also assumes the right to question the validity or efficacy of the provisions of any treaty in so far as it applied to Trinidad and Tobago.[64]

This rebus sic stantibus clause can also be found in the agreement between the Government of the Bahamas and the U.K. The agreement stated that the Bahamas would assume all treaty obligations and rights previously undertaken by the U.K. Government in relation to the Bahamas, on the understanding that the Bahamas will, within reasonable time, wish to review in detail such treaty obligations with a view to their continuation or discontinuation.[65]

The Netherlands' practice was different. Suriname never signed a devolution agreement with the Netherlands. Instead the Government of Surinam sent a note to the Secretary General of the United Nations stating among other things that:

> (a) by virtue of customary international law the Republic of Surinam assumes all the treaty rights and obligations of the Government of the Kingdom of the Netherlands in respect of Surinam;
>
> (b) each treaty requires legal examination before it can indicate which of these treaties Surinam wishes to treat as having lapsed; and
>
> (c) until Surinam reaches a decision to the contrary, there is a presumption of legal succession to each treaty by the Republic of Surinam.[66]

The devolution practice was also later abandoned by the British Government.[67] When Saint Christopher (St. Kitts) and Nevis became independent in 1983 the Prime Minister and Minister of Foreign Affairs wrote to the Secretary General of the United Nations that:

> ... with regard to multilateral treaties applied or extended to the former British Associated State of St. Christopher and Nevis it will continue to apply the terms of each treaty provisionally on the basis of reciprocity until such time as it notifies the depositary authority of its decision in respect thereof.
>
> As regards bilateral treaties applied or extended to, or entered into on behalf of the former British Associated State of St. Christopher and Nevis, the Government of St. Christopher and Nevis declares that it will examine each such treaty and communicate its views to the other State Party concerned.

and further that:

> ... the Government of St. Christopher and Nevis will continue to observe the terms of each treaty, which validity so applies and is not inconsistent with its independent sovereign status, provisionally and on basis of reciprocity.[68]

The non-performance of a devolution agreement makes the new state liable only towards its predecessor, not towards other states.[69] For the United States when an instrument accepting the principle of devolution is brought to its attention the U.S.A. lists such a state as party to all applicable U.S. treaties in its list of «Treaties in Force» interpreting the presumption implied compliance in such instruments, in their favour.

This was the reason for the exchange of notes between the Government of the United States and that of Trinidad and Tobago, which states:

> With the assumption by the Government of Trinidad and Tobago of pertinent international civil aviation rights and obligations of the United Kingdom, it is understood that the provisions of the agreements under reference[70] will continue to apply to the operation of scheduled services between the United States and the Caribbean area by the airlines of the United States and Trinidad and Tobago pending the conclusion of a new transport agreement between the two governments. This note and the reply thereto constitute an agreement to that effect.[71]

The same procedure was followed towards the Government of Jamaica.[72] States that become independent notify the Secretary General of the United Nations in compliance with Article 102 of the United Nations Charter that requires U.N. members to register every treaty and international agreement with the Secretariat of the Organization. By giving the unilateral declaration to the Secretariat, whose task it is to publish the treaty or agreement, the new state notifies the party or parties involved in the bilateral or multilateral agreements that it accepts the obligations and rights of all treaties and agreements applicable to its territory and under which conditions.

A question now arises. Will the non-independent states in the Caribbean follow this same procedure and, in case of the bilateral air transport agreements, will they proceed as soon as possible to open negotiations with third countries for new bilateral agreements?

There is no reason to believe that the new states will not notify the Secretariat of the United Nations that they will assume the rights and obligations from the treaties and agreements entered into by their predecessors. How great the necessity is to start negotiations on a new bilateral air transport agreement soon after the independence depends on several factors. These could be:

(1) The new state's own contribution in negotiations pre-independence;

(2) the size of its own traffic generating market;

(3) the type of air transport agreements that are in existence;

(4) the type of air transport agreements that they would like to have;

(5) the economic situation; and

(6) the possession of its own airline and its capacity.

Here we will discuss some of these factors. If the local authorities have already had a positive contribution in previous negotiations with third parties those bilaterals would contain some local «wishes». In the Netherlands Antilles this has been the case. The Minister of Civil Aviation has been designated as Kingdom Representative with the power to sign and or denounce bilateral agreements. These agreements are limited to only the territory of the Netherlands Antilles. If the Netherlands wants to sign an agreement with the same country it will conclude its own bilateral agreement limited to Europe.

The other possibility is that the Netherlands and the Netherlands Antilles negotiate a package of rights that are internally divided and separately evaluated between them. Each country can denounce its part of the agreement separately.

There are also other bilateral air transport agreements where the rights are in one individual package. In negotiations with a third party rights of one Kingdom partner are given away in favour of the other partner.[73] Only where this last situation is actual and the new independent territory wants to bring about a more equal air services relationship between it and a third country would we expect that soon after the independence that these would be negotiations for a new bilateral agreement.

The second point that can influence renegotiation of bilateral air transport agreements after independence is the size of the traffic generating market. The country that has greater out-bound traffic will demand a bigger share if it does not already have it in the bilateral air transport agreement. The size of the outbound traffic is closely related to the economic development of the territory.

The next matter that will decide whether to start renegotiating the existing bilaterals is the fact that the new state has its own airline and the size of this airline. If this is not the case the airline of the predecessor state would continue to maintain the service for a while. Naturally

this will also have its influence on the outcome of the bilaterals concerning the rights of the dependent state. If the new independent state already has its airline, this will reflect in the outcome of the negotiations because the state would press for certain rights.

In the case where the state establishes its own airline after independence it would like to take the rights over from the predecessor state's airline or conclude its own agreement with a third country, with terms that are more suitable to its needs. The type of bilateral agreement the new state wants to have is also important. The «new» air policy is closely related to the economic situation and the position of the airline in the whole economic framework. The question is: Does the present bilateral air transport agreement suit the needs and wishes of the new state? If not then it has to be renegotiated.

As each of the non-independent territories is in a different position concerning the points mentioned above, it is not possible to say exactly what is going to happen after independence. On these matters the territories are still in a process of development.

CHAPTER II - FOOTNOTES

1. The Senate Appropriations Committee adopted on Sept. 25, 1984 exemptions to the noise rule for Miami Airport. Part of the resolution says that if a foreign carrier faces «unreasonable burdens» in trying to comply and that burden «would not be in the interests of the foreign policy of the United States», DOT could extend the exemption until Dec. 31, 1987, and later if the department so desires.» Aviation Daily, Thursday, Sept. 27, 1984, Vol. 275, No. 18, p. 137.

2. U.K.'s Overseas Development Agency is to put £10 million that is needed to see the deal through for 2 other British Aerospace commuter aircraft for LIAT. This according to Inter Avia Air Letter, Jan. 31, 1985, Vol. No. 10, 681.

3. «The Netherlands development assistance shall always be conditioned to the complete market protection for the exclusive landing right of the K.L.M.» Interview with Mrs. N. Smit-Kroeze, Secretary of State for Traffic and Transport, Beurs & Nieuwsberichten, Jan. 12, 1986, Willemstad, p. 1.

4. Curaçaose Luchtvaartbesluit 1935, Publicatie Blad 1935, no. 96.

5. Luchtvaartwet 30 July 1926, Staatsblad no. 249.

6. Publicatieblad 1965, no. 44.

7. Suriname left the Kingdom of the Netherlands when it became independent in November 1975.

8. Statuut voor het Koninkrijk der Nederlanden, Oct. 28, 1954, Staatsblad no. 503.

9. Since Jan. 1, 1986 Aruba became equal partner in the Kingdom together with the Netherlands Antilles and the Netherlands. The Minister of Transport negotiated an air transport agreement with the Government of the United States in Jan. 1986. This bilateral has to be ratified by the Kingdom Government in the Hague.

10. Cathalina, C.E., Annotation to the article of Mr. W. Rabus. «The independence of the Antilles, legal aspect of the air transportation concerning the Chicago Convention and bilateral agreements».

11. U.S. Stat, Vol. 30, p. 1754.

12. «An Act to encourage the use of aircraft in commerce, and for other purposes». Public No. 254, 69th Congress s. 41.

13. Air Commerce Act, s. 2(c).

14. Idem note 13, s. 1

15. Idem note 13, s. 9(b).

16. Civil Aeronautics Act of 1938, 52 Stat. 973 (1938).

17. Idem note 16, s. 1(10).

18. Idem note 16, s. 801.

19. Idem note 16, s. 1(29).

20. Public Law 600, 1950, 81st Congress, Chapter 446 - 2nd Session, s. 3336.

21. 94th Congress, 1st Session, H.R. 11200, H.o.R. Dec. 17, 1975.

22. The Constitution of France, 1958 as amended last Dec. 30, 1963. Art. 72, s. 1.

23. Journal Officiel de la République française, 3 juin 1924.

24. By Law of 11 May, 1928 this law was made applicable to the colonies.

25. Law of 16 May, 1930.

26. Ordonnance no. 45-2401 du 18 octobre 1945. Journal Officiel de la République française, p. 11839.

27. Idem note 26, arts. 7 and 10.

28. Law of 19 March, 1946, 46-451; J. Off. 20 March 1946, p. 2294.

29. Decree of 21 August 1947, 47-2029; J. Off. 19 Oct. 1947.

30. Decree no. 51-376, 9 July, 1951; J. Off. 12 July, 1951, p. 7456.

31. Decree of 12 November 1954; J. Off. 13 Nov. 1954.

32. Art. 2: Nul ne peut exercer une activité de transport aérien s'il n'y a été autorisé par le ministre chargé de l'Aviation marchande.

33. Decree of 20 May 1955, J. Off. 21 May 1955.

34. Decree of 18 August 1962, No. 62-993.

35. Idem note 34, art. 4.

36. Decision of 26 October 1978; J. Off. 18 Nov. 1978.

37. For the text of that article see note 32.

38. Idem note 36, art. 4.

39. Idem note 36, art. 5.

40. Idem note 36, art. 6.

41. Idem note 36, art. 7.

42. Idem note 36, art. 8.

43. Idem note 36, art. 9.

44. Cmnd 9218 1928 para. 14 HMSO London.

45. The Dominions were Canada, India, Australia, Newfoundland, New Zealand and South Africa.

46. An Order in Council is legislated by the King in Council. In practice Orders in Council are only enacted on the advice of the responsible Minister, who in matter of air law was the Air Minister till 1945.

47. S.R.O. 1937, No. 1064.

48. Air Navigation (Licencing of Public Transport) Regulations, 1944, Art. 4.

49. Idem note 48, art. 5(1).

50. Air Navigation (Licencing of Air Services) Regulations, 1951; G.N. 87, 1951.

51. Idem note 50, s. 4(3).

52. Report of the West Indies Constitutional Conference, 1961. Held in London, May and June 1961, Cmnd 1417, HMSO London.

53. Idem note 52, p. 10.

54. Idem note 52, Appendix E, p. 37.

55. Report of the Windward Islands Constitutional Conference 1966, June 1966, Cmnd 3021, Annex E, p. 21.

56. Report of the St. Kitts/Nevis/Anguilla Constitutional Conference, 1966, Cmnd 3031 Her Majesty's Stationary Office, p. 26.

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58. Civil Aviation Act 1949 (Overseas Territories) Order 1969, No. 592 Part II, s. 8(1)(b).

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63. The Report of the Jamaican Independence Conference, 1962, London, February 1962 Cmnd 1938, S. 46, pp. 12-13, HMSO London.

64. The Report of Trinidad and Tobago Independence Conference, June 1962, Cmnd 1757, S. 6, pp. 10-11.

65. Report of the Bahamas Independence Conference, 1972, January 1973, Cmnd 5196, s. 40, p. 11.

66. Letter of November 29, 1975 from the Prime Minister of Surinam to the Secretary General of the United Nations. Treaties in Force: A List of Treaties and other International Agreements of the United States in Force on January 1, 1979. U.S. Department of State Publication 8968, p. 186.

67. As far as 1974 Grenada used this same approach when becoming independent. See note 66, Treaties in Force, Jan. 1, 1984, U.S. Dept. of State Publication 9351, p. 68.

68. Note of November 2, 1983 from the Prime Minister and Minister of External Affairs to the Secretary General of the United Nations. Treaties in Force: A List of Treaties and other International Agreements of the United States in Force on January 1, 1984. U.S. Dept. of State Publication 9351, p. 149.

69. Zemanek, Karl, "State Succession After Decolonization" Académie de Droit International, Sijthoff Leyde, 1965 III Vol. 116, p. 215.

70. These are the Bilateral Air Transport Agreement of 1946 USTIAS 1507, 60 Stat. 1499 (Bermuda I) and the agreement entered into by exchange of notes by the Governments of the U.S. and the U.K. of November 22, 1961: Routes between the U.S. and the West Indies, USTIAS 4955.

71. Continued application of certain agreements to scheduled services between the United States and the Caribbean area by the U.S and Trinidad and Tobago airlines. Agreement effected by exchange of notes dated at Port-of-Spain and St. Ann's, Sept. 27 and October 8, 1962. Entered into force October 8, 1962. USTIAS 5029.

72. USTIAS 5244.

73. Landing rights in the Netherlands Antilles were given by the Government of the Kingdom to Sierra Leone (June 13, 1967 Tractatenblad 1967, no. 84), Ghana (July 3, 1960 Tractatenblad 1960, no. 125), Liberia (November 28, 1958, Tractatenblad 1959, no. 4).

Venezuela was given fifth freedom right from the Netherlands Antilles to Miami, the Dominican Republic and Jamaica in exchange for fifth freedom rights from Venezuela to Europe for K.L.M. See Bilateral Air Transport Agreement 1976, the Kingdom of the Netherlands-Venezuela.

CHAPTER III

EXISTING BILATERAL AIR TRANSPORT AGREEMENTS IN THE CARIBBEAN

I - THE DEVELOPMENT IN THE REGULATION OF AIR TRAFFIC SERVICES

The Paris Convention of 1919 declares in the first article that «every Power has complete and exclusive sovereignty over the airspace above its territory». Every state has this sovereignty whether a signatory or not. This sovereignty puts them on an equal footing with other states and entitles them to regulate all the aspects of air traffic over, to and from their territory. Following this declaration many states legislated laws and stipulated the rules that have to be followed when an airline company wants to fly to their territories. The government gives concessions to the airline company. After the concessions are granted the government usually signs a contract for the carriage of mail to and from its territory.[1] Before World War II some European states had bilateral air transport agreements between themselves and with the United States.[2] Traffic rights here were often exchanged only on the basis of reciprocity.[3]

At the Chicago Convention of 1944 the attending states agreed that «international air transport services may be established on the basis of equality of opportunity and operated soundly and economically.»[4] But as the most important nations

at the Chicago Convention could not agree on a formula for the multilateral exchange of traffic rights, international air transport services are governed by three articles of the Convention:

> Article 1 says: The contracting States recognize that every state has complete and exclusive sovereignty over the airspace above its territory.
>
> Article 5 states that non-scheduled flights are permitted into the territory of the other contracting state subject to the right of the latter to impose such regulations, conditions or limitations as it may consider desirable.
>
> Article 6 states that no scheduled international air service may be operated over or into the territory of a contracting state, except with the special permission or other authorization of that state, and in accordance with the terms of such permission or authorization.

The result of this is that airlines that want to start air services to and from another state have to make a request through the official channels for landing rights and to carry foreign passengers.

The right to perform international flights can be divided into technical and commercial rights: The two technical rights are elucidated in the International Air Services Transit Agreement (IASTA).[5]

> (a) the privilege to fly across the territory of another state without landing;
>
> (b) the privilege to land for non-traffic purposes.

The commercial rights for scheduled international air services are stated in the International Air Transport Agreement (IATA).[5] These are the five freedom rights:

- The first two are the same as those in the IASTA;
- the third freedom right is the privilege to take on passengers, mail and cargo destined for the territory of another state;
- the fourth freedom is the privilege to take on passengers, mail and cargo destined for the territory of the state whose nationality the aircraft possesses; and
- the fifth freedom is the privilege to carry passengers, mail and cargo between two foreign states.

Exchange of traffic rights has become an important mercantile activity. Each state that has a national airline seeks agreements that give its national carrier the right to participate in the scheduled traffic of cargo and passengers with a view to achieving the greatest possible benefits from the network of international routes and the organization of the respective services.

As already mentioned the many states at the Convention had different interests, different goals and were not able to come to a concensus on multilateral international regulation of these different interests. The participating states at the Chicago Convention were not willing to sign away the right to regulate individually[6] their economic interests in the exchange of traffic rights. So Art. 6 of the Chicago

Convention has been after World War II the «go»-sign for the States to negotiate bilaterally the exchange of traffic rights.

In 1946 the representatives of the United States and Great Britain met in Bermuda to negotiate an agreement on air services between their territories. This agreement,[7] known as Bermuda I, became the blueprint for many other bilateral air transport agreements between the nations of the world.

National interests occupy the major role in the exchange of bilateral air traffic rights. A state's conception of its own interests and needs, the desires of its travelling public, the esteem a national or private carrier generates for the state all combine with military and technological considerations to create a state's air transportation policy. To put it more concretely, the rights that are being exchanged are influenced by:

(a) the bargaining power of each partner during the negotiations;

(b) the air transport policy of each party: Is it liberal, protectionist or in-between?

(c) the volume of the air transport market of each party;

(d) the size of the national airline and its potentialities; and

(e) the political, economic and cultural position of each party.

It has been a fact that the demographic size of a partner or of its market is not always what indicates the actual power of a partner. There are examples of small states that have used matters other than aviation to impose their demands upon a bigger, stronger partner. That is why some writers suggest that to have a clear understanding of bilateral agreements it is necessary to take into account Confidential Memorandums of Understanding (CMofU). These secret agreements contain details related to the bilateral agreements. Unfortunately only the bilaterals are filed with ICAO,[8] never any CMofU.

The bilateral agreements can have different forms. Whether they are protocols, exchanges of notes, agreed memorandums of understanding, air services or transport agreements, they have the identical binding effect of a treaty.[9]

1. The Content of a Bilateral Agreement

As stated above the agreement that gave the framework for most bilateral air transport agreements between nations was Bermuda I, signed between the Government of the United States and the United Kingdom in 1946. Thirty years after the signing of Bermuda I it was replaced by Bermuda II, an agreement with more restrictive regulations. Following the domestic deregulation policy of the U.S. Government this country has been persuading other governments to agree on more liberal

regulations for air traffic between their respective territories. In the next paragraph we will analyze the differences between these three types of bilateral agreements. What follows will give an idea of the subjects that are usually regulated in an air transport agreement. It is not an exhaustive enumeration; other provisions might be added to fit a particular situation. The main points, however, usually remain the same.

Clauses of a Bilateral Air Transport Agreement

Preamble: Here the names of the parties involved and their general objectives for concluding this agreement are stated.

Principles and Objectives for routes: The parties express their desire to establish air services which will take care of the traffic demand with an equitable overall exchange of economic benefits for the carriers.

Grants of rights: Here follows a description of the traffic rights to be exchanged. These are the technical rights (1 and 2) and the commercial rights (3, 4 and 5). The agreed services are performed along the specified routes listed in the Route Schedule or Annex.

Designation of Airlines: This articles gives the parties the right to designate one or more airlines to operate the agreed services.

Authorization of Services: Here the conditions imposed upon the airline(s) are stated.

Revocation and Withholding of Authorization: This clause permits the Contracting States to revoke or withhold the authorization to exercise the rights of this agreement from an airline that does not comply with the laws and regulations of the State granting the rights.

Certificate of Airworthiness: The parties shall recognize each other's certificates of airworthiness.

Applicable Laws and Regulations: Airlines are subject to the laws and regulations of the country to which they are operating.

Airport Charges and other Facilities: This article stipulates the uniformity of charges and exemptions and other regulations related to commercial activities.

Capacity Provisions: This section refers to the capacity to be offered by each contracting party.

Rates and Fares: Some articles deal with the procedure for the establishment of tariffs.

Consultations: This article suggests when and how consultations are to be held.

Arbitration: This states the procedure to be followed in case of dispute between parties.

Termination: The procedure to be followed if one of the parties wishes to terminate the agreement.

Registration: Parties agree to register this agreement with ICAO according to article 83 of the Chicago Convention.

Definition: This article contains terms used in the agreement and their definitions.

Entry into Force: Here the date when the agreement will enter into force is given.

Route Schedule or Annex: Attached to the agreement are the routes for the air service agreed upon by the parties.

In some agreements articles will also be found related to safety and security, that each party commits itself to provide to civil aviation.

Where it is not regulated in the agreement itself as is the case with Bermuda I, the rules for charter air services are sometimes provided for in a separate agreement or in an Annex (as in Bermuda II and the liberal bilaterals). For our purposes the principle aspects of the bilateral air transport agreements are those that regulate the commercial activities of air traffic. It should also be noted that for the Caribbean nations the most important types of agreements are Bermuda I and liberal bilateral air transport agreements. The reasons for this are that these types of agreements have been signed by most of the countries of the Caribbean and because most of the traffic to and from these countries is carried under one of these agreements.

The clauses to be analyzed are those concerning the freedom rights, designation of airlines, capacity, frequency, fares and rates. Some of these clauses, eg. frequency, may not be dealt with at all in some agreements; it depends on the parties to the agreement. In some bilateral agreements of South American states the frequency and capacity are specified in minute detail.

2. The Clauses of the Bermuda I Agreement

(a) Freedom Rights

The freedom rights that are important here are the third, fourth, and fifth freedoms. As parties can as a rule easily agree on

how to deal with third and fourth freedom traffic, the problems usually arise with the fifth freedom and stopover passengers.

Fifth freedom traffic is, according to the Bermuda I agreement, «secondary justification» traffic. Stopover traffic, a right granted to the traveller by the airline, can also be considered secondary justification depending on the policy of the state where this stopover takes place. When the stopover is of long duration at a point in the country of which the designated airline is a national, enroute to or from a third country, then that traffic may be considered to be «primary justification» where seen as a combination of third and fourth freedom traffic.[10] Stopover is often used to promote tourism. There is no standard internationally accepted criterion for the duration of stopovers. If this stopover question is not clarified a passenger may be disqualified from continuing his trip with the same foreign airline if this trip is to be within the same territorial jurisdiction. This traffic could then be considered cabotage,[11] which is restricted according to the Chicago Convention art. 7 and which is also almost never permitted under the clauses of a bilateral agreement.

The rationale behind fifth freedom traffic is that it is needed to economically sustain long international routes; if this right is not granted it could aggrevate the economic circumstances of the operation. While some authors consider fifth freedom an indispensable right for the operation of most

international air services and an essential instrument for the establishment of an integrated system of air traffic,[12] others find that it should be exchanged only when regional and local services are inadequate[13] and otherwise it weakens the grantor state's negotiating position towards the third state.[14] At one time the U.S. carriers did not seem to be interested in fifth freedom rights in the Caribbean because «vacationers choose one spot and stay there».[15]

In the U.S.-Barbados liberal bilateral agreement the U.S. Government was willing to grant an additional gateway to the airlines of Barbados when this country «...grants U.S. designated airlines unrestricted intermediate rights on flights to Barbados....»[16]

(b) Designation of Airlines

The Bermuda I clause that deals with this matter is not uniform. According to the particular situation, the clause may read that each party can designate one airline or «more» airlines for the purpose of operating the agreed services on the specified routes. This designation has to be done in writing to the other contracting party. Some bilaterals specify that each contracting party has the right to withdraw, by diplomatic note to the other contracting party, the original designation and substitute another airline.[17]

How many «more» can be is not specified. But the clauses on capacity and competition surely give the limits on the number of airlines a contracting party may designate. Designation of too many airlines by one party can cause a disequilibrium in the market share. This would run against the principles of «fair and equal opportunity». Therefore, multiple designation, where agreed upon in bilaterals, is subject to mutual agreement and depends on the circumstances in each case.

One other aspect of the designation of airlines is that the non-designating contracting party has the right to refuse the designation (i.e., not authorize it) or impose conditions on it, in any case where that contracting party is not satisfied that the designating contracting party or its nationals have the «substantial ownership and effective control» of the designated airline.[18]

In the past authorities of the U.S. Civil Aeronautics Board were reluctant to grant permits to some new emerging Caribbean airlines to operate the agreed routes of the bilateral air transport agreements because of the requirements of substantial ownership and effective control.[19]

In 1966, Air Jamaica Limited was granted a 3-year operation permit despite the conclusion that:

> ...many important aspects of the ownership and control and a very substantial part of the operation of Air Jamaica will be in the hands of BOAC and BWIA and in great part will constitute operations by those two carriers.

But the principle reason for granting the permit was that:

> /T/he applicant here is the national carrier of Jamaica, a friendly neighbouring Caribbean nation, which has only recently achieved its independence.[20]

It was in the «public interest» to limit LIAT's[21] permit to a 5-year term, «but not attached to the ownership and control» requirements proposed by the CAB examiner. LIAT's stock was for 82% owned by persons not of U.K. nationality but by BWIA of Trinidad and Tobago and U.S. citizens. The requirement for British ownership and control would force the carrier into hands of British investors and this would impede the process of the establishment of a multinational Caribbean airline.[22]

In 1969, Dutch Antillean Airlines (ALM), was granted permission to engage in foreign air transport to and from Miami and New York[23] for a indefinite term despite the findings of the Examiner that:

> in the light of the wet lease agreement /KLM-ALM/ and other cooperative arrangements between the carriers, that KLM's control over ALM's Antilles-New York operation will be sufficient to cause it to be engaged in foreign air transport on behalf of ALM.[24]

Although the Government of the Commonwealth of the Bahamas owned 87.6% of the stocks of Bahamasair there were non-Bahamians with veto power in the management of the airline. The C.A.B. concluded that «the record does not establish that

effective control of Bahamasair currently rests with Bahamas citizens». Therefore a foreign air carrier permit[25] was granted for 5 years «...to enable the Board to re-examine the question of control at a later date.»[26]

Some small developing states in the Caribbean and the South Pacific got and even now are into great financial problems because of their efforts to own a national airline in order to operate international air transport services to support their economy.

In the Canada-Cuba air services agreement[27] there is a provision in the event of a temporary lack of appropriate aircraft to operate the agreed services. The designated airline can then contract aircraft from an airline registered in the other contracting party or a third country. But this is only for a temporary situation.

To resolve the problems of having to own an airline with great financial risk some members of the ICAO-Economic Commission drafted a resolution for the Assembly to adopt that:

> /u/rges contracting States to accept the designation of and allow an airline substantially owned and effectively controlled by one or more developing State or States (or its or their nationals) belonging to a regional economic grouping to exercise the route rights and of air transport rights of any developing State or States within the same grouping; under mutually acceptable terms and conditions including air transport agreements negotiated or to be negotiated by the parties concerned; ....[28]

With the adoption of this resolution the ICAO members that have no national airline will be able to disignate a third country's airline (from the same region) to operate the agreed services they acquire from the bilateral partner. This could be very positive in the process of regional integration of air transportation. At the Fourth Caricom Summit in July 1983 the heads of States of the Caribbean Community agreed to sign an intergovernmental agreement on cooperation in air transportation among member states. The agreement provides, inter alia, for one member state to designate an airline owned by another member state as its national carrier.[29]

In the spirit of this resolution and the Caricon Agreement the Government of Canada accepted the designation of BWIA (Trinidad and Tobago International Airways Corp.) by the Government of St. Lucia notwithstanding art. VI, para. 1(c) of the bilateral air services agreement between the two governments.[30] What can be concluded from this is that the small developping states have a very positive solution if they need air transport or an airline for economic reasons. There is no need to establish an airline for transportation that can be done by an already established bigger airline, while at the same time, the State, not owner of the airline, will be able to benefit from this transportation.

(c) Capacity

Capacity is defined as the payload of the aircraft available on a route or a section of a route. In relation to a specified air service, it means the capacity of the aircraft used on a service, multiplied by the frequency of operation by such aircraft over a given period and route or section of a route.[31] The two variables to be adjusted here are frequency and type of aircraft.

Where the capacity is left to the market forces, frequency and/or type of aircraft will be changed by the airlines themselves to adjust to the demand. In a protective bilateral agreement frequency and type of aircraft are specified in advance (i.e. predeterminated). Each contracting party has the right to use that type of aircraft on so many flights (per week) to and from the other contracting party. Both approaches have the same basic principle: to maintain a broad equilibrium between air transport demand and supply.

These two approaches should lead to a fair and equal opportunity for all the designated airlines to operate the agreed air routes. Competition among the carriers is restricted even further when they have to take into consideration the interests of the carriers of the other country so as not to affect, unduly, each other's services. When the Americans put this clause into the bilateral agreement with the U.K. their intention was that this would prevent unfair trade practices between the carriers.

Equal opportunity to operate will not guarantee equal share of the traffic nor equal share of the revenues.[32] If both competitors have to reach the finish at the same time there is no stimulation for the partners to produce something different or engage more intensively in the process to supply service to the travelling public.

The question of how much capacity is needed for the agreed air routes is approached in different ways: (a) the governments or aviation authorities of both parties agree that each party will use an aircraft that has X number of seats;[33] (b) it can be left to the designated airlines to serve the routes with a pooling agreement. By themselves the airlines will determine the capacity to be shared. In most cases though, the pooling agreement is not mentioned in the bilateral agreement or Annex;[34] and (c) the Bermuda Agreement provides a means of determining the necessary capacity. Capacity is best at a 60-75% load factor. The primary objective is that the capacity offered meets the traffic demand between the country of nationality of the carrier and the country of ultimate destination of the traffic. Supplementary capacity may be needed to carry fifth freedom traffic but that has to be related to:

(1) traffic requirements between the country of origin and the country of destination;

(2) requirements of through airline operation; and

(3) traffic requirements of the area through which the airline passes after taking into account local and regional services.[35]

For some countries fifth and sixth freedom traffic[36] is very important for the economy of the national airline. Therefore, such traffic should be given a place corresponding to its relative value within the general system, i.e. one corresponding to the operator's needs.[37] In some bilateral agreements these traffic rights are excluded.[38]

Another form of capacity control seems to be sales restrictions on fifth freedom sectors imposed by governments for traffic originating in their territories.[39]

Airlines are requested to file, periodically, the statistics on traffic carried on the agreed routes enabling capacity to be adjusted, ex post facto to the demand. Parties have also agreed to regular and frequent consultation on this matter.[40]

(d) Frequency

Frequency per se was not included as part of the Bermuda I agreement. Some governments introduced this in their agreements as a tool to control the capacity that was to be offered, and, in this way, to restrict the competition between the carriers. On a certain route the airlines are only allowed to have a certain number of flights within a certain period of time.

This clause is found mostly in bilateral agreements among governments that have a protectionist air transport policy. For examples of these agreements see note 38.

(e) Fares and Rates

Fares and rates are the other subjects that the parties to the Bermuda I agreement had to arrange in such a manner as to leave space for airlines to do business but at the same time to supply them with the tools to have control on the level of the price that the airlines charge for their service on the agreed routes. The desire of the two parties was:

> ...to foster and encourage the widest possible distribution of benefits of air travel for the general good of mankind at the cheapest rates consistent with sound economic principles.[41]

The fares and rates had to be established by the carriers themselves. These have to be «fixed at reasonable levels, due regard being paid to all relevant factors, such as cost of operation, reasonable profit and the rates charged by any other air carriers»[42] on the same route. To come to the level the carriers shall use the IATA Traffic Conference procedure.[43] The tariffs, agreed between the designated airlines in consultation with other airlines on the route, will then be submitted for approval to the governments. Both governments must approve the tariffs for them to come into force. A detailed procedure is described in paras. (e) to (g) of Annex 1 of Bermuda I to be followed

when governments cannot agree on the tariffs proposed. The proposed tariff may go into effect provisionally pending the result of an advisory report by ICAO in case of no consensus by the aeronautical authorities concerned.

In some cases there is no mention of the IATA Traffic Conference instead the tariffs agreed on between the designated airlines are submitted directly for governmental approval.[44] Other bilateral agreements only mention «any competent organization accepted by both Contracting Parties.»[45]

3. The Bermuda II Bilateral Agreement

The degree of government involvement in the exchange of traffic rights is stronger in this type of agreement. This type of agreement came as a reaction by one of the contracting parties to the Bermuda I agreement. For this party (U.K.) the «fair and equal opportunity» never became reality because the American carriers' revenues were twice as much as those of the U.K. carriers. The reaction was that the clauses of the Bermuda I agreement had to be more restrictive to guarantee fairness and equality for the designated airlines. Therefore, the competition tools of capacity, frequency and type of aircraft had to be predeterminated by the aeronautical authorities of the contracting parties.

Stringent predetermination type bilateral agreements have been signed by developing countries wishing to protect

their national carriers from too much competition from stronger foreign airlines. As has been done above with the Bermuda I agreement, we will now review some clauses of the Bermuda II agreement.

(a) Freedom Rights

Besides the first, second, third and fourth freedom rights, the Bermuda II agreement also grants fifth freedom traffic rights to the contracting parties. This right shall be exercised in accordance with «the general principles of orderly development of international air transport.»[46] Also the right to operate international charter air services[47] has been dealt with in Bermuda II.

As mentioned above, some bilateral agreements, although they have similar clauses, to this Bermuda II agreement do not grant fifth freedom rights on certain routes.[48]

(b) Designation of Airlines

Art. 3 of the agreement says that contracting parties may designate one airline or airlines for the purpose of operating the agreed services. Two airlines may be designated by each contracting party, but only according to certain provisions related to the amount of passengers during a period of time.

(c) Capacity

The designated airline(s) shall have a fair and equal opportunity to compete.[49] They have to take into consideration the interests of the airline(s) of the other contracting party so as not to unduly affect that airline's or those airlines' services on all or part of the same routes. The requirements for fifth freedom traffic rights are the same as in the Bermuda I agreement. The frequency and capacity of services shall be closely related to the requirements of public demand in such a way as to provide adequate service to the public and permit reasonable development of routes and viable airline operations. Much attention will be paid to the efficiency of operation and to the provision of frequency and capacity at such a level as to accommodate the traffic at load factors consistent with low tariffs. These provisions are to prevent excess capacity on the routes.[50]

(d) Frequency

Frequency as a means to regulate capacity was not dealt with in a specific article. But Annex 2 specifies that the designated airlines shall file with both contracting parties its schedules for services and that the schedules shall specify the frequency of services, the type of aircraft and all the

points to be served.[51] This gives an excellent opportunity for prior approval of the capacity to be offered. Then follows an extensive procedure to deal with any dissatisfaction by a contracting party with the frequency requested.

(e) Tariffs

Tariffs shall be established at the lowest level consistent with a high standard of safety and adequate return to efficient airlines operating on the agreed routes. Another relevant factor can be the need of the airline to meet competition from scheduled or charter air services. The proposed tariffs, agreed among the carriers and following the procedures of IATA or any other association of international airlines, shall be submitted to the aeronautical authorities of both contracting parties for approval.

(f) Charter Services

Different from Bermuda I, Bermuda II deals with charter air service in art. 14 and Annex 4. Charter service was only granted third and fourth freedom traffic rights. The contracting parties will encourage the development of efficient and economic charter air services. Charterworthiness is governed by country of origin rule,[52] i.e. the regulations of the country where the traffic charter originates.

Art. XVIII of the France-Dominican Republic bilateral agreement requests a special authorization for the charter service and also a special authorization for the tariffs to be applied for these charter trips. This comes very close to what is set out in art. 5 of the Chicago Convention about non-scheduled air services.

4. Liberal Bilateral Air Transport Agreements

This type of bilateral agreement originated in the United States.[53] There have been two factors that encouraged the development of liberal bilaterals. In the international field the U.S. and the U.K. signed the Bermuda II agreement which was more restrictive than its predecessor, the Bermuda I. The Americans wanted to find a way to prevent having to sign a similarly restrictive agreement in the future.[54]

Domestically the deregulation process was under way; the government wanted to be less involved in the air transportation regulation. It was not possible to conduct deregulation strictly domestically. Harbison[55] mentions two reasons for this:

1. It was difficult for the U.S. airline network to successfully operate under distinctly separate systems;

2. Foreign airlines depend on U.S. carriers for connecting transportation because of their limited access to the gateways. This will result in the situation that the domestic fares will affect most through fares beyond the first gateway.

The United States was able to agree with several countries on this new type of bilateral. It has been suggested that the U.S. was more enthusiastic with a country that is strategically well situated; next to an important aviation country that was more or less unsympathetic to a more competitive relationship with the United States. It seems that the C.A.B. was following special strategies to impose its liberal air policy on important aviation countries that were so far unwilling to agree to this.[56]

Wassenbergh[57] states certain conditions for a government to adopt a liberal air policy:

1. The government wants to attract as many air services as possible in the interest of the public and the national economy.

2. The government feels that its national carriers are sufficiently strong and efficient to meet increased competition or is not interested in safeguarding a national participation in the provisions of air services through protective measures.

And a very highly ideological point of view that:

3. ...liberal air policy for the conduct of international air services can best serve the interest of the nations of the world by bringing about a rapprochement of the peoples of the world and promoting world trade.

We called this last condition very highly ideological because if the government does not see any benefit for its people or its airlines it is very unlikely that it would adhere to this opinion.

The above mentioned conditions may well be favourable to a nation that has a large traffic generating market and one or more strong airlines. For other countries that do not possess these, the reasons to conclude a liberal bilateral agreement with the U.S. could be: (1) to receive additional gateways in the U.S. for more access to the U.S. market; and/or (2) because of fear of diversion of traffic to neighbouring countries that have concluded a liberal bilateral agreement with the U.S.[58]

This fear is based on the presumption that a liberal bilateral agreement will allow more competition among the airlines flying the agreed routes and this will lead to lower fares and rates. Those countries that depend heavily on U.S. tourism are especially vulnerable for such a «good buy».

Although their national airlines are not financially and technically able to compete with the American carriers, the governments are under pressure to agree to a liberal bilateral agreement with the U.S. This pressure comes from the economic sector that sees here an opportunity to have more tourists if the tariffs are lower due to competition among the airlines. On a higher level the government sees an opportunity to make its country more competitive with other countries in the region or other regions of the world with similar conditions.[59]

Until the beginning of 1986 the U.S. signed liberal agreements with four Caribbean countries.[60] These governments have surely entered an agreement with great potential risks because it is still to be seen if the positive aspects of this type of bilateral agreement will surpass the negative financial results it has on the national airline. The U.S. White House Policy announcement of August 21, 1978 expressly states that the general objectives of the new aviation policy are «designed particularly for major international air markets.»

Although this «open sky» policy has one goal, i.e., to liberalize the regulatory air transport environment, the details of this policy are somewhat different according to the size of the other contracting partner. Following is an analysis of the clauses.

(a) Freedom Rights

Besides third and fourth freedom rights, fifth and sixth freedom rights are also exchanged. These include rights from intermediate points to the other contracting parties and from the contracting party to points beyond.

U.S. carriers will usually have the right to serve foreign countries from any point in the U.S. via any intermediate points to any beyond points. Foreign carriers will have a specified number of points in the U.S.[61]

(b) Designation of Airlines

The contracting parties shall have the right to designate by diplomatic note as many airlines as they wish to operate the agreed international services. These designations can be altered or withdrawn at any time.[62] The airlines have to comply with the requirements of substantial ownership, effective control, the national laws and regulations and safety regulations.

Even if airlines of one contracting party withdrawn from the routes there is still competition in the case of multiple designation. Carriers of the other contracting party can still compete with each other on the route specified in the agreement. This could then lead to a monopoly of one party. If the airlines from the other contracting parties are forced out of the market because of heavy competition[63] then we believe that this goes against the air policy of any nation. It would be an abnormal situation that because of foreign competition a country has to concede all its third and fourth freedom traffic to foreign carriers on a specific route.

Jamaica was the first Caribbean nation to sign a liberal bilateral agreement with the U.S.[64] The agreement stipulates that each party may designate «an airline or airlines» to service the routes.[65] Nine months later the Netherlands Antilles and the U.S. agreed that «[e]ach party have the right to designate as many airlines as it wishes.»[66] It was agreed

that the airlines designated by the Government of the Netherlands Antilles shall not include any airlines of the Netherlands (Art. 3(3)).

The Memorandum of Understanding stipulates further that on two routes, designation is limited to one airline of each contracting party.[67] Either party may designate an additional carrier on the above mentioned routes if the previously designated airlines have been unable to maintain levels of service adequate to meet market demand.

In February 1980 the C.A.B. issued an Order[68] stating that its intention was to certify all fit applicants to provide services to points in the Caribbean (other than points in Venezuela and the Netherlands Antilles). The reasons mentioned were: (1) There is a high volume of existing and anticipated traffic from the U.S. mainland, particularly from inland cities to the Caribbean; (2) The present levels of service are inadequate to meet the needs of passengers and communities particularly Puerto Rico and the Virgin Islands; and (3) The best means to meet the need for improved service is to grant the applications of all fit, willing and able carriers for which illustrative service proposals have been submitted. This means that the applicant has to prove that the proposed service is consistent with by the public convenience and necessity, but he does not need to have a present intent to start the services nor an intent to commence service in the near future.

This seems to be a potential threat to carriers servicing the Caribbean from the United States. They have to be very efficient and very competitive so as not to allow more entrants or to scare potential entrants away from the market.

In limited entry markets the Board would follow the activities of the selected carriers and consider measures to replace those that do not perform effectively.[69]

In the agreement between the U.S. and Barbados, Art. 3(1) stipulates multiple designation of airlines. (The designation of airlines in the agreement between the U.S. and Aruba is not available at the moment.[70] The U.S. is apparently also negotiating with the Dominican Republic on a new pro-competitive agreement.[71])

In the situation of the Caribbean, with high season and low season, the multiple designation of airlines can have some undesirable effects for the airlines. In the high season when there is heavy demand for air service to the Caribbean many air carriers would like to start their services from the U.S. cities. The carriers that have been servicing these cities on a continuous basis and are hoping to receive extra revenues in the high season to compensate for possible losses, see that they will have to share the traffic with those carriers that have entered the service to make a quick buck. Therefore, it is recommended to preserve single destination of airlines for one or two U.S. cities and apply multiple designation to other gateways.

(c) Capacity

The designated airlines will have fair and equal opportunity to compete in international air transport services. Each party will take the necessary measures to eliminate all forms of discrimination or unfair competition practices. There is a prohibition against unilateral capacity limitation. The designated airlines are free to determine the capacity, frequency and type of aircraft to be used.

What will happen in the case of overcapacity? For the small Caribbean airlines it is difficult to reduce capacity by changing aircraft because their small fleets do not offer them much choice. Those airlines that are not able to compete will fall out. If only one airline of each contracting party remains in the market, it will request its government to start negotiations with the other contracting party to reduce frequency or implement other measures. For only one airline to reduce its frequency in a pro-competitive market would be to reduce its total traffic.[72]

(d) Tariffs

Tariffs, one of the principal instruments of the competition between airlines have also been released from too much governmental regulation and restriction. The liberal bilateral air transport agreements have different systems to

regulate tariffs. Each party to the agreement will encourage individual airlines to develop and implement competitive prices. The tariffs are set by the airlines individually and are based on «commercial considerations» in the market place. The U.S.-Barbados agreement specifies this in «needs and conditions» of the market place.[73] Government intervention in the pricing of the services is limited to:

(a) prevention of predatory or discriminatory prices or practices;[74]

(b) protection of consumers from prices that are unreasonably high or restrictive because of the abuse of a dominant position;[75] and

(c) protection of airlines from prices that are artificially low because of direct or indirect governmental or other external subsidy or support.[76]

The consumer is the one that receives most protection in these liberal bilateral agreements, not the airlines, the competitors. Can an airline charge any tariff? In principle yes, as long as it stays outside the radius of clause (a) and (b) mentioned above.[77]

Does a government have any other right to oppose the introduction of such a tariff? Not according to the agreement. The government gives certain specific intervention clauses. The government will have to request special consultations on this matter with the other contracting party.

The bilateral agreements mention different systems to disapprove a tariff:

(1) the system of dual disapproval;
(2) the system of country of origin disapproval;
(3) the band pricing-system.

Besides these systems, airlines operating the routes specified in the bilateral agreement can match prices of their competitors.

First let us have a closer look at the three systems that can be found in an agreement:

(1) Dual disapproval (mutual disapproval): A tariff shall not go into effect or remain effective if both parties disapprove it. It is extremely unusual for a government to agree with a foreign government that its national airline wants to or is charging a price that is unreasonable for its competitors. In theory, every airline will set its own price.

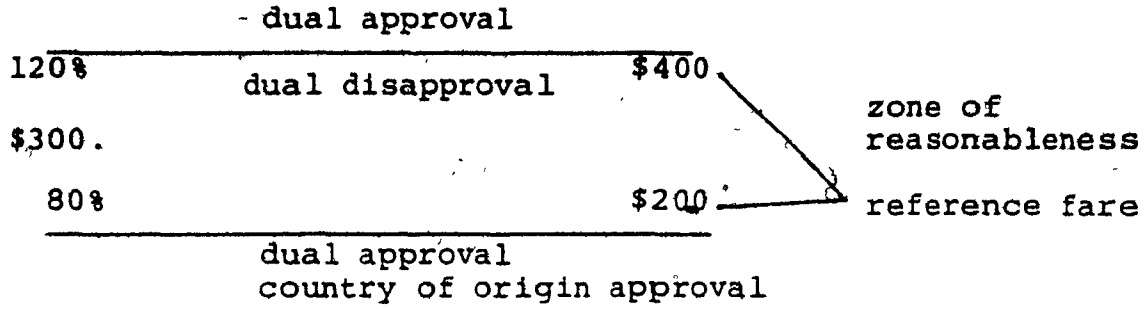
(2) Country of origin disapproval: This term is derived from the wording of the clause that:

> ...either party may take action to prevent the inauguration or continuation of the price for which a notice of dissatisfaction was given, but only with respect to traffic where the first point on the itinerary (as evidenced by the document authorizing transportation by air) is in its own territory.[78]

(3) The band pricing system (or fare band system): The principal element is to establish one or more reference fares around which various other fares may fluctuate. The reference fare(s) can be set by the government where the traffic originates[79] or by mutual agreement.[80]

The fare may fluctuate freely between the two reference fares or a certain percentage over the reference fare, or a certain percentage of the reference fare.[81] Here the system of dual disapproval is applied. If the fare is outside the band then the mutual approval is applicable.[82]

For cargo and first class prices the agreement says that only dual disapproval can prevent them from becoming effective.[83]



(e) Price Leadership and Matching

As we have seen the bilateral agreement grants to the airlines concerned the right to ask (under certain restrictions) any price they want for their services. In practice this is not always possible because the competition will not allow it. It does not allow much choice in price range on certain routes. When one airline sets a very competitive price for a route the other airlines concerned will have to follow if they want to stay in the market.

The term price leadership is not mentioned as such in the agreements. The clause of the agreements reads:

> Neither Party shall take unilateral action to prevent the inauguration or continuation of a price proposed to be charged or charged by (a) an airline of either Party or by an airline of a third country for international air transportation between the territories of the Parties,....[84]

The U.S.A.-Barbados agreement has no clause like this. This means that an airline of a third country can not be a price leader.

When the leader sets a new competitive price for a route any other airline can meet or match this price. This includes also airlines of third countries flying this route. (Sometimes only allowed on reciprocal basis.[85]) It is also possible for an airline of a contracting party to match prices on routes between the other contracting party and a third country, i.e. on fifth freedom traffic routes. Meeting or matching the leading price can be done without government intervention.

(f) Charter Flights

Under the liberal bilateral agreement charter air services are also regulated. The charter services are performed under the country of origin charter rules, i.e. the laws and regulations of the contracting partner where these services begin, are applicable. In case the rules of one contracting party are more restrictive than the airline of the other contracting party shall be subject to the least restrictive of such terms.

The parties shall have the right to operate third and fourth freedom combination one way or roundtrip charters with stopovers enroute. It is also agreed that each contracting party's airlines can carry sixth freedom traffic in combination with scheduled air transportation[86] or only charter service with a stopover of at least two consecutive nights in its territory.[87]

For the route Miami-Netherlands Antilles the M ofU. gives specific restrictions related to the booking of the charter trip.[88] This liberal charter agreement makes it possible for a Caribbean charter airline to operate from any point in the United States to at least two points in the Caribbean as a single charter roundtrip.

II - THE CONTENTS OF THE BILATERAL AGREEMENTS OF THE CARIBBEAN NATIONS

The Chicago Convention Art. 83 requests all ICAO members to file their bilateral agreements with the Organization. But this does not happen all the time. There are quite a number of bilateral agreements that have not been filed. This will surely impede the completeness of any research on air transport.

The completeness of such research is also influenced by the Confidential Memorandum of Understanding that is often signed with the bilateral air service agreement, but not

available for the public. This can make many unseen changes to the bilateral agreement.

Administrative agreements between aeronautical authorities of two countries are also used to allow air services to be performed[89] while these agreements are not filed with ICAO. It is also not uncommon that air services are performed between two countries under a special authorization given by one government to a foreign airline.[90] According to their declaration at independence many of the British West Indies nations accepted the rights and obligations from bilateral air transport agreements signed by the United Kingdom on their behalf and which have routes to or from their territories. This «adherence by means of succession» has been used mostly in the relation with the United States. Most of the new nations did not negotiate new bilaterals because there was no need and they had no airline for which to request reciprocal rights.

Not all the bilaterals that are filed with ICAO have been analyzed here. For the list of the bilateral agreements see Annex II.

There are some bilaterals that have been signed by Caribbean nations with countries in Africa[91], that are not taken into account because they are hardly ever applied for regular traffic of passengers. There are also agreements

signed by the colonial powers that give landing rights in their territories in the Caribbean,[92] while there is no traffic that requests a connection from the Caribbean territory to that country.

The routes in the bilateral agreement are sufficient to connect the Caribbean with all major cities in North, South, and Central America, Europe, and some African cities, starting from Caribbean airports to origin (see Annex II). This means that in theory there would be no problems for a passenger who wants to fly with interline connections from the Caribbean on a Caribbean airline to any major city mentioned in the territories above.

Because of the political situation it is not possible to carry the passengers without restrictions. Besides restrictions on fifth freedom traffic there is also the problem of cabotage. No foreign airline may carry passengers between two points in the same territory.[93] This can curtail traffic to and from a territory and at the same time restrict economic growth. This is especially felt in the Netherlands Antilles and the French Antilles. According to the bilateral agreements the other contracting party has no right to carry passengers between the mainland and the islands. The result is that in case the dependent territories have no airline that can fly between the mainland and the islands, the airline(s) of the

colonial power has (have) the monopoly on this route. To protect this monopoly the colonial government will restrict all possible competition in that market.[94]

A closer look at the bilateral agreements show us that some have articles identical to Bermuda I, four are liberal and others, even if they have certain articles similar to the Bermuda model, establish in a definite form the predetermination of capacity by determining the aircraft to be used, the frequency and/or the number of seats that can be available on each flight. Two thirds of the agreements we have here show that there is no restriction on capacity between those countries.

As regards regional traffic, eight of the twelve agreements between the nations in the Caribbean show that these nations favour a non-predetermination of capacity. The rest clearly determine the capacity by one of the forms described above. This could mean that the Caribbean nations in the majority of cases see that their national airline is able to compete with the airlines in the region. Five of the six partners of the agreements that determine the capacity are independent states. The Governments of the U.K. and France were involved in six of the bilateral agreements that do not predetermine the capacity.

None of the agreements signed with the U.S.A. or the U.K. contain predetermination clauses while with South American countries, four out of the five agreements contain restrictions on capacity.

Although these agreements looked at here are in existence, several of them are not in effect in some cases for political reasons; in others because insufficient traffic between the partners does not justify the economic operation of the services and in some because the territories have become independent states. In this last situation the airline of the colonial power then loses its right to operate from the ex-colony. There is no cabotage right any longer.

The proportion between the number of agreements the Caribbean nations have with countries outside the region and among themselves gives a clear indication that there is little interest in the establishment of intra-regional air services. Consequently, there is insufficient direct air service between the islands of the Caribbean. The argument against this might be that there is not sufficient traffic to start a regular air service. But the travelling public does not like to go «close to home» with many stopovers. The kind of service we have at present will not encourage inter-Caribbean traffic.

The connection between the mainland to most of the individual Caribbean islands is most of the time so good that a traveller from Europe or North America can reach one Caribbean island faster than a Caribbean traveller can go from one island to another. To stimulate inter-island traffic it is necessary to make it attractive to travel; the service has to be dependable and the fares have to be attractive. If some

countries in the Caribbean can sign liberal bilateral agreements with traffic generating countries it is an excellent way to try to stimulate inter-Caribbean traffic using, to begin with, a liberal administrative agreement with a fare band system.

The reason that most of the air services are signed is to make it possible for tourists to come to the Caribbean islands. That is why there are no restrictions on the capacity from those traffic generating markets. Another reason is that the traffic generating country does not want any restriction on capacity to be applied to its airlines.

The question then arises of negotiating power of the Caribbean nations. Among themselves they would be equal but there is no equality when one of them has to negotiate with a traffic generating country in North and South America or Europe. Most of the Caribbean is new nations with insufficient experience in negotiating air transport agreements. As there is a spirit of cooperation among certain Caribbean nations (Organization of Eastern Caribbean States, Caricom, Caribbean Development and Co-operation Committee), there exists within this region the possibility of concluding a multilateral agreement of cooperation on air services in these countries. This could include an agreement with basic and standard principles for interchange of commercial rights in the scheduled and non-scheduled air services and cargo flights.

Such a multilateral agreement could also regulate the co-operation and pooling of efforts and resources in technical and economic areas of all Caribbean nations that are willing to co-operate for an integration of the regional air transport. This agreement has to replace the three different kinds of bilateral agreements and other arrangements the Caribbean nations have with third countries and with each other.

All the Caribbean nations seem to be in the same situation: air transport has to facilitate the communication between their territory and the world outside. The principal aspect of this communication is to make it possible for tourists to visit the country to bring in hard currencies. The more the better for the economy. They have different opinions how to maximize this traffic. Some have a national airline to protect, others have no airline to protect but depend on foreign airlines. The national airlines are having financial problems due to competition mostly from airlines outside the region. Some sign agreements with protective clauses for their airlines, others think the solution for their ailing economy is an «open sky» policy towards the United States.[95] To come to a multilateral agreement we have to come to a regional consensus over the wishes and needs of the Caribbean countries and how to realize these in a regional co-operation.

CHAPTER III - FOOTNOTES

1. See for the negotiation tactics by PANAM, Walter W. Wager, «Les Accords entre la «Pan American Airways» et les gouvernements étrangers», 1 Revue Général de l'Air, 1950, p. 76.

   Even before starting its flights in the Caribbean the direction of KLM requested the representative of the Dutch Government in Venezuela to negotiate for possible KLM flights to and from this country. As was reported:

   > «Contrary to the view of most governments in Europe, the Venezuelan Government considered the concession for a foreign airline not a question that had to be dealt with along the official or diplomatic channels, but purely as a commercial affair which that government was going to handle directly with the company concerned. Diplomatic assistance or intervention was deemed undesirable.»

   KLM's Caribbean decade. The story of the operations of the Royal Dutch Airlines in the West Indies since Dec. 1943, see p.16. For KLM's concession in Haiti see, p. 27, see Trinidad, p. 20.

2. See P.P.C. Haanappel, «Bilateral Air Transport Agreements 1913-1980» 5 Int'l Trade Law Journal, 1979 No. 1, p. 241.

3. See G. Cribbett, «Some Int'l Aspects of Air Transport» Journal of the Royal Aeronautical Society (1950) p. 669.

4. Preamble of the Convention on Int'l Civil Aviation signed at Chicago on December 7, 1944.

5. International Air Services Transit Agreement and International Air Transport Agreement signed at Chicago on Dec. 7, 1944.

6. As per July 1, 1986, 11 States have signed the Int'l Air Transport Agreement.

7. The original English text is in TIAS 1507.

8. According to Art. 83 of the Chicago Convention the bilateral agreement shall be filed with the ICAO Council which shall make them public.

9. The Vienna Convention on the Law of the Treaties (1969) Art. 2(1)(a): «Treaty» means an international agreement concluded between States in written form and governed by international law whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

10. Different countries have different duration periods. IATA says that the duration can be no longer than the duration of the ticket. For some countries stopover can be for some days and others for some weeks. See Bin Cheng, The Law of International Air Transport, Stevens, London 1962, p. 324. A period of 12 days or less was once agreed upon by the U.S. and the Netherlands as being «of short duration». See U.S. TIAS 6797.

11. Cabotage right is the right granted to a foreign airline to take on in the territory of the grantor passengers, mail and cargo destined for another point within the territory of the grantor state.

12. H.A. Wassenberg, «Innovation in International Air Transport Regulations - The U.S.-Netherlands' Agreement of March 19, 1978», 3 Air Law 1978, No. 3, p. 138.

13. John C. McCarrol, «The Bermuda Capacity Clauses in the Jet Age», 29 JALC 1963, p. 115.

14. N.M. Matte, Treatise on Air Aeronautical Law, The Carswell Co. Ltd., Toronto, 1981, p. 146.

15. Aviation Week and Space Technology (AWST), May 24, 1982, p. 39.

16. U.S.-Barbados Bilateral Air Transport Agreement, Annex I, Section 1B, note 2, ICAO No. 3221.

17. See bilateral air transport agreements between Canada and Jamaica, Art. 3, para. 2; Canada and Trinidad and Tobago, Art. 3, para. 2; Canada and Haiti, Art. 3.

18. These two requirements can be found in the International Air Services Transit Agreement, Art. 1, s. 5, the International Air Transport Agreement, Art. 1 s. 6 and most of the bilateral agreements. Bin Cheng cited Lord Swinton of the U.K. Delegation at the Chicago Conference in 1944 speaking on the ownership.

> «We want to agree, if we can, that we shall know, and everyone shall know, with whom they are dealing, and if an airline is registered in a particular country it is a national airline and not something quite different, masquerading under an assumed nationality.»

B. Cheng, idem note 10, p. 375. This remark is quite well placed for the situation of the several «national airlines» in the Caribbean and Central America. In several countries in this area the national airline was a subsidiary of PANAM. See for details R.E.G. Davies, Airlines of Latin America Since 1919, Putman & Co. Ltd., London 1984. Apparently it was the «invasion» of the Germans in the aviation development in Latin America that prompted the United States to introduce this clause in the Havana Convention of 1926.

19. Before starting to operate the agreed routes, the foreign designated airline has to apply for a permit from the U.S. authorities according to the Federal Aviation Act 1958, s. 402. The airline is screened to see if it complies with the requirements of the bilateral agreement and other regulations and laws of the U.S.

20. Air Jamaica Limiced foreign air carrier permit, 44 CAB Reports 169 (1966) Docket 15919.

21. LIAT is based in Antigua and at this time (1967) it was to perform service to U.S. territories according to the U.S.-U.K. bilateral air transport agreement (1946) as amended on May 27, 1966.

22. Leeward Islands Air Transport Services Limited foreign permit. 46 CAB Reports 546 (1967) Docket 17403.

23. These services were to be performed according to the U.S.-Kingdom of the Netherlands bilateral agreement of 1957.

24. ALM Dutch Antillean Airlines foreign permit. 50 CAB Reports 18, 1968, Docket 18595; see also amendment 53 CAB Reports 384, 1970, Docket 21674.

25. The Commonwealth of the Bahamas became independent on July 10, 1973. Bahamasair was to fly the routes granted to U.K. from the Bahamas to the U.S. under the U.S.-U.K. bilateral agreement of 1946.

26. Bahamasair and Out Island, foreign permits. 64 CAB Reports 175, 1974, Docket 25895.

27. Air Services Agreement between the Government of Canada and the Republic of Cuba, Canada Treaty Series 1976, No. 26, Art. VI.

28. ICAO Doc. Report of the Economic Commission on Agenda Item 18.1, A24-WP/151, P/82.

29. Latin American Regional Reports Caribbean, RC 83-06, 23 July 1983, p. 5.

30. Agreement between the Government of Canada and the Government of St. Lucia on Air Services, Jan. 6, 1984. Art. VI, para. 1(c) gives the right to each contracting state to revoke the permit to operate air services if it is not satisfied with substantial ownership and effective control of the designated airline. The note of acceptance was sent by the Canadian High Commission in Barbados to the Prime Minister of St. Lucia. (Note 531, Jan. 6, 1984).

31. Idem note 10, p. 411, 412.

32. The result of Bermuda I was that the U.K. complained that U.S. carriers had a too large share of the market.

33. See Bilateral Air Transport Agreement, Venezuela-Jamaica ICAO No. 3021, Aug. 20, 1974.

34. Pooling agreement is mentioned in Jamaica-Venezuela bilateral agreement; the Netherlands-Mexico bilateral agreement. Art. 12 s. 4 and 5 arrangement for pooling agreement; s. 6 joint operating organization according to Art. 77 and 79 Chicago Convention.

35. Bermuda Agreement I, para. 6.

36. Sixth freedom traffic right is the right to carry passengers between two foreign countries via the country of which the airline is a national.

37. Eric Wesberghe, «Reciprocity in Air Transport Bilaterals: Realities, Illusions and Remedies, Part II, Tariff Discrimination and the Plurilateral Approaches,» ITA Bulletin 32/5 Oct. 1981, p. 859.

38. See bilateral air services agreements: Venezuela-Jamaica ICAO No. 3021, Aug. 20, 1979; Venezuela-The Kingdom of the Netherlands; ICAO No. 1158, May 26, 1955; France-The Dominican Republic, ICAO No. 2307, Dec. 15, 1970.

39. See B. Gidwitz, The Politics of International Air Transport, Lexington, Toronto, 1980, pp. 140-141.

40. Idem note 35, para. a.

41. Para. 1 of the Final Act of Bermuda Agreement I.

42. Annex 1 para. (h) of Bermuda Agreement I.

43. Thomka-Gazdik, «Rate-Making and the IATA Traffic Conferences», 16 JALC (1949) p. 298; «International Rate-Making», 9 IATA Bulletin, 1949, p. 61; P.P.C. Haanappel, Ratemaking in International Air Transport, Kluwer, Deventer, 1978.

44. See Air Services Agreement between the Government of Canada and the Government of St. Lucia, Art. XIV, sec. 2. This happens very often when one of the contracting parties has no national airline or the national airline is not a member of IATA.

45. Air Services Agreement between the Government of Canada and the Republic of Cuba, Treaty of Series 1976, No. 26, Art. XIII, sec. 2.

46. Bermuda II, Art. 11(3).

47. Bermuda II, Art. 2(3); Casebook Government Regulation of Air Transport by Profs. M.A. Bradley, P.P.C. Haanappel, Institute of Air and Space Law.

48. Bilateral Agreement France-Dominican Republic - Route Schedule, ICAO No. 2307, Dec. 15, 1970.

49. Idem, note 46, Art. 11(1)

50. Idem, note 46, Art. XV.

51. Air Transport Agreement between Brazil and Guyana Art. 4, U.N. No. 14607 Treaty Volume 997, p. 149, March 4, 1975; Idem, Agreement Venezuela and Jamaica Art. 3(e), ICAO No. 3021, Aug. 20, 1979.

52. Memorandum of Understanding between the U.S.A. and the Government of the U.K. of Great Britain and Northern Ireland, April 1, 1977, Sec. A, paras. 2-6.

53. Now we have liberal bilateral agreements between the U.K. and the Netherlands and between the U.K. and West Germany. The agreement between the United Kingdom and the Netherlands provides for: (a) any airline designated by its own government may fly any route

between the two parties; (b) the fares need approval only by the government of the country where the travel originates; (c) the carriers have right to 6th freedom rights. (See Interavia 10530 1 and 2).

54. Eric Wesberghe stated that «/T/he finding that the rights obtained are not so much actual gains as assets to be exploited - and not always exploitable - has probably been instrumental in U.S. policy», ITA Bulletin No. 32, Sept. 1981, p. 825.

55. Peter Harbison, Liberal Bilateral Agreements of the U.S.A.: A Dramatic Pricing Policy, LL.M. Thesis, McGill University, 1982, p. 22.

56. Micheal E. Levine, «Requested Comments on Negotiating Strategies for Northern and Southern Europe», Closed Board Meeting, January 12, 1979. CAB February 26, 1979. Casebook Government Regulations, Institute of Air and Space Law, Dec. 1983, pp. 180-184. Similar stategies have been used to pressure Japan to relax the regulations of air transport with the U.S.A.

57. H.A. Wassenbergh, «Towards a New Model Bilateral Air Transport Services Agreement», III Air Law, No. 4, 1978, p. 197.

58. P.P.C. Haanappel, Pricing and Capacity Determination in International Air Transport: A Legal Analysis, Kluwer, Deventer, 1984, p. 140.

59. The Caribbean as an American tourist attraction has to compete with Mexico, Florida, Hawaii, Southern Europe. The Caribbean islands compete among themselves for the American tourists.

60. These countries are: Barbados - April 8, 1982.
Jamaica - April 4, 1979.
not ratified yet { Neth. Antilles - Jan. 22, 1980
Aruba - Jan. 17, 1986.

61. Jamaica has 10 points in continental U.S. and Puerto Rico. The Netherlands Antilles has 5 specified points and 5 additional to be selected. Barbados has 3 points and one additional if it grants unrestricted

intermediate rights on flights to Barbados. Aruba has gotten 4 points in the U.S.A. These additional gateways, rover points that can be selected by the foreign carriers can be changed upon relatively short notice, 60 days.

62. Section 401 of the Federal Aviation Act adopted by the CAB gives the multiple and permissive authority. The carriers have permission to start the agreed services routes whenever they like and stop whenever they like. According to CAB this is «required because competition, both actual and potential, is necessary in the advancement of their statutory goals, including an optimal development of an air transportation system and the promotion of efficient service at reasonable cost....» See United States-Benelux Low Fare Proceedings, Docket No. 30790, Order No. 79-10-16, CAB August 29, 1979.

63. The application by each Contracting Party of the system to establish tariffs (country of origin rule or dual disapproval) can easily lead to monopoly by one Contracting Party.

64. Protocol between the Government of the U.S.A. and the Government of Jamaica relating to air transport, signed April 4, 1979, 31 UST 308, TIAS 9613.

65. Idem, note 64, art 2.

66. (Unratified) Agreement between the U.S.A. and the Kingdom of the Netherlands relating to air transportation between the U.S.A. and the Netherlands Antilles, Art. 3(1).

67. These routes are Miami/Fort Lauderdale-St. Maarten, Miami/Fort Lauderdale-Aruba/Bonaire/Curaçao. Idem, note 66, Memo of Understanding, II B 1 Part 2.

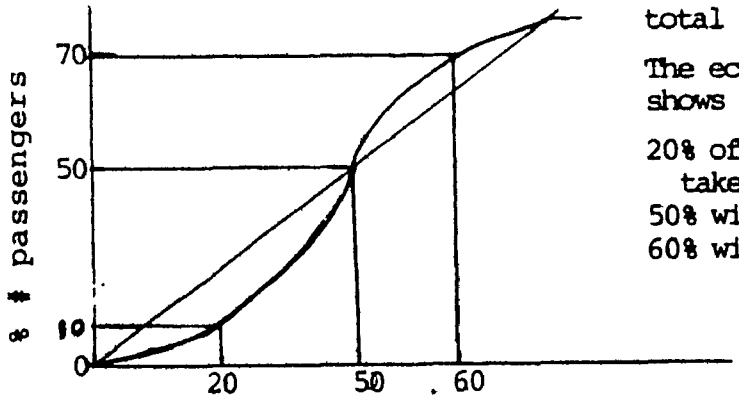
68. CAB Order 80-2-6, February 1, 1980.

69. Idem, note 68, p. 11, V Investigations.

70. The information we have on the U.S.-Aruba liberal agreement is from the Aviation Daily, Jan. 17, 1986, p. 91.

71. See Aviation Daily, Feb. 18, 1986, p. 263. According to this source only the route structure is the problem that there is no agreement yet.

72.



total traffic

The economy of air transport shows that:

20% of flights offered will take 10% pax.
50% will take 50% pax.
60% will take 70% pax.

(* private source)

73. U.S.-Barbados bilateral agreement, ICAO No. 3221, April 8, 1982, Art. 12(1).

74. Predation is when the airline charges uneconomically low prices; in order to drive a competitor out of the market; with intention to have a monopoly position and than raise the tariffs. The burden of proof is on the party alleging predation. Offering lower fares to increase market share is not predation. Idem, note 55, p. 126. A selective price is discriminatory; it has to be equal price for equal distance.

75. To charge higher prices to have a dominant position is not enough for the government to intervene. The airline has to have a monopoly position and abuse of this position.

76. This is very difficult to allege. Governments give financial support to the national airline to cover the deficit on the overall operation, not a specific route. «....or other external subsidy or support» appears only in the U.S.-Jamaica agreement. It is not clear why it is placed here. It would be interference in internal affairs of the airline management to forbid

it to look for financial support. This clause sounds like the airline that cannot finance its operations with its own funds has to get out of the market.

77. The article reads like this: «If either party believes that any such price in inconsistant with the considerations set forth in paragraph.../clause a, b, c/ of this article, it shall request consultations....»

78. Air transport agreement between the Government of the U.S.A. and the Government of Papua New Guinea, March 30, 1979, TIAS 9520, 30 UST 5672, Art. 11 D(2). Same article in the air transport services U.S.A.-Fiji, Oct. 1, 1979, TIAS 9917.

79. See U.S.A.-Barbados agreement Art. 12(5)(B).

80. See U.S.A.-Philippines agreement, TIAS 10443, Art. 12(6)(a) and Annex II. «The Parties agree that the base for the index fare level of Art. 12 shall be the Standard Foreign Fare Level....as determined by the United States Civil Aeronautics Board for each U.S.-Philippine city-pair market.»

81. Unless both Parties agree otherwise, a passenger price will continue in effect or enter into effect on the proposed date of effectiveness if it is at least 40 per cent but no more than 115 per cent of the base normal economy fare in effect on the date the price is filed. Idem, note 79, Art. 12(5)(A)(i).

82. Idem, note 79, Art. 12(5)(A)(ii). The U.S.A.-Philippine Agreement stipulates that the dual disapproval system is applicable for prices equal or greater than 80 per cent of the appropriate index fare level but that country of origin approval is applicable in case the price is less than 80 per cent of the appropriate index fare level. Art. 12(6)(a) and (b).

83. U.S.A.-Barbados Agreement Art. 12(6) and (7). U.S.A.-Philippines Agreement, Art. 12(7) on cargo price.

84. See the bilateral agreements U.S.A.-Jamaica, Art. 6(4)(c); U.S.A.-Netherlands Antilles, Art. 12(3)(a); U.S.A.-Philippines, Art. 12(3)(c). In this last agreement the wording is different: «If either Party is dissatisfied with any price proposed or charged by an airline of a third country for international air transportation between the territories of the Parties, ...»

85. U.S.A.-Philippines Agreement, Art. 12(5)(c).

86. The Memo of Understanding attached to the U.S.A.-Netherlands Antilles agreement says in section 2E: Notwithstanding the provisions of Annex II neither party shall permit the operation of part-charter services by the airlines of either party during the pendency of any prohibition against such charters by the United States of America.

87. See U.S.A.-Netherlands Antilles, Annex II, Sec. 1(a) and (b); U.S.A.-Barbados, Annex II, Sec. 1(a) and (b).

88. There will be an advance purchase requirement of 14 days prior to the date of departure with later sales limited to 15 per cent substitution and 15 per cent fill-up until the date of departure.

89. This is the case between Haiti and the U.S.A. Although there is no official bilateral air services agreement between the U.S.A. and Haiti air services are being performed by designated airlines of both countries.

90. In September 1976 approximately 44 per cent of all the air routes to, from and between the Caribbean countries operated with unilateral permits granted by the Governments directly to the airlines while the remaining 56 per cent have done it under the umbrella of bilateral agreements. From «Study of the Situation of Air Transport in the CDCC Countries», Working Paper 7, Meeting of Civil Aviation Experts, July 31-August 1, 1978, Port of Spain, p. 4.

91. Bilateral agreement between Cuba-Angola; Cuba-Guinea; and Cuba-Equatorial Guinea.

92. Bilateral agreement between the Kingdom of the Netherlands-Ghana.

93. The three territories that can be distinguished clearly are: (1) the Netherlands-Netherlands Antilles and Aruba; (2) France-The French Antilles (Guadeloupe, Martinique and Guyana); and (3) U.S.A.-Puerto Rico and the U.S. Virgin Islands.

94. In the past it has been impossible for the Netherlands Antilles to organize charter flights from the Netherlands or West Germany to the Netherlands Antilles. The rules of the agreement between the Netherlands and the Neth. Antilles are too tight to permit any action that could have any negative effects on KLM's monopoly. The representatives of Guadeloupe, Martinique and Guyana at «La Table Ronde sur le Tourisme dans les Antilles-Guyane» seem to feel the same restrictions. In the «Rapport de la Commission Desserte Aérienne Territoire des Antilles» the representatives «...ont vivement souhaité que les eventuelles demandes qui pourraient être présentées par des compagnies étrangères ou par les autorités aéronautiques des pays considérés comme réservoirs potentiels de touristes pour les Antilles - Guyane soient examinées de façon favorable par les responsables français compétent.» La Table Ronde sur le Tourisme dans les Antilles-Guyane met in the end of 1984 in Guadeloupe and Martinique and on Jan. 28 and 29, 1985 in Paris.

95. It is a question of how many of the Caribbean states that are following the «open sky» policy really endorse it completely. If they really like the idea of «open sky» then they will surely have negotiated such liberal agreements among themselves. The impression is strong that in negotiations with the U.S. they had no other choice but to accept the U.S. policy and hope that it will workout in their benefit too.

CHAPTER IV

AIR POLICY TRENDS AND THE CARIBBEAN

I - INTRODUCTION

As stated in the first chapter events in other parts of the world will sooner or later affect the Caribbean. Because of its central position between North, Central and South America and its historical colonial ties with Europe, the Caribbean is under the influence of events in those regions.

Changes in the international aviation policies of those regions can spark reactions in the air travellers. Being heavily dependent on tourism from the Americas and Europe these changes will have effects on the Caribbean. Contrary to other kinds of effects that can be kept off shore, the Caribbean islands will have to accept and adopt certain parts of these changes. The negative effects of not accepting the new developments could be that the Caribbean nations, under the same circumstances as Europe and the Americas but with a different policy in international aviation, will become less attactive for the tourists.

The situation is worst where the small states have an open economy and every independent island is a separate nation. It is competing for tourists on the world market with its neighbours and other big nations. A small island has to spend a considerable amount of time and money in public relations

to be known to potential travellers and has to offer a better bargain than other bigger competitors.

The problem with competition is that he who has the least resources is, in most cases, the big loser. The Caribbean nations have limited resources, they are each very vulnerable to competition. What they will lose with severe competition for international tourists is their national airline (if they have any) and/or tourists. The question is not whether they are willing to sacrifice one or the other, but how much of what little they have is possible to save. Each Caribbean island, not being a strategic aviation asset on its own, has little to bargain in trade negotiations.

The following is an overview of the developments in aviation policies in North and South America and Europe. This is necessary because of the repercussions they have on the way the Caribbean nations pursue their aviation policies. The last part of this chapter is an attempt to formulate the main points for a Caribbean multilateral air services agreement.

II - DEREGULATION

> «Deregulation means that governments will not intervene nor interfere with airlines management decisions, leaving them free to decide themselves where and what they will fly and how. Regulations will then be necessary to prevent an abuse of airline freedom.»[1]

This «coupled with the safeguard of existing anti-trust laws ensure that carriers compete with each other and do not shy away therefrom through a system of inter-carrier competition restraining agreements.»[2] By introducing this aviation policy the U.S. Government went over to an open sky for its national airlines. As this deregulation policy suggests, there is no need for a regulatory department, so the Civil Aeronautical Board disappeared and the domestic air transport business was left to the travellers and the airlines.

Deregulation rejects the public utility characterization and regulation of air transport as an industry and denies that this industry section is truly oligopolistic in nature.[3] Under deregulation the activities in air transport in the United States intensified. More carriers entered the business, the fares and rates on many routes were lowered and air services became accessible to a larger part of the population.

A study done in 1985 summarized some of the results of deregulation:[4]

Deregulation has been most favourable with respect to its impact on scheduled convenience for the traveller. Less favourable is its impact on fare levels with enormous disparities developing between different markets. The most unfavourable impact is on the financial results and outlook for the carriers.

Price wars on some high density routes result in an increase of demand but the real net profit declines. Although the tariffs double on other routes the revenues are not enough to cover the costs. The mortality rates among U.S. airlines is high. Not price but schedule rivalry has become the major form of competition with a tendency for overcapacity.

In this spirit of competition the U.S. Government enacted the International Air Transportation Competition Act[5] that gives the CAB and later the Department of Transport and the Department of State increased regulatory power to enforce a system of free competition. With the approval of the President, U.S. aeronautical authorities can retaliate against unfair, discriminatory and restrictive practices of foreign aeronautical authorities or air carriers against U.S. air carriers.[6]

The attitude of the United States towards other governments was stronger than a simple invitation to let the airlines compete in the international market. As said before, various countries accepted that «invitation» and signed liberal bilateral air services agreements with the United States. Such agreements for an «open sky» approach require both parties to refrain from unilateral intervention and let the airlines compete for the international traffic. This has led to increases in traffic, availability of low fares and service options. Even other less liberal markets had to change because of the drain effect of the liberal markets.[7]

> From the consumer point of view the big winner of deregulation seems to be the passenger who travels on a route or in a market which has any or all the following characteristics: long haul, high density, competitive, tourist-oriented. The more of these characteristics are present, the lower the passenger's fare will tend to be.[8]

Not everyone agrees that deregulation of air transportation is the only factor that has made traffic increase in certain markets. It is, however, undeniable that competition leads to lower prices and that lower prices will attract more travellers. The study mentioned above reports in conclusion 19:

> Traffic volumes appear to have reacted more strongly to various external factors, than to changes in international air competition per se. Necessarily approached on a bilateral basis, the degree of «open skies» liberalization has varied between different countries and regions. There is no evidence of correlation between the degree of liberalization and the amount of traffic growth.[9]

Similar conclusions were reached by aviation experts from the Caribbean.[10] Tourists appear to go where the political situation is stable and where they feel safe. Currency values are also a factor that influences the travelling public.[11] Another factor for increase in travelling is the growth of the economy. In countries where the economy has collapsed we can expect the home market for air travel to decrease.

The United States continues to promote its aviation policy at the international level. There is no doubt that more

Caribbean nations will be pursued to conclude a liberal agreement with the United States.[12] In itself it would be an excellent way for Caribbean states to attract more traffic to or via their territories. The flaw in this approach, favouring more competition and especially price competition in the international traffic market, is that states and airlines have in practice unequal resources and can therefore not exploit the opportunity extended to them under the open skies policy to the same extent. Even if the airlines have the right to and from a gateway the value of this depends on the use that is made of it.

Deregulation is designed for big, mature markets. The principles of this policy are meant to be applied in highly developed markets in the United States and Canada, (maybe) South America and Europe. A mature, developed market needs no regulation because the competitors in that market are more or less of equal strength. It is unfair to have large strong airlines compete without restrictions against small developing airlines.

Not all principles of deregulation should be applied in a relation between a highly developed country with strong national airlines and a small developing country that has a national airline that is fighting to stay on its feet. Free and multiple entry and no restriction on capacity will favour stronger aviation countries because of the sheer size of their

market and resources. Multiple designation should only be allowed from a market that is not being served by the airline of the developing country. The principle of dual disapproval of tariffs puts the little airline in a defenceless position and a hostile environment. The small airline has to match the prices of the big airlines that are experienced competitors in their home market. To apply at this time the U.S. deregulation policy to the Caribbean under these circumstances does not help these countries. Some Caribbean airlines may fall from the sky in the near future when the governments run out of funds to subsidize them.

Besides the further implementation of U.S. deregulation in international air transport, the Canadian developments towards deregulation are also interesting.[13] Although there will be differences, deregulation Canadian-style could have similar effects as those south of the Canadian border. It will have repercussions in international air transport to and from Canada. Canada has air services agreements with almost all of the islands in the Caribbean. When traffic grows to these destinations more Canadian carriers will want to fly these routes. The principles of «country of origin» (approval of tariffs), «designation of one or more airlines» and «fair and equal opportunity to compete» can give the Canadian carriers the opportunity to practice their deregulation experience in their Caribbean services. The Caribbean islands have

each on its own a small traffic generating market. For most of the national airlines of these islands the Canadian outbound traffic offers the most revenues. As more Canadian carriers are competing for this traffic under rules favourable to them or at least with no protection for the small Caribbean airlines, these revenues may come to shrink, leaving the small airline with unprofitable operations to and from Canada.

III - LIBERALIZATION

Although some European states have entered into liberal bilateral agreements with the United States, most of the governments and airlines are reluctant to pursue this policy.[14]

There are some differences between the American and the European situation. Instead of deregulation the European authorities talk about «liberalization» of air transport. European liberalization means that:

> ....Governments decide on a measure of freedom for the airlines to act as they see fit, but at the same time that Governments set bounds to the use of the freedom by airlines («liberté octroyée»).[15]

The Commission of the European Economic Community issued two memos, one in 1979, and the other in 1984. Both memos deal with liberalization of intra-Community air transport. The second memo[16] says in part three:

> The issue in realistic terms, therefore is not whether the Community should deregulate air transport but whether the present system can be made sufficiently flexible so as to contain within itself enough pressure to ensure that airlines increase their productivity and provide their services at the lowest possible costs.

Haanappel notes that because of differences between North America and Western Europe no full scale transplantation of North American style deregulation to Western Europe and international air transport is feasible nor desirable.[17] For some national airlines deregulation leads to excessive and destructive competition: too many aircraft, too many seats, chasing not enough passengers.

The pressure on the governments and the airlines comes from other governments, airlines and other interest groups. The European Bureau of Consumers' Union said that it is «witnessing the progressive emergence of lower fares» but that it is not widespread enough.[18]

The European Commission is urging the members of the E.E.C. to adopt a relatively liberal, common stance at tariff negotiations. A member of the Commission declared that:

> the Commission is determined to push through its plans for liberalization, in particular to eliminate obstacles to competition in the air transport sector.19

The Second Memo of the Commission mentions some provisions that have to be made to ensure competition among the airlines. For example:

- Commercial pooling agreements between airlines may no longer be made compulsory. Such an agreement between airlines is not forbidden, but in order to be exempted from the Treaty of Rome's competition rules, they will have to limit revenue transfer between participating carriers to 1 percent of poolable revenue;

- No capacity restriction in bilaterals unless the traffic share of a national carrier falls below 25 percent of a particular inter-community international air transport market;

- Joint ventures where only one participating carrier actually operates flights, are forbidden, unless it can be exempted from the E.E.C. competition rules;

- Besides the inter-airline multilateral tariff coordination through IATA, it is also possible to create zones of flexibility for tariffs and country of origin governmental tariff approval rules; and

- State subsidization to cover airlines' operating losses should be avoided.

The European Civil Aviation Conference (ECAC) issued a policy statement with the decisions taken by the Conference in its 12th Triennial Session.[20] Among them we read:

5. ECAC believes that total deregulation of the airline industry is economically unacceptable and inappropriate;

6. ECAC seeks to achieve a pragmatic, balanced middle course between the extremes of deregulation and unduly restrictive regulation;

7. ...this policy aims at a regulatory framework which permits and encourages the industry to satisfy the broadest range of consumer demands, both in terms of quality of service offered and price levels while meeting the airlines economic requirements and governments objectives, without creating conditions for disruptive effects on the market place or the social environment;

10. States should follow a liberal policy in general in granting of traffic rights.

11. Multiple designation is to be applied more generally on a country pair basis. Some states accept multiple designation on a city pair basis.

14. The capacity to be offered on any route should be primarily related to the requirements of that route and be a matter in the first place for the commercial judgement of the designated airlines in accordance with the principle of fair and equal opportunity. This does not mean equal results or equality in benefits nor should governments insist on 50/50 sharing of capacity and traffic. Due regard should be given to avoid serious overcapacity.

17. More flexible conditions and criteria in the tariff system and greater freedom for carriers to set their own tariffs.

21. Harmonization of the conditions of competition to take away differences between states that have an effect on fair competition.

22. Restrictions on pooling between airlines but not where it is done to improve the service. Joint ventures are permissible in such cases where there is insufficient traffic to support more than one airline.

The United Kingdom, Ireland, and the Netherlands are strongly in favour of this liberalization policy while France does not want to «rush» into it.

The economic effects of liberalization are being felt already, although it is not being applied throughout Europe. Liberalization is having a negative effect on revenues. «But is gives us flexibility on the routes and to set the tariffs» declared the president of KLM, recently. «This means that

we can give better service and the economies of scale will compensate for revenues dilution.»[21]

Although liberalization is not accepted by Europe as a whole, at the same time, it is being applied on a country to country basis. No European country will be able to resist the influence of competition between the airlines and all will have to adopt more competitive regulations. The competition thus created will be strong but not as destructive as in the United States because many airlines are government owned, either partially or wholly. Governments will not allow their national airline to be destroyed or pushed out of the market.

Will the effects of liberalization spill over the European borders and affect the Caribbean nations in their air transport policy?[22] Certainly! Those European states that have bilaterals with the Caribbean nations will attempt to amend these agreements so that the airlines may compete more freely. This in the case where both parties have designated an airline or airlines and both airlines are flying that route.

Also, in the situation where the Caribbean airline has the fifth freedom right between two European countries where the liberalization policy is being applied, the airline will undergo the influences of this policy.

The European carriers are competing with American carriers. Soon they will start competing between themselves throughout Europe. These exercises will give them good experience.

Against these experienced airlines the Caribbean airlines have to compete for the traffic to and from Europe. There is a good chance that the European traffic to the Caribbean is going to increase but if this is going to be in the benefit of the Caribbean airlines under the actual circumstances is very doubtful.

IV - PROTECTIONISM

The Latin American States have been applying protective measures to air transport for a long time. This has been a reaction partly stimulated by the activities of European and American carriers throughout the history of aviation in these states.

Civil aviation policy in South America is strongly influenced by the principles of sovereignty and legal equality of states, and by the belief that international relations should be governed by justice and freedom.[23] These principles, from the so-called Ferreira doctrine imply that:

1. Any state has the right to take air traffic in the same way as its partners but as a rule may not operate traffic other than its own. It can do this without affecting the sovereignty of its partners and the principle of equality;

2. The traffic between parties should be shared on a reciprocal and equitable basis;

3. Fifth freedom should be granted only as a solution to practical problems or when a state is not in a position to operate the traffic to which it is entitled; and

4. Regional traffic should be carried mainly by Latin American carriers and traffic between two neighbouring states should be carried by airlines from these two states.

The results of the application of this doctrine in international air transport are that: States have to intervene to guarantee that there is fair and equal sharing of the traffic between carriers; states also have to intervene to see that airlines have a sound economic operation. The market forces of supply and demand alone do not permit the achievement of this result.

Since states have ownership of their traffic (third and fourth freedom) fifth freedom traffic is considered complementary and can be granted freely or for consideration (trade-off).[24]

The bilateral air transport agreements of the Latin American states show the application of the principles of the Ferreira doctrine. The strong ties between the governments and the national airlines reflect in the clauses of the bilaterals.

In the case of capacity, the governments define and stipulate the supply of capacity in the form of type of aircraft, number of seats per aircraft or flight frequencies. This is done to ensure that there is a fair and equal opportunity for

both airlines to operate the agreed services.[25] Equal opportunity means equality of benefit.[26] Aeronautical authorities monitor the supply and demand of capacity and adjustment is subject to governmental approval. In case of under capacity this can be increased with additional third and fourth freedom rights. For occasional needs special flights can be permitted or traffic restriction on fifth freedom rights can be suspended.

With respect to traffic rights, third and fourth freedom traffic are considered the «main stream traffic». Fifth freedom is «subsidiary traffic» and exchangeable on the basis of strict reciprocity. Where reciprocity can not be accepted in traffic rights it is converted into a compensation. This can be monetary, or in the form of technical assistance, either aeronautical or non-aeronautical. This is also the case with stopover rights which have a maximum duration of 15 days.

As a rule Latin American states apply the concept of single designation. This is not a matter of doctrine but results from the fact that most of them have only one international airline.

The other aspect of Latin American bilateral agreements that is strictly regulated is the tariffs. The governments encourage a multilateral system to set tariffs. To be applicable these tariffs will have to be approved by both contracting parties. There are some factors that have to be taken

into account when setting the tariffs.[27] Although this is part of the doctrine that reflects a protectionist aviation policy the principles are not uniformly applied. The states apply different systems of tariff approval. This could mean that there is some easing of the strict policy in a way designed to stimulate inbound traffic through lower fares.[28]

Non-scheduled services do not take a big share of international air transport in Latin America. Recently some states have been introducing new regulations to make imbound charter traffic more attractive.[29]

As a result of the protectionism in Latin America there are several pooling agreements between Latin American and European carriers. In relations with the United States, the Latin American carriers fear the competition. The United States is encountering heavy resistance in its efforts to export the deregulation policy to Latin America. Not all states are able to resist; the main reason is that they need a greater flow of tourists and foreign exchange to help restore the economy.

By adopting a more competitive policy the governments hope that airlines will bring more tourists to their country. Does Latin American policy affect the Caribbean nations? There is no doubt about that, but to a lesser degree than U.S. policy.

Cuba and the Dominican Republic are, because of the language similarity, closer to South and Central America. They are also members of LACAC.

In addition to that several other nations in the Caribbean region have bilateral agreements with South American states (see Annex II). What can be seen is that one or more protective measures are incorporated into the agreement (see bilateral agreements Venezuela - the Netherlands Antilles, Mexico - the Netherlands Antilles in Annex II).

The restrictive provisions on capacity have impeded traffic flow from South America to the Caribbean. The fact that the Caribbean islands are not individually heavy generating traffic markets does not «entitle» them to a bigger share of the South American market. With the restrictions on fifth freedom operations, services of Caribbean airlines to single destinations in Latin American markets are not viable in times of economic recession.

V - THE STRUCTURE OF AN AVIATION AGREEMENT FOR THE CARIBBEAN

The majority of the Caribbean states have no mineral resources and depend heavily on agriculture and tourism. Because of unstable prices of agricultural products in the world market, tourism has become the biggest source of foreign exchange. A considerable amount of money is being spent by the Caribbean on tourist promotion.

The majority of the Caribbean states have a national airline. Most of these national airlines fly the routes also flown by North American, South American, and/or European airlines.

The application of a laissez faire aviation policy to stimulate tourism could be detrimental to the Caribbean airlines. A restrictive policy, on the other hand, would hinder the flow of tourism but can help the airlines cope with the competition. The problem for the governments becomes what to choose or how to balance these two interests. There is no question that they need the tourists. The question is do they need a national airline? If they need the airline they will have to create an environment where it can live. It is not only a question of living but the airline should also be able to thrive on its own. In the world of aviation, with competition from big airlines, the Caribbean airlines have little or no chance of making a living on their own. This is the reason that the governments step in to subsidize or act as grantor for the national airline.

As this situation can not go on forever, the governments and their airlines have to find a compromise solution between open sky and protectionism.

Because of North American, European and South American aviation policies no Caribbean nation has been able to develop a consistent aviation policy; there is no common Caribbean policy towards any of those regions, nor is there a preference for any type of bilateral air transport agreement. This situation makes the Caribbean very vulnerable for the «divide and conquer» tactic of those who want to keep a strong position ir the Caribbean.

The only solution to this situation is for the Caribbean states to apply the same aviation agreement to all states from outside the region. The Caribbean states should have a standard bilateral agreement to negotiate with third parties. At the same time, the relationship between themselves has to be revised.

The basics for such a standard bilateral agreement are: (a) promotion of tourism; and (b) promotion of the national airline. With these as starting criteria a framework for the agreement must be developed.

In fact there must be two regulatory systems. One for intra-Caribbean and one for the extra-Caribbean commercial aviation. The reason is obvious; the size of the contracting partners. The Caribbean nations are more equal among themselves. Their individual aviation power is not comparable with the North American, South American or European states.

It would be a complete fiasco to take a foreign system of aviation regulation and transplant it to the Caribbean. The Caribbean has a different socio-economic, political and legal structure from North America, South America or Europe. But as Haanappel[30] remarked:

> ...there seems to be nothing inimical in borrowing elements from the regulatory regime of one jurisdiction and applying them, with or without adjustment, in another.

From what has resulted from deregulation and protectionism and what the Caribbean thinks is adoptable of the European liberalization, it should try to set up two regulatory systems that are suitable for the whole Caribbean. These systems have to ensure the cooperation between differing basic concepts and national objectives in an optimal way. At the same time they have to result in permanent advantages for the consumers and suppliers of air transport.

To work in an optimal way the different clauses of the agreements have to be the same throughout the Caribbean. It has to become one region where the governments apply the same clauses in bilateral air services agreements with third parties from outside the region.

The bilateral agreements can be divided into three categories:[31] (1) the administrative clauses; (2) the commercial rights; and (3) the exploitation rights.

(1) Under the administrative clauses we find:

a. definitions;
b. single designation of carrier;
c. regulations concerning effective control and substantial ownership of the designated carrier;
d. authorization to operate (concessions, conditions, suspension, revocation) and the inauguration of the services;
e. applicability of national laws and regulations;
f. licences for personnel and certificates for aircraft;

g. Security regulations (national and international, Tokyo Convention 1963, Hague Convention 1970, Montreal Convention 1971);
h. users fees;
i. custom duties; taxes and charges;
j. consultations;
k. amendments;
l. rules related to disputes;
m. registration of agreement;
n. entry into force; and
o. withdrawal from the agreement.

It is expected that there will be no problems getting the Caribbean governments to agree on the majority of these administrative clauses for a standard aviation agreement, both intra-Caribbean and extra-Caribbean. These clauses must be uniform and clear so as to minimize the bureaucratic procedures.

One of the important aspects to be arranged regards the question of effective control and substantial ownership. The clauses for an intra-Caribbean agreement have to stipulate clearly that designated airlines have to comply with these two requirements. This is to avoid a Caribbean airline acting as an agent/feeder airline for an airline from outside the region. Those nations that do not have a national airline to designate should be able to use the ICAO-Resolution of Community of Interest[32] to designate an airline from a neighbouring regional country to perform the services that the country is entitled to.

The result will be that all air services between the Caribbean countries will then be performed by Caribbean carriers.

In their relation with states outside the region the Caribbean states have the option to use the ICAO Community of Interest Resolution. Another possibility is to construe a clause which gives the Caribbean nations the right to designate their own multinational airlines (see next chapter for this subject). For this we can take the example of the SAS Clause or the «Air Afrique Clause».

The SAS Clause in the bilateral agreement between Sweden and Trinidad and Tobago is in the form of the exchange of notes and it says:

> 1. A.B. Aerotransport (ABA) co-operating with Det Danske Luftfartselskab A/S (DDL) and Det Norske Luftfartselskap A/S (DNL) under the designation of Scandinavian Airlines System (SAS) may operate the routes for which it has been designated under the Agreement with aircraft, crews and equipment of either or both of the other two airlines;
>
> 2. In so far as AB Aerotransport (ABA) employ aircraft, crews and equipment of the other airlines participating in the Scandinavian Airlines System (SAS) the provisions of the Agreement shall apply to such aircraft, crews and equipment as though they were the aircraft, crews and equipment of AB Aerotransport (ABA) and the competent Swedish authorities and the AB Aerotransport (ABA) shall accept full responsibility under the Agreement therefor.[33]

The «Air Afrique Clause» is not really a clause but a way for the state-members to designate their multinational airline Air Afrique. Article 14 of the air transport agreement between Lebanon and Sénégal reads in the second paragraph:

> The Government of the Lebanese Republic agrees that the Government of the Republic of Sénégal, in conformity with articles 2 and 4 of the Treaty relating to air transport in Africa and the annexes thereto, signed by the Republic of Sénégal at Yaoundé on 28 March 1961, reserves the right to designate Air Afrique as the medium chosen by the Republic of Sénégal to operate the agreed services.[34]

Another system for designating the airline is direct naming as is done in the Protocol of Agreement between the Republic of Mali and the Republic of Niger:

> The enterprise designated by the Government of the Republic of Niger shall be the multinational company «Air Afrique».[35]

The ICAO Community of Interest Clause can be used by a nation that has no airline; the SAS and Air Afrique clauses can be applicable when the present national airlines of the Caribbean states establish one multinational airline to fly the international routes outside the region.[36]

In this system the Caribbean states will apply on all intra- and extra-regional routes the single destination. In situations where one of the Caribbean islands accepts the multiple designation arrangement with a country outside the region, its application has to be limited to gateways not served by the Caribbean multinational airline. This is to avoid too much competition on a route.

(2) The commercial rights give the conditions under which an airline can do business. Under this we find subjects such as:

a. market entry (sales, agents, visa/ immigration);
b. commercial operations (offices, employment, ground operations, reservations);
c. filing of tariffs;
d. passengers and cargo handling;
e. aircraft, passengers, baggages and freight in transit; and
f. slots at the airports.

To stimulate market entry the governments should adopt a more flexible attitude and give the airlines of the Caribbean region the same treatment as their national airline. All discriminatory practices that favour the national airline have to be removed. This does not mean that the airlines will not have to prove that they are financially viable. This must be continued to avoid possible unpleasant economic consequences for the travellers.

As market entry would become relatively easier, safety provisions should be tougher to avoid unsafe aircraft being used to make a quick profit when the opportunity is there.

(3) Rights and conditions of exploitation of the air services. In this part are found the most important clauses of a bilateral agreement:

a. routes;
b. change of gauge;
c. capacity, frequency, and type of aircraft;
d. determination and coordination of tariffs;
e. transit rights;
f. rights to over fly;
g. blind sector right;
h. traffic rights for passengers and freight;
i. stopover rights; and
j. rights for charter operation.

These clauses should give a certain degree of flexibility to the airlines flying regional and extra-regional routes.

a. Routes

It is not possible here to define in detail how the routes within the region and to and from the region should be arranged. The routes within the region should be left to the airlines to arrange in their own way, always taking into account the provisions of the bilateral agreement.

For the routes outside the region we have two possibilities: In the case of a multinational Caribbean airline there can be a route clause that says: «From points in the Caribbean to....» (names of points in the other contracting party). In the case where only national airlines fly the routes, as in the present situation, then every country stipulates its own routes.

b. Change of gauge would be needed if one island can be made as a hub for routes outside the region. This decision can best be left to the national airline.

c. Number of frequencies and type of aircraft determine the capacity. As policy is to have as many tourists as possible there should not be restrictions on the capacity; but, as in the case of deregulation, if there is no restriction we will soon find many empty seats flying over the ocean. For this reason the Bermuda I capacity clause with the ex post facto review could be a suitable provision that leaves some flexibility for the airlines and gives the aeronautical authorities the opportunity to act in case of excess overcapacity. The bottom line is that each airline should have at least a certain per cent of the traffic. This will avoid airlines being squeezed out of the market.

d. Tariffs, the prices that have to be paid for air transport, are an important competition element. If left to float freely «fare wars» would result with many casualities, especially among those small airlines that are not very efficiently run. If the tariffs provisions are too strict this competition will be unfavourably limited.

For intra-Caribbean, as well as outside the region, a fare band system of tariff setting is recommended. In this system there will be a zone of reasonableness where the airlines are free to determine the tariffs. All tariffs under this zone are subject to the dual approval system and those above the zone are subject to country of origin approval. For competition reasons it is best that governments should have some control

on low fares. It should be left to the airlines to set «above the zone» fares in case they want to attract a certain group of the travelling market. Competition wise an airline will not ask higher fares than its competitors for the same services.

e. and f. Transit and overflight rights have to be regulated in the same way throughout the region. States should allow airlines to use these rights without any economic burden and without discrimination.

g. A blind sector route is a route between two landings where an airline has no traffic rights. If this is to be applicable in the Caribbean it will depend upon what the parties in the region do when granting traffic rights.

h. To stimulate competition among the Caribbean airlines there should be no restriction on the exchange of third, fourth, and fifth freedom traffic rights within the region. For parties outside the region the situation is different. For them the Caribbean is presented as one closed region. There is no problem to exchange third and fourth freedom traffic rights. Fifth freedom traffic rights within the region would then be considered cabotage. It would be granted to a party outside the region only on a strict reciprocity basis. From the point of view of the Caribbean it would be more advantageous to

consider intra-Caribbean traffic for foreign carriers as cabotage rather than fifth freedom. One reason is that the Caribbean multinational airline will not be so successful qua public acceptance if it makes use of fifth freedom rights in another contracting party's territory. If the Caribbean airline does not use the cabotage rights because of certain reasons then there is a possibility to demand compensation from the other party; that is using cabotage rights within the region.[37]

i. Stopover rights can give the opportunity for travellers to visit more than one island in one trip. There is no uniform definition of the duration of a stopover but it will be necessary to come to a concensus on this to avoid its confusion with cabotage (for foreign airlines).

j. The expansion of charter traffic to this region can be harmful for the Caribbean airlines. Especially if these charter flights are organized from a point in the other contracting state where the airline has a regular service. In the past most of the charter flights have been in the high season, just when the airline hoped to make money to cover for eventual losses in the low season. Charter flights should be restricted from gateways already serviced by an airline with scheduled flights but restrictions are not necessary for other gateways.

To summarize the following can be stated: The Caribbean islands depend on tourism; they need national airlines to provide communication with the world because sea transport is only complimentary. They have had bad experiences in cases where they depended on a foreign airline for this communication.[38] For this reason they cannot allow too much competition for their small national airlines.

On the other side, protectionism falls most heavily on smaller airlines, which can never expand in any appreciable way if their route networks, tariffs and capacity possibilities are restricted.

The whole Caribbean should apply one and the same agreement for all countries outside the region. The provisions of this agreement will allow competition with some restrictions.

For intra-Caribbean air transport the region is somewhat closed and an agreement among these nations will allow more competition between equal airlines. In this way the Caribbean states can try to stimulate more traffic to the Caribbean and also within the Caribbean at a price that is in the interests of travellers and the airlines.

CHAPTER IV - FOOTNOTES

1. Wassenbergh, H.A., "Regulatory Reform - A Challenge to Intergovernmental Civil Aviation Conferences", Air Law, Vol. XI, No. 1, 1986, p. 35 note 12.

2. Haanappel, P.P.C., "Deregulation of Air Transport in North America and Western Europe", Air Worthy, Liber Amicorum, Honouring Prof. Dr. I.H.Ph. Diederiks-Verschoor, Kluwer, June 1985, p. 98.

3. Haanappel, P.P.C., "Deregulation in Canadian Air Transport: If It Happens", AASL Vol. IX, 1984, p. 61.

4. Brenner, Melvin H.; Leet, James, O.; Schott, Elihu, Airline Deregulation, Summary of Conclusions, ENO Foundation for Transportation Inc., Connecticut, 1985, p. xi.

5. International Air Transportation Act of 1979, 94 Stat. 35.

6. 49 U.S. Code 1372(f)(2). 94 Stat. 38.

7. Air France lowered its fares to/from U.S. because of low fares between the Netherlands and Belgium and the U.S.A. This was also the case in South America where because of high tariffs travelers flew to Miami or New York and then to Europe at the low fares on the North Atlantic.

8. Haanappel, P.P.C., "An Analysis of U.S. Deregulation of Air Transport and Its Inferences for a More Liberal Air Transport Policy in Europe", submitted to the Committee on Economic Affairs and Development of the Council of Europe, Strasbourg, May 21, 1984, AS/EC.(36)3.

9. Idem, note 4.

10. Caribbean Development and Co-operation Committee. Report on First Meeting of Civil Aviation Experts, July 31 - August 1, 1978,, Port of Spain, Trinidad, E/CEPAL/CDCC/46, August 8, 1978, p. 6.

11. Around 1983 when the U.S. dollar was very strong and the European currencies devaluated, it became very expensive for Europeans to travel to countries where the prices are set in U.S. dollars. Most of the Caribbean currencies are tied to the U.S. dollar and thus these destinations became very expensive for European travelers. The exceptions were Guadeloupe and Martinique where the French franc kept the "same value" because it is the national currency.

12. See "DOT Seeks More Liberal Caribbean Aviation Policies" in Aviation Daily, July 9, 1985, p. 46.

13. See Haanappel, P.P.C., «Deregulation of Canadian Air Transport: If It Happens», AASL, Vol. IX, 1984, pp. 59-78; «Freedom to Move, A Framework for Transportation Reform», issued by the Ministry of Transport, July 1985; The Gazette (newspaper), Business Section G, p. 1. «Don't Expect Lower Fares Soon, Airlines Say,» Montreal, Saturday, July 5, 1986.

14. There are liberal bilaterals signed between European countries: Eg.

United Kingdom - the Netherlands
United Kingdom - West Germany
United Kingdom - Switzerland

15. Idem, note 1.

16. Second Memo of the Commission of European Council, March 15, 1984, COM(84), 72 Final, para. 43.

17. Idem, note 2, p. 111.

18. ITA Monthly Newsletter, No. 34, December 1985, p. 8.

19. Idem, note 18, no. 36, February 1986, p. 8.

20. European Civil Aviation Conference, ECAC Policy Statement on Intra-European Air Transport, Decision taken at ECAC's 12th Triennial Session, June 18-21, 1985, DOC No. 68E 21/6/85.

21. ITA Lettre Mensuelle, No. 37, March 1986, p. 9. American airlines have experience and those flying the North Atlantic routes know that even with economies of scale and low fares it is hardly possible to make any profit.

22. The Netherlands and Canada have already signed a new more competitive bilateral agreement. The airlines will have a greater freedom to choose the type of aircraft and flight frequencies. The governments may only intervene in exceptional cases to fix fares.

23. The Argentine Doctrine postulates that the solution of any problem must be fair, because "our formula is not to invoque freedom, but justice in international relations, knowing that freedom does not produce justice, unless it be regulated to supply the unequality between the parts." Prof. Dr. Enrique A. Ferreira, Multiple, Discriminatory and Excessive Imposition in International Air Transport, National University of Cordoba, Argentina Communication and Transport Institute, 1953, p. 91.

24. The traffic is then shared on the basis of 75 per cent for parties (3rd and 4th freedom) and 25 per cent for the foreign country's carrier (5th freedom).

25. The Fourth Assembly of LACAC held in Bogota in 1980 accepted a resolution (A4-7) which is a model clause and is a method for predetermination of capacity. It says in para. 3:

> "Cada Parte contratante concederá justa e igual oportunidad a las líneas aéreas designadas de ambas Partes contratantes para explotar los servicios convenidos entre sus respectivos territorios, de forma que impere la igualdad y el beneficio mútuo, mediante la distribución por partes iguales, en principio, de la capacidad total entre las dos Partes contratantes."

See also Bilateral Air Transprt Agreement between Brazil-Argentina, 1077 UNTS p. 306 Section V.

26. ICAO Circular 1983, International Air Passenger and Freight Transport, Latin America and the Caribbean, Circular 175-AT/65, p. 31.

27. The relevant factors are: operating costs, characteristics of the service, a reasonable profit, tariffs charged by other air carriers operating on the same route, part of it or similar routes. See Annex to Recommendation A6-1, Model of Tariff Clauses in Accordance with the Principle of Mutual Tariff Approval.

28. The Latin American States apply different systems of tariff approval.

- Country of origin (in theory they adhere to mutual approval)	in	Argentina, Bolivia, Colombia, Panama, Peru, Venezuela
- Mutual approval	in	Brazil and Mexico
- Country of origin	in	Ecuador
- Dual Disapproval	in	Costa Rica

Source CLAC/A6-NE/7, p. 2 (LACAC).

29. Idem, note 26, p. 35.

30. Idem, note 8, p. 54.

31. This is analogous the division given by the Air Transport Commission of the International Chamber of Commerce in the Declaration accepted by the 144th Session of the Council; see Revue Française de Droit Aérien, No. 37, 1983 p. 426.

32. ICAO General Assembly 1983, A24-12.

33. Bilateral Air Services Agreement. Sweden and Trinidad and Tobago, 826 UNTS p. 126.

34. Air Transport Agreement, Lebanon and Senegal, 794 UNTS p. 253.

35. Protocol of Agreement between the Republic of Mali and the Republic of the Niger, Art. 2, ss. 1, 835 UNTS p. 199.

36. At the moment LIAT is performing its services as a multinational airline. It is owned by the majority of English speaking islands and is designated by them to fly the international routes in the region which end in Puerto Rico and Caracas.

37. These reasons could be public acceptance in the other Contracting Parties' territory, not enough traffic in the Contracting Party territory to permit more competition, in the Contracting Party territory between the national airlines there is already heavy competition.

38. It happened on several occasions that there was only one foreign airline flying a route. When the profit decreased the airline stopped to fly on short time notice leaving the island without any service. This is being called the «hit and run» policy of some American airlines.

CHAPTER V

COOPERATION AMONG CARIBBEAN AIRLINES

I - THE REASON FOR COOPERATION

The Caribbean airlines are in an ambigious position. Besides being a business enterprise they are also a government instrument; and as such, they are not always instructed according to economic criteria alone.

As a businness enterprise they have to compete with others and at the same time they have to comply with their government's policy. Even in situations where they act solely as a business enterprise it has been difficult to make any profit.[1]

It is not uncommon for the governments to subsidize the airlines or bail them out when they are in serious deficit. This at the same time opens the door for the governments to interfere with the business policy of the airlines. When government policy overmasters business policy the business as such becomes subordinated to other priorities of the government.

The airlines have to be as independent as possible to do their own business. Inherent in this is that they carry their own losses. Under the present circumstances they will go bankrupt before long.

In the United States the tendency is that the airlines yield or die. Several of them have been swallowed up when

they were sick.[2] As the situation is developing, in the near future we will have fewer but highly powerful airlines. If already small airlines can not make ends meet there is not much hope in the future.[3] Business-wise they have no future if they go on their own. Thus, cooperation is evolving as a sine qua non condition for small airlines to strenghten their position and service.

It is in this spirit that, e.g. the Treaty of Yaoundé has been concluded in 1961 constituting Air Afrique[4] and the first LACAC Assembly recommended member states to stimulate their national airlines to enter into as many cooperation agreements and arrangements as possible among Latin American airlines.[5]

The cooperation between airlines can be in the technical field or operational field or both at the same time.

II - TECHNICAL COOPERATION

In the technical field cooperation can be implemented at two levels:

- in the standardization of flight equipment and the establishment of common technical specification for the type of aircraft to be used;
- in the creation of an agency that would centralize the means of maintenance, common operating methods and equivalent qualifications for personnel.

Standardization of the airline fleets is a very important and basic phase leading to technical cooperation. The actual flight equipment of the Caribbean airlines is somewhat diversified mainly because of the different financial sources that airlines have recourse to for acquiring and maintaining equipment.[6]

The other aspect in this field is the necessity to harmonize certain procedures and conditions for issuance of airworthiness certificates and pilot licences.[7] These aspects of cooperation can be beneficial if they are supported by cooperation on the maintenance level supervised by an agency. Especially for the tasks and structure of this agency the Caribbean airlines can take the example of the European airlines in ATLAS and KSSU.[8] These two cooperation agencies have been set up to have better utilization of the facilities, concentration of training facilities, better utilization of personnel, the pooling of spare parts and the sharing of risks. The parties agreed among other things that:

(a) there will be an equitable as possible sharing of activities and costs among themselves;

(b) there is a first refusal right of tasks not previously allocated when a new type of activity or aircraft is introduced in the operation;

(c) the principles are binding on the partners for the life time of the aircraft concerned as long as at least two of them are still operating them;

(d) the relations between them are to be governed by specific contracts which are in conformity with national laws and regulations; and

(e) disputes will have to be submitted to the IATA arbitration clause.[9]

If the Caribbean airlines are able to maintain their aircraft themselves it would save them quite moneys which they are now paying to European and American enterprises to do this job.

At the same time this technical cooperation would be a stepping stone to another kind of cooperation, namely in the financial field. The homogeneity of equipment and sharing of maintenance will undoubtedly give a greater negotiating power vis-a-vis manufacturers and financial institutions than is the case in an isolated approach by one airline.

Abonouan's conclusion on AFRAA's technical cooperation could well be applicable in a Caribbean situation:

> When the cooperation in the technical field is complete, this will have a considerable inpact on the economic activities, the exchange of manpower, the finances of the airlines, etc....and can serve as a basis for the realization of other projects that are highly beneficial for Africa, like the grouping of [national] airlines in multinational airlines and, why not, the creation of a pan-African airline.[10]

III - OPERATIONAL COOPERATION

In the previous chapter we proposed that Caribbean airlines compete for intra-regional traffic. For extra-regional operations we suggest one standard bilateral agreement. When the governments agree to this the next step would be for the airlines to operate the routes jointly. For the extra-regional routes we see the developments as follows:

(a) a pooling agreement between the national or designated carriers; and

(b) in the second phase, a consortium of these carriers; and

(c) in the third phase, an international airline.

Here the Caribbean governments must make extensive use of the «community of interest» regulation to cover the whole route network to and from the Caribbean region.

These possibilities are to harmonize and coordinate the operations of the Caribbean airlines and replace their weak position in this strong competitive environment.

A. The Pooling Agreement

This agreement between airlines is for the operation by them of one or more routes and allocation of revenues derived from such operations.

It does not represent a fusion of operation nor an association because of lack of social capital and animus

societatis. Each of the parties remains independent using the facilities and taking charge of the loss of their respective operation. There is no common responsibility. The agreement is governed by the laws of contract; it can be bilateral or between more airlines and can be shaped to suit the needs of the parties. It consists of two elements: (1) the regulation of the traffic between the airlines parties to the agreement; and (2) the deposit of the revenues in a common fund.

The second element cannot exist without the first one because the revenues are from the traffic carried by the airlines. The first element can exist without the second; it is possible for airlines to conclude an operating agreement without any bearing upon the revenues of the parties. In a pooling agreement the different parties have various kinds of input. These can be:

(1) Traffic rights: One party appoints the other to fly the routes it is entitled to but not able to do itself. This situation comes close to the «community of interest» clause;[11]

(2) Personnel: Two airlines agree to fly a route jointly while one supplies the aircraft and the other the personnel;[12]

(3) Personnel and flight equipment: In this case it can range from an interline agreement to a joint operation of specific routes.

This enumeration is not exhaustive because different airlines have different needs.

The advantages of a pool agreement are:

- it limits the effects of competition;
- it gives a better utilization of equipment;
- it offers opportunities for airlines to extend their traffic markets;
- it enables airlines to reduce costs.

A pooling agreement between the Caribbean airlines on the extra-regional routes would be of great advantage for those nations that do not have the equipment to fly long distances.[13] As noted in Caribbean Tourism:

> without the closest possible collaboration between Caribbean airlines no national airline will successfully develop and maintain any routes from Europe into the Caribbean; without a joint approach to market research,...,national airlines in the Caribbean will forever be opening services and closing them again before long.[14]

When dealing with a pooling agreement between the Caribbean airlines it should be kept in mind that some of these islands may have laws that prohibit such an agreement that restrict competition. If this is the case the respective governments should grant immunity from prosecution to the airlines parties to the agreement.

This will be less of a problem than the situation with U.S. and possibly European and Canadian anti-trust laws.

The Canadian competition rules prohibit any conspiracy, combination, agreement or arrangement that is likely to prevent, limit, lessen among others the facilities for transport or dealing in an article or restrain or injure trade or commerce.[15]

For deregulation Canadian style to come to its full effect the authorities will have to see that the airlines operate according to these rules.[16] There have been no pooling agreements between airlines for domestic routes, only for foreign routes. Notwithstanding the law no action has ever been taken against airlines as offenders of this Combines Investigation Act.

Lately the European Court of Justice decided that the competition (or anti-trust) rules of the EEC Treaty (Art. 85(1)) were applicable to the air transport sector.[17] Although this decision leaves the airlines unharmed at first sight, the European Commission has indicated its intention to take legal action against individual member states and airlines to enforce the competition rules in this sector.

The Court has also declared that international agreements between member states, even those requiring bilateral tariff agreements between airlines and their approval by national authorities cannot prevent the application of European Community laws.[18] This means to say that all inter-airline arrangements on tariffs, capacity and revenues, even those approved by member states, would be subject to the competition rules unless specifically exempted. Any agreement which has effects in the community will fall under the jurisdiction of the Court. This is an application of the «effects» doctrine.[19]

Many Caribbean nations have bilateral agreements with European countries containing provisions regulating the tariff

fixing by the designated airlines and the approval of the tariffs by the national authorities. If the Court declares that all these inter-airline agreements are against the EEC competition rules and therefore null and void, this may affect the competitive position of the Caribbean airlines versus the European ones.

The airlines will then be free to set their own tariffs based on the market forces. This could sparkle fare wars on the different routes. When European airlines lower their fares for inter-community travel, the non-European airlines, which also service these routes, will have to match the prices.

Under U.S. anti-trust laws as applied to aviation[20] both the U.S. government and private parties are making attempts to extend the provisions of U.S. anti-trust laws outside the U.S.[21] Section 412 of the Federal Aviation Act requires any carrier to file every cooperative working arrangement affecting air transportation between an air carrier and any other air carrier foreign or not. The contract, agreement or arrangement will be found unlawful if it is adverse to the public interest or in violation of this Act.

Such an agreement will be exempted from the anti-trust laws if it is necessary to meet a serious transportation

need or to secure important public benefits, including international comity or foreign policy considerations, and if the authorities do not find that such need can be met or such benefits can be secured by reasonably alternative means having materially less anti-competitive effects.[22]

The United States confer anti-trust immunity only through its agencies and not by agreement. In the past the CAB had approved joint operation agreements by foreign airlines for services to and from the U.S.A. Some of these agreements would surely have been disapproved, had it not been for State Department consideration that they were in the «national interest» or the approval was because of «special circumstances».[23]

But to date no commercial pooling agreement has ever been approved by the CAB or DOT. All provisions for the pooling of revenues were lifted from the agreements that had been approved.

The subject, extra-territorial effects of national laws, was an agenda item of ICAO's Third Air Transport Conference in 1985. In its recommendation to the Council it urges the development of appropriate guidance material for avoidance or resolution of conflicts between Contracting States over application of national competition laws to international air transport, especially where bilateral air

services agreement provisions are affected and where extra-territorial application is alleged.

It also recommends Contracting States to ensure that their national competition laws are not applied to international air transport in such a way that there is conflict with their obligations under the air services agreements and/or under the Chicago Convention, nor in such a way that they have extra-territorial application which has not been agreed between the States concerned.[24]

B. The Caribbean Airline Consortium

A consortium is based on a real and effective willingness for a total collaboration. The classical example is the Scandinavian Airlines System (SAS). The parties put the activities, materials and recourses at common disposal. There is an intensive and complete collaboration in the international air transport.

The members cannot be parties to another consortium at the same time. There is a basic structure of common organs with different powers to implement the air policy and administer the activities. The states intervene when their airlines establish the consortium or make regulations to protect the consortium once it is functioning. There is also some common property while they are jointly and severally liable towards third parties for responsibilities of the consortium.

Such a Caribbean airline consortium will be the governments' chosen instrument to operate on the extra-regional routes according to the standard bilateral air services agreement mentioned in the previous chapter.

As said it will be a partial consolidation of the national airlines because the national airlines remain in existence to fly the intra-regional routes.

Contrary to the situation in a pooling agreement, the national airlines lose their identity in a consortium. This is the case with the multinational Scandinavian Airlines System, SAS, formed by the national airlines from Sweden, Norway and Denmark.

The input of the parties to a consortium can be: ground and/or flight equipment and personnel; traffic rights; and capital.

The parties can agree on the share of each in the joint venture. We are positive that a consortium of airlines from states with differing political philosophies may be able to co-exist with greater harmony than national governments, since its common objectives are limited to non-political economic gains.

The United States seems to be positive towards this idea of a joint venture among the Caribbean airlines. An official of the DOT made an inviting gesture to the Caribbean

for «the pooling of funds and resources to advance development collectively where individual efforts would not suffice.[25]

C. The Caribbean Multinational Airline

The multinational airline would be the highest level of cooperation among the Caribbean airlines. In fact this would exist besides the national airlines and operate only on the extra-regional level. To reach this level it is not necessary that the process goes through step one and two. It is possible that the Caribbean nations decide to establish an international airline without first having the airlines make other agreements. All extra-regional flights by national airlines will have to be ceded to this multinational airline. There should be no competition between these airlines. The existence of this multinational airline depends on the close cooperation and coordination by the governments and on an integration of aviation policies; it would be independent of national airlines.

This is the case with the multinational airline «Air Afrique». On a much smaller scale operates LIAT: the airline owned by the English speaking islands. Its operations are almost entirely in the Caribbean.

There are some differences between a consortium and a multinational airline. This airline has an international legal

personality and the liability is according to commercial laws and is limited to the suscribed capital. The parties are not responsible for the debts of the multinational enterprise.

The formation of a multinational airline is connected with considerable risks during the first years of operation. It is important that sufficient capital is provided from reliable sources. It is recommended that all states participate in equal amounts of social capital though this should not be a conditio sine qua non for the establishment of a multinational airline. This equal share will prevent that a state would get a dominant position among the others. As was suggested in the proceedings towards the establishing of the multinational shipping company NAMUCAR, it should be possible to obtain a loan for those states that need capital and wish to participate in the enterprise.[26]

What strengthens the possibilities of the new enterprise to survive, is the possibility of the members to withdraw or terminate their membership. There must be a prohibition against withdrawal of any party before the expiration of at least ten years. This would force the parties to look for solutions to the problems which are bound to arise during the first tentative years of the enterprise's life, rather than withdraw at the first sign of conflict, real or imagined.[27]

In this system it is very important to have a good set of rules to resolve disputes fast and efficient. And, of

course, there should be provisions for dissolution of the airline under certain circumstances.

In general terms the structure of the administration of the multinational airline would consist of: the management, responsible for commercial interests and the business operation; the Board of Directors, in charge of the control of the Management, the supranational interests and development of policy for the whole region; and the Council of Ministers, the forum where the respective Ministers present their national interests.

The Board of Directors will function as a buffer and a filter for the governments' influences. It will watch that no government will have direct control or influence on the policy of the management. The management is only responsible to the Board of Directors which in its turn is responsible to the Council of Ministers consisting of representatives of all participating states.

Partnership in such a multilateral enterprise demands that the parties commit themselves to constantly proving their willingness to cooperate even in situations where the rate of return is less than projected. In any case it will not be less than it is now.

IV - NATIONALITY AND REGISTRATION

A subject closely related to a consortium and multinational airline is the nationality and registration of aircraft operated by these international operating agencies.

Arts. 17 and 18 of the Chicago Convention stipulate that aircraft have the nationality of the State in which they are registered and that they cannot be validly registered in more than one state at the same time. These regulations are for the determination of the state responsible for operation of the aircraft.

Where we have an international joint operating entity among several states, the question of nationality and registration of the aricraft arises: With the possibilities we have today, there should be no more problems.

In the case of the SAS consortium the partners share the fleet in the proportion of three to two to two and register the aircraft accordingly in their national registers.

There could have been a situation of misrepresentation in the SAS case. It is generally assumed that the crew and personnel on the aircraft have the same nationality as the aircraft. In the SAS operations this is not always so. The crew and personnel of the three state members operate the aircraft registered in the three states without correlation between the nationalities. The situation is resolved by an agreement among the Scandinavian states.

Another possibility is that all aircraft are registered in the national register of one state. According to an agreement the rights and obligations are shared among the partners to the entity. This is the situation of Air Afrique and LIAT.[28]

A third possibility is to have a joint register exclusively for the registration of aircraft operated by the multinational airline. This register shall be separate and distinct from the national registers of the partners and shall be maintained by one of them. The parties shall be jointly and severally bound to assume the obligations and responsibilities. This system is being used by Arab Air Cargo.[29] The aircraft of this airline bear a common or international mark (4YB) which is assigned to it by ICAO.[30] The advantage of this is that the aircraft are not bound to one nationality and will not meet obstacles when a third country does not allow aircraft of one of the partners to fly over its territory.

For this same reason we suggest the Caribbean multinational airline to apply the last system of registration of its aircraft. The state that will be in charge to maintain the register can be decided by the parties or more specifically by the Board of Directors.

CHAPTER V - FOOTNOTES

1. According to information available the following companies had the following results over the years:

   ALM had profits only once since 1964;
   AIR JAMAICA had to sell part of its fleet to pay its debts (and leased it back to continue operations);
   BWIA had been operating only with loss;
   LIAT is heavily dependent on subsidies.
   Cayman Islands Airways has doubts about its future.

2. See «The Concentration of Power», Editorial in Flight International, No. 4009, Vol. 129, 3 May 1986, p. 1.

3. Airlines of Less Developed Countries operate under these conditions: high operating costs; small fleets; less dense route networks than Developed Countries; poor aircraft utilization. The LDC market is a traffic destination market; the domestic traffic is limited in extent and growth possibilities.

4. Parties to the Treaty of Yaoundé are Sénégal, Ivory Coast, Benin, Congo, Niger, Tchad, Republic of Central Africa, Mauritania, Togo and Upper Volta.

5. First General Assembly of LACAC, Recommendation A1-5, CLAC/A6-NE/5, 25/10/84, Sexta Asamblea de la CLAC, Rio de Janeiro 20-23 November, 1984, pp. 9-10.

6. The 21 Caribbean airlines listed in World Airline Directory (Flight International, 29 March 1986, p. 36) have a mixed fleet of 19 DC's, 19 Boeings, 19 BAe HS 748's, 13 Twin Otters, 13 Antonovs 26, 14 Ilyushins, 14 Yakolevs, 10 Antonovs 24, 8 Tupolevs, 2 Airbusses, 4 Tristar 500's, and a wide variety of smaller aircraft.

7. There are differences in the Caribbean because of the different political/historical systems. The countries that manufacture aircraft have their own national requirement for airworthiness. And this has probably been implemented to in the colonial territories.

8. Air France, Alitalia, Lufthansa, Sabena and Iberia are members of ATLAS. KSSU is an association of KLM, SAS, Swissair, and UTA.

9. Meline, Jacques, Secretary General of Atlas Group, «Regionalism in International Air Transportation: Cooperation and Competition. Current Regional Activities, a Regional Experience in Technical Cooperation: The European Atlas Group: Concept and Realities», speech delivered at Seminar organized by MIT/ALIA the Royal Jordanian Airline in Jordan, April 19-21, 1983.

10. Abonouan, Kouassi, «AFRAA statut et contributions au développement du transport aérien», LL.M Thesis, McGill University, August 1984, p. 88.

11. Such a situation is possible in case ALM wants to fly to Montreal but does not have the aircraft. It can come to an agreement with Cubana to fly the first leg Montreal-Habana and ALM would take the passengers from Habana to the Netherlands Antilles.

12. Such an agreement is in force between KLM and ALM for the Mid-Atlantic route.

13. At one time, ALM was permitted to fly to Chicago only with non-stop flights from the Netherlands Antilles. But because of the type of aircraft ALM had, this route could only be serviced with a technical stop in Miami. For this reason ALM could not make use of its rights to serve Chicago.

14. Caribbean Tourism, a publication of Caribbean Tourism Research and Development Centre, Vol. 6, No. 1, March/April 1986, p. 1.

15. Combines Investigation Act, R.S.C., c. C-23, Art. 32(1)(3), (5) and Art. 33.

16. See P.P.C. Haanappel, «Deregulation in Canada: If it Happens», AASL, Vol. IX, 1984, pp. 74, 75.

17. Joined cases 209 to 213/84 Ministère Public v. Lucas Asjes and others.

18. Walsh, Kevin, «Air Transport and the EEC Competition Rules», International Business Lawyer, July/August 1986, Vol. 14, No. 7, p. 223.

19. The Anti-Trust Guide for International Operations, drafted by the Anti-Trust Division of the U.S. Dept. of Justice says that...«the U.S. anti-trust laws should be applied to overseas transactions where there is a foreseeable effect on the U.S. commerce...» but that unnecessary interference with sovereign interests of foreign nations should be avoided. See Samie, Najeeb, «The Doctrine of 'Effects' and the Extra-Territorial Application of Anti-Trust Laws», Lawyer of the Americas, Vol. 14, 1982, pp. 23-59; Harbison, Peter, «Competition Laws Corrode Airline Cooperation», IATA Review, April-June 1986, pp. 5-7. What states have been doing to protect their subjects from application of these foreign anti-trust laws is that they enact blocking statutes.

> «Most Latin American countries treat business practices associated with market power and the competitive relations which emerge and develop within the national economy differently than restrictive practices which develop to operate in the context of international economic relations. There has been a definitive, though often implicit, tendency to distinguish between the treatment of 'domestic' and 'imported' market power.»

German, Rafael, «Latin American Anti-Trust», Laywer of of the Americas, Vol. 14, 1982, pp. 1-22, at p. 1.

20. Federal Aviation Act, Sec. 412, 49 U.S. Code 1378.

21. One of these situations is the case of Laker Airways versus British Airways and British Caledonian and other companies in a U.S. court, under the terms of U.S. law, for actions that took place outside the U.S.

22. Idem, note 12 (a)(2)(A)(i) and Sec. 414.

23. See Air Jamaica Ltd., CAB Doc. 15919, Jan. 19, 1966; Transportes Aereos Portugueses SARL, CAB Doc. 16692, June 1, 1966; Lineas Aereas de Nicaragua S.A. LANICA 50 CAB Reports 1969.

24. Third Air Transport Conference, Montreal 23 Oct. - 7 Nov. 1985, Agenda Item 3, Recommendation 5, 1(a) and 2(b), ICAO Doc. 9470, AT Conf/3.

25. See declaration by DOT Assistant Secretary for policy and international affairs, Aviation Daily, July 9, 1985, p. 46.

26. Salgado y Salgado,José, E., «La Empresa Naviera Multinacional del Caribe S.A. NAMUCAR», El Caribe Contemporanéo 5, Enero-Abril 1981, p. 85, 86.

27. Archer, Ian de V., Multinational Co-Operation in Air Transport in the Commonwealth Caribbean, LL.M. Thesis, McGill University 1968, p. 68.

28. Air Afrique is registered in Ivory Coast. LIAT is registered in Antigua and is owned by the Governments of Antigua, Barbados, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Lucia, St. Kitts-Nevis, St. Vincent and Trinidad and Tobago.

29. Arab Air Cargo is a multinational airline established by Jordan and Iraq. The register is maintained by Jordan.

30. See ICAO Council, 110th Session, Subject No. 14.3.12 and No. 15.11, C-WP/7746, 3/11/83.

CHAPTER VI

THE CARIBBEAN COMMISSION FOR CIVIL AVIATION

I - REGIONAL INTERGOVERNMENTAL ORGANIZATIONS

1. International Civil Aviation Organization (ICAO)

Ever since air transport became international it was felt necessary to promulgate regulations and standard rules at the international level. This was in order to avoid conflict between governments about this matter and at the same time it stimulated developments in aviation. At the public international level, the Paris Convention of 1919 and the Chicago Convention of 1944 are the most significant.[1] The private aspects of air navigation have been regulated in several conventions since 1929.[2] The significance of the Chicago Convention had as part of its mission the replacement of earlier conventions on air navigation. The other achievement was the establishment of an institution necessary to both provide technical coordination and watch over air navigation. The Preamble to the Chicago Convention speaks of avoiding friction and of cooperation among peoples, on which universal peace depends, and of the need to develop international civil aviation in a safe and orderly manner, in order to promote sound and economic operations.

The institution mentioned above is the International Civil Aviation Organization (ICAO). 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:

a) insure the safe and orderly growth of international civil aviation;

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

c) help in the development of airways, airport, and air navigation facilities for international civil aviation;

e) prevent economic waste caused by unreasonable competition;

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

g) promote the development of all other aspects of international civil aviation.[3]

Although ICAO is able to address all problems of international civil aviation many member States realized that their interests were more specific and better dealt with on a regional basis. This led to the creation of regional aviation organizations by the contracting States.

2. European Civil Aviation Conference (ECAC)

The first regional institution created to deal with civil aviation matters was the European Civil Aviation Conference (ECAC) established in 1955 pursuant to a recommendation of the

Conference on Co-ordination of Air Transport in Europe (CATE) which was convened by ICAO in Strasbourg in 1954.

The objectives of ECAC are: to review the developments of intra-Europe air transport, in order to promote coordination, better utilization and orderly development of such air transport; and to consider any special problems in this field.[4] The Conference has a consultative function and its resolutions and recommendations or other conclusions are subject to governmental approval.[5]

ECAC comprises a General Assembly, composed of state delegates, a Secretariat and four Standing Committees (two economic (regulatory and implemention), a facilitation and a technical committee).[6]

The most important accomplishment of the Conference has been the multilateral agreement between the European states for freely exchanging among themselves commercial traffic rights in respect of certain categories of non-scheduled operations, without imposing the limitations proposed in art. 5 of the Chicago Convention.[7] Other achievements have been:

- the Multilateral Agreement relating to certificates of airworthiness for imported aircraft;
- the international agreement on the procedure for establishment of tariffs for scheduled air services;
- the Ottawa Declaration relating to charter regulation between ECAC, Canada and the U.S.A.;

- the U.S.-ECAC Memorandum of Understanding on tariffs on the North Atlantic;

- the Report on Competition in intra European air services, suggestions for liberalization of air transport in Europe.

Most European countries are represented in ECAC, giving this organization great influence on the conduct of air navigation to, from and especially within Europe, as shown by its achievements.

3. African Civil Aviation Commission (AFCAC)

The African Civil Aviation Commission (AFCAC) was established in 1969 at a conference held in Adis Ababa, convened jointly by the Organization of African Unity (OAU) and the United Nations Economic Commission for Africa (ECA). It is interesting to note that ICAO had done some preparatory work in this area as far back as 1964.[8] The aims and objectives of AFCAC are: to provide the civil aviation authorities in the member States with a framework within which to discuss and plan all the required measures of co-ordination and cooperation for all their civil aviation activities; and to promote co-ordination, better utilization and orderly development of African air transport systems.[9]

To achieve this the Commission is expected to carry out studies and fostering programmes within the area to encourage:

the coordination and application of aviation rules; the growth of traffic; the standardization of equipment; and to consider the possibility of integration of government policies.[10]

The Commission is an autonomous body having all the legal attributes associated with international inter-governmental organizations, i.e. international legal personality. The structure of AFCAC consists of a Commission (this is reminiscent of the Assembly of ECAC or ICAO), a Bureau (a President and four Vice-Presidents, one for each region) and a Secretariat. The Commission determines policies and guidelines in civil air transport for submission to member states in the form of recommendations. The Bureau is responsible for directing, coordinating and steering the work programme established by the Commission during plenary sessions. The Secretariat is in charge of organizing meetings, studies, and the maintenance of records and the like.[11]

The Bureau suffers from the problem that its members are not permanent appointees. Instead, they are elected by the AFCAC plenary session for a period of two years. However, they are also officials of national civil aviation departments and are subject to transfers by their governments. Consequently, continuity in the work of the Bureau cannot be guaranteed.[12]

AFCAC has been very actively involved in tariff matters, exchange of traffic rights between member states and between AFCAC members and non-members.[13] AFCAC policy places heavy

emphasis on both the development of training procedures and uniformity in the issuance of licences. In addition, development includes cooperation and integration of African airlines and the improvement of air services, as well as improving the financial structure of African airlines.[14]

One particular change in the aviation policies of African states is that in colonial times most air services in those colonies were carried out under a Bermuda I-type of agreement. This type of agreement was signed between metropolitan states, neglecting possible future developments in their colonies. As a reaction to this, the post-colonialist new states adopted a more protective stance in exchange of traffic rights after independence.[15] Finally, in this context, the African Air Tariff Conference was established for tariff-fixing on intra-African routes, while for extra-African routes tariffs will continue to be established according to IATA procedures.

4. Arab Civil Aviation Council (ACAC)

This Council was established in 1965 under the auspices of the League of Arab States. In 1978, the Council issued a policy statement which included the following objectives:[16]

- promotion, development and growth of international air transport on a sound and economic basis in accordance with the requirements of public interest;

- the achievement and maintenance of harmony between scheduled and non-scheduled international air transport;

- actions for coordination of policies and regulations of Arab and foreign states in relation to control of capacity availability;

- the coordination of policies on the establishment of fares and rates and the enforcement of agreed tariffs;

- the strengthening of cooperation and coordination between ACAC and the Arab Air Carrier Organization (AACO), for the achievement of common objectives and the promotion of civil aviation and air transport in the Arab world, and to provide technical and economic conditions to ensure their prosperity;

- the promotion and encouragement of technical and economic cooperation within the framework of AACO; and

- the promotion of personnel training in all sectors of air navigation.

Some members of AFCAC are also members of ACAC as they are also Arab states.

5. South Asian Aviation Association (SAAA)

In December 1984, the Civil Aviation authorities and the airlines of South Asia decided to form the South Asian Aviation Association (SAAA). The aims and objectives of this Association are:

- to promote and develop safe and economic air transport systems to, from and within the South Asian Region;

- to ensure the orderly growth of civil aviation in the region;
- to encourage and strengthen closer cooperation amongst members in technical, training and marketing fields, and to eliminate uneconomic competition;
- to promote safety and efficiency in international air navigation, airworthiness and aircraft operations;
- to encourage the development of airports and air navigation; and
- to conduct research and maintain statistics in conjunction with member airlines.

In addition, the member airlines will use the SAAA forum to defend their interests. Finally, it was decided at the Conference to create four committees - two of them in order to tackle the technical problems of SAAA members.[17]

6. Latin American Civil Aviation Commission (LACAC)

a. Establishment and Structure

In 1973, after many attempts and efforts,[18] it was finally decided to establish a permanent civil aviation commission pursuant to a recommendation by the Second Conference of the Aeronautical Authorities of Latin America. This would provide the Civil Aviation Authorities of South and Central America, Mexico and the Caribbean with an adequate institution in which

to discuss and plan all necessary measures for coordination of and cooperation in civil aviation activities.[19]

As was the case with ECAC and AFCAC, the rationale for the establishment of a regional civil aviation organization in Latin America was more economic than technical, now that the latter aspects are regulated by the Chicago Convention and ICAO recommendations. The economic aspects of international air services have proven difficult to coordinate on a worldwide basis. They are too closely related to national political and economic factors. The task of ICAO in this field is confined to generalities, such as: the economic study of air transport; the formulation of principles and recommendation for the orderly development of air transport in the world; and to provide the member states with as much information as possible concerning civil aviation.

To fulfill its objectives, LACAC is functioning to:

- foster and support coordination and cooperation between member states for the orderly development and better utilization of air transport within to and from the region;
- carry out studies on economic questions of air transport;
- promote exchange of statistical information between member states;
- encourage the implementation of ICAO Regional Plans related to the various technical fields of air navigation;

- foster arrangement for the training of personnel and technical assistance in the field of civil aviation.[20]

In practice, LACAC activities have concentrated on the following principal tasks:[21]

- preparation of research programmes for the development of air transport in the Region;
- studies on the problems of unilateral measures which affect international air transport;
- application of restrictions for on-line and interline traffic;
- compilation of bilateral agreements and other legal arrangements for reciprocal tax exemption to avoid double taxation and the preparation of a multilateral agreement for the member states;
- a continuing study of the problems related to tariffs in the Region;
- studies in the conditions of carriage for passengers and cargo;
- improving the criteria for determination of capacity and scheduled services;
- development of guidelines and criteria for non-scheduled air services in Latin America;
- studies related to economic repercusions that the premature application of noice regulations could have on Latin American airlines;
- preparation and development of a programme for a regional technical cooperation for the training of personnel in the economics of air transport.

Over the years the work programme of LACAC has expanded and practically all economic aspects related to air transport in the Region are now included in the programme.

LACAC consists of two basic organs. The first is the Assembly, which establishes the policies and the work programme of the Commission and the Executive Committee. It also consists of representatives of all member states who meet every two years.[22] The first Assembly was held in Buenos Aires in 1974.

The second organ, the Executive Committee, consists of the President and four Vice-Presidents elected by the Assembly. When electing the members of this Committee, the Assembly takes into consideration an equal geographical representation, the principle of rotation, and the contribution of each state to air transport in the Region.[23]

The Executive Committee is in charge of the administration, coordination and direction of work programmes established by the Assembly. The Committee meets twice a year and has under its direction three groups of experts, in Air Policies, in Costs and Tariffs, and for Legal Problems.

The recommendations and resolutions of LACAC are adopted by the Assembly after they have been studied by the respective groups of experts and approved by the Committee. Members can also vote by mail on subjects that have been examined already by the organs of LACAC and the member states. A two-thirds majority is necessary for adoption of such a resolution or recommendation.

b. The Aerocommercial Policy of LACAC Member States

LACAC has always been in favour of the economic regulation of international air transport. In addition, the coordination of the air policies of the members of the Region has always been an objective. This has been based on two aspects of the aerocommercial policy: (1) the capacity and traffic rights; and (2) the tariffs and the related aspects.

As mentioned in Chapter IV, LACAC member states, with some exception, are in favour of predetermination of capacity and they accepted this principle as mandatory in their bilateral negotiations.[24] This principle of predetermination is based on:

- the prior approval by the respective authorities of capacity to be offered;
- the estimated traffic requirements between the territories of the contracting parties; and
- the equal sharing of the capacity between the two parties.

Although the criteria and guidelines were modified during the Fifth Assembly, the basis of the principle remains intact.

Recommendation A3-1 sets the criteria to be taken into consideration when member states have to adjust capacity during periods of high demand.[25]

In Resolution A3-3, the member states appeal to the several governments to grant first and second freedom rights and the right

to stay-over at all points on agreed routes within the Region.

In reaction to the CAB Show Cause Order in 1978, LACAC adopted Resolution A3-2 in its Third Assembly to establish definite criteria and procedures for the negotiation, approval and enforcement of international tariffs. The resolution also recognized IATA's tariff coordination mechanism as the primary option. LACAC's reaction against the method used by the CAB to evaluate tariff levels (SFFL) had some success. This method was not representative of the industry as a whole, as the statistics did not reflect the traffic costs and revenues of Latin American carriers.

There is extensive cooperation between LACAC , AITAL and IATA, in respect of tariff fixing for the Region. Other tariff-related aspects of air transport have also attracted the special attention of LACAC. Among these, we find conditions of carriage for passengers, compensation for denied boarding and delay, excess baggage, and damage to hand baggage.[26]

II - LACAC AND THE CARIBBEAN

All hispanic South and Central American States are members of LACAC. In the Caribbean area, only Cuba, the Dominican Republic and Jamaica signed the Constitution of the Commission.

Up to the Sixth Assembly in 1984 Jamaica had not taken part actively in the activities of LACAC. Although they are invited as observers, none of the civil aviation authorities of other states in the Caribbean, except for the Netherlands Antilles and, in the last Assembly, Haiti have attended these assemblies. The reasons are not clear, although language may be a problem. Art. 26 of the Statutes of LACAC states that the working languages of the Commission shall be Spanish, Portuguese and English. Rule 37 of the Rules of Procedure for Meetings of LACAC stipulates further that the provision of simultaneous translation shall be subject to the budgetary provisions approved by the Assembly.[27]

It is assumed that language is not the sole reason why the French and English Caribbean and Suriname stay away from LACAC. Another reason is surely the existence or non-existence of a relationship between the colonial Caribbean and South America. Furthermore, the Caribbean states consider their region uniquely situated in the middle of North and South America, in addition to the disparity in the size of the territories. Thus, the aviation policies of the Caribbean and LACAC member states differ considerably.

Due to their economic situation, where internal means of production do not suffice, the needs of the Caribbean have necessitated increased concentration on tourism. As the emphasis is on the actraction of tourists, the several governments try to

eliminate all obstacles that could restrict inbound traffic. For this reason, the Caribbean states will never on their own be in favour of a predetermination of capacity. Also, due to the size of their individual airlines, they can not demand equal sharing of the traffic between the traffic generating market and their territories.

However, leaving tariff coordination for the Caribbean routes to IATA is not a solution either, since only three airlines of the Caribbean are members of IATA. Thus, there is a disproportionate input from extra-Caribbean airlines. The results of this tariff coordination do not represent the real Caribbean tariff structure. Nevertheless, the establishment of the CARICOM Air Fares and Rates Committee is a positive sign and should be expanded to cover the whole Caribbean, and to be given a practical role rather than its present consultative function.

When the coordination of international air transport at the regional level is difficult to realize, due to the multiciplity of interests and implications in international air transport, it is more feasible to establish coordination on a smaller scale than that envisaged by LACAC.[28]

LACAC member states are more homogenous and therefore more unified and active on aero-political matters. The Caribbean region bears more similarity to the African region, where every state pursues different solutions to different problems. At

this stage, the Caribbean is not in a position to make a positive contribution to the basic principles of air policy in the LACAC context.

Firstly, the Caribbean nations will have to organize themselves and establish a common Caribbean policy before they can step on the international stage.[29] This coordination and cooperation can only be achieved through an organization, one in which Caribbean Civil Aviation Authorities can discuss their differences, analyze their particular aviation problems and coordinate their activities to solve these problems.

III - SUGGESTIONS FOR COOPERATION

Transportation planning in the Caribbean region is relatively recent. For some years now, suggestions on how to improve air transport in the Caribbean have been made. Most of these suggestions though, concern the situation in the CARICOM member states. The undertone of these suggestions and recommendations seems to be the same: regional cooperation and coordination is necessary. Demas, the Secretary General of CARICOM wrote in 1972 that:

> "Needless to say, there is no obvious merit in operating separate freight and passenger carriers. The Region must aim at developing one regional air carrier, and it is doubtful whether this can come about in the absence of a concerted Government action at a regional level. The intra-regional

operations would serve to stimulate intra-regional trade, while the extra-regional operations would constitute an important part of the infra structure of the tourist industry. It is certainly not to late to revive earlier proposals for a single West Indian air carrier, controlled by the Governments and/or people of the Region. Failing this, there should be ample scope for more cooperation among the existing country-owned airlines - through standardisation of equipment and pooling of parts."[30]

In 1976 the same author made some very cogent comments, whose importance necessitate their reproduction in full:

"For a number of years now there has been no progress in the rationalisation of air transport for the passengers and freight, both extra-regionally and intra-regionally. The countries of the region have not recognized that this is one central area where they have to pool their bargaining power and regulate the operations of foreign air carriers in the interest of the region. It is to be hoped that the recently established Regional Transportation Council will contribute to putting some order into the chaotic situation.

A single regional air carrier owned by all the Governments of CARICOM, is needed, with the longer haul routes helping to cross-subsidize the shorter routes. However, the long-haul routes are hardly likely to be profitable and the short-haul routes are bound to incur losses heavier than are necessary unless there is a regulation of the operations of non-regional carriers both with respect to the number of points of entry into the region and with respect to their movement between different points within the region. This entails the co-ordination of activities of individual member states both in the negotiation of bilateral air agreements and in the granting to other carriers of landing and traffic rights."[31]

In 1977, the Caribbean Development and Co-operation Committee (CDCC), a subsidiary body of the Economic Commission

for Latin America, constituted a group of civil aviation experts to prepare recommendations designed to foster the development ~~of regional air~~ transport. Two of the seven recommendations adopted by the Fourth Session of the Commission respectively propose that:

> 1. CDCC Ministers responsible for civil aviation meet on a regular basis to discuss matters of common interest in the field of civil aviation; and
>
> 2. that in order to improve the operation of regional air transport services CDCC governments should seek to conclude agreements among themselves and should consider entering into multilateral agreements for the operation of air services among the territories of CDCC member states.[32]

A 1978 mission of the World Bank analysed the problems of the Caribbean Commonwealth and observed that:

> "The fourth heads of government conference in 1967 recognized that the establishment of a regional airline would help regional development, and a resolution was passed at the fifth conference in 1969 recognizing BWIA's claim to that role. Moreover, the Port of Spain Agreement of June 9, 1976, among the Premiers of the four MDCs [Trinidad & Tobago, Jamaica, Barbados and Guyana], reiterated the need for rationalizing air service in the Caribbean area and recognized the special claims of BWIA to be recognized as the regional air carrier. As yet, however, no regional air carrier has been designated."

Furthermore, the report states that:

> "The regional air transport system must efficiently meet the demands of the tourist industry in the region. This objective can

> be achieved in various ways, one of which might be the consolidation of the existing airlines into a single entity and the establishment of a regional management and service company."[33]

In 1980, a study was performed on aviation in the Netherlands Antilles. After concluding that a joint-venture between KLM and ALM would have negative effects on "higher Antillean interests", it is stated that:

> "Not excluded is the idea for ALM to fly to Amsterdam independently or in co-operation with a regional partner like Air Jamaica, Caribbean Airways or BWIA."[34]

In the same year at a seminar on Caribbean tourism, one of the speakers averred that:

> "[A] regional charter airline makes much more sense than a regional scheduled airline.... Perhaps such an entity would not own any aircraft in the first instance; perhaps it could lease aircraft from existing regional carriers."[35]

In 1981, the Group of Experts of CARICOM issued a report on a "strategy for the integration movement during the decade of the 1980's". In its recommendations for transportation, the regionally-owned airline companies have been urged to come together to establish either a Caribbean airline holding company or a Caribbean airline leasing company. The holding company would have responsibility for: planning the overall route structure; determining the fleet size and type of equipment; operating the capital budget; deciding on the overseas offices, staff, counter and reservation facilities; and operationg charter

or other special services. Under the second alternative, the leasing company would buy equipment, including aircraft, and lease these to the national carriers.

The Group also recommended that the other Governments take shares in the air freighting company CARICARGO owned by Barbados and Trinidad and Tobago.[36] Another report concerning transportation planning in the Caribbean cites a World Bank study reviewing regional transport, which recommended that consideration be given to the establishment of a Caribbean Air Transport Board. Further on, the latter report states that:

> "The Caribbean is in dire need of an integrated and unified system of transport.... There is a clear need for a permanent forum to coordinate the activities and priorities in the transport sector in the region.
>
> While such a 'body' must be endowed with resources that would allow it to perform in a technically competent manner, it must at the same time be sufficiently positioned to influence in a very direct way transport policy decision making."[37]

The report finally recommends that a Transport Planners Group be established, under the authority of the CDCC Ministers. This Group would receive feedback from international agencies, governments, operational units and universities and other research bodies. The Group will collate this data to make plans for all branches of transport.

In his paper presented to the INTAL Symposium on Transportation, Wickenden states under the heading "Establishment of a Caribbean Air Transport Council":

> "This proposal, originating from the Transport Review, was considered by the CARICOM Standing Committee of Ministers of Transport. While such an organization would be useful it was felt that its introduction was premature considering the current state of aviation in the Caribbean."[38]

In the conclusion the author states that:

> "Building on the experience of CARICOM, there needs to be an extension of the integration movement first into a wider Caribbean and then with the integration movements of Central and South America."[39]

In his conclusions on this matter, the ICAO Secretary General recommended to Latin American and Caribbean states that they should continue close and regular consultations between themselves and at the sub-regional level, to maintain and develop the co-operative framework for national policies.[40] The latter further recommends that carriers explore and develop technical cooperation and co-ordinate fleet planning among themselves, to increase efficiency and reduce costs.[41]

Despite the positive suggestions of these experts, very few have been implemented to date in Caribbean aviation. No state outside the region should or will intervene, as this will raise suspicion and create the impression of an "intervention in self-interest". Thus, such attempt is likely to fail. There are factors that encourage Caribbean cooperation and others that frustrate this process.

IV - FACTORS ON THE WAY TO CARIBBEAN REGIONALISM

1. Positive Factors

The Great Mumber of Small Airlines

Almost every island has one airline. The majority have two or more. The economic freedom facilitates the establishment of airlines with very limited activities and materials, which, in the long run, tend to become inefficient. If they do not disappear, they have to merge with other airlines or co-operate closely with other airlines in the region.

Competition from Airlines from Outside the Region

The Caribbean region hosts the largest airlines in the world, which fly in under third, fourth and sometimes fifth freedom rights. Lack of equipment impedes Caribbean airlines from reciprocating under favourable economic conditions.

High Costs of Acquisition of Aircraft

This is one of the principal elements ripe for cooperation between the airlines, with the view to rationally distributing investment costs. The several small Caribbean airlines find themselves in a difficult situation, because the operation of routes does not produce enough revenue in order to pay for fleet renewal.

The Need to Coordinate Routes and Tariffs

The situation in the Caribbean, as quoted above, is basically a free for all. Airlines differing in nature, nationality, and size compete with each other, multiplying routes often without prior agreement, which leads to excess capacity and a notable lack of coordination. This results in most routes being uneconomical, with everyone incurring losses. One positive step in this situation is the designation of BWIA by the Governments of Barbados and St. Lucia to fly their routes to North America.

Lack of a Regional Aviation Organization

Here we refer to an organization that coordinates the different regional aeronautical activities and facilitates communication among the regional aeronautical authorities. On a small scale, we have the coordination of aviation policies by the Organization of Eastern Caribbean States.[42] Also in a positive view, is the cooperation between Jamaica and Trinidad to take turns representing the British West Indies on the ICAO Council. In addition, the intention of Cuba and the Dominican Republic to join this cooperation is a very positive step in regional cooperation.[43]

Furthermore, a remarkable action by some Caribbean states was the drafting of a letter signed by the ambassadors of Antigua and Barbuda, Barbados, the Dominican Republic, Guyana,

Haiti, and Trinidad and Tobago, which was sent to the U.S. Secretary of State and expressed their concern about the implementation of the regulation to prohibit certain aircraft from landing on U.S. territory because of noise regulations (FAR 36/91E).[44]

The above-mentioned similarities among Caribbean nations should make a close cooperation feasible. However, there are differences which make this cooperation less a matter of course.

2. Negative Factors

Existing Acquired Interests

A number of airlines and governments have acquired some important interests on their own, or with the help of others. Thus, it is necessary to take into consideration the fact that some governments receive a certain preference from other governments, because of their position or situation which may be considered as "special circumstances". It is very difficult for such a airline or government to join an organization without running the risk of losing these privileges, for regional cooperation which does not offer immediate tangible benefits.

The Distinct Nature of the Airlines

This could be a problem in the process of coordination. The Caribbean airlines are variously: fully or partially government owned; owned by several governments; and privately owned.

Some are government-owned but have freedom in management, while others function as government departments.

Diversity of Legal Principles

Because of their political history, the groups of states in the Caribbean have different sets of aeronautical legislation. In most of the cases the laws and rules are copied from the respective metropoles to which a tint of "couleur locale" is added.

Adherence to international multilateral agreements has brought a certain uniformity among all contracting parties. This uniformity is essential for the establishment of a multinational airline.

Non-alignment with International Organizations

Some of the airlines of the Caribbean are members of IATA (Air Haiti, BWIA, Caribbean Air Cargo, Cubana, Trans-Jamaican Airlines).[45] Whatever reasons the others have for not becoming members, this creates certain obstacles to cooperation.

The result is harmful when states situated in the same region have similar needs in air transport, but have opposing attitudes, contrary solutions, and incompatible principles. This is all within an area that, in general, represents a homogenous perspective when seen from the international point of view. This situation enables third countries to make good use of this disunity to strengthen their position and increase their influence in international air transport.

The need for cooperation is vital for the progress of the islands and for the region as a whole.

There has been no entensive action towards regional integration and previous sporadic actions have failed. Okolo gives several reasons to explain the failure of these efforts in the Third World.[46]

First, is the relative absence of favourable background conditions for integration. Even when the organization is established, it remains weak because of its limited authority. This is due to the fact that member states retain their veto power over legislation of the organization. As a third reason, the author mentions the fact that there is often bickering among member states over unequal sharing of economic benefits.

Nationalism is another reason that makes states reluctant to sacrifice national interests to regionalism. According to Demas:

> "[I]n air transport the 'paradox of sovereignty'- namely, that a state may have to voluntarily share some of its formal sovereignty with other countries in a regional grouping in order to achieve a greater degree of effective sovereignty- is extremely relevant for the countries of the Caribbean Community".[47]

Furthermore, it would be well to take the advice of Hammarskjold who stated in the context of internationalism that:

> "...increased interdependence implies loss of autonomy in national economic policy.

> Nevertheless, the increase in potential gain from policy coordination with other countries more than outweighs this disadvantage....For though we may be motivated by higher ideals, the enduring force for cooperation is still mutual advantage.»[48]

Competing ideologies and economic orientations are likely to cause conflict and undermine the feasibility of functional regional cooperation.[49] A final reason for the absence of sustained success in Third World regional integration is mentioned by Okolo. Thus, the high degree of dependency of these countries upon industrialized states makes them vulnerable to external economic influences and impedes regional cooperation. Axline gives more details when he states that:

> «These external factors, of which foreign governments and multinational corporations are two main examples, can directly affect the opportunity costs of participation in a regional integration scheme. Some of the more obvious ways in which this can be done are through private and public investment decisions, aid and trade policies, and direct political action.»[50]

There are several examples of such actions by external factors in the Caribbean. Though these are not all in the aviation field, they have enough side effects to impact upon aviation matters.

V - A CARIBBEAN COMMISSION FOR CIVIL AVIATION

1. The Position of the Caribbean Commission for Civil Aviation

Art. 55 of the Chicago Convention says that the ICAO Council may:

> «[W]here 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.»

Although regional organizations were conceived by institutions active in other fields than civil aviation, ICAO played a very important role from the beginning in the development of regional organizations.[51] The assistance that these organizations sought was primarily based on the above-mentioned Art. 55 of the Chicago Convention.

ICAO's willingness to assist in establishing a regional organization did extend to initiating such establishment. As expressed in Assembly Resolution A12-18 and A18-21 the Council was invited to given sympathetic consideration to assistance in air transport matters of regional interest presented by Contracting States or regional organizations. Furthermore, ICAO resolved that, when required to do so, it would support the creation, on the request of States, of regional civil aviation bodies likely to establish relations with ICAO comparable to those which the latter maintains with ECAC pursuant to Resolution A10-5.[52]

Regarding other kinds of multilateral cooperation agreements, because ofthe constraints they impose on the contracting parties, "the initiative has to come from within the group of parties, inspired by the incentives of the benefits to be derived."[53]

Basically, and despite their particular characteristics, it seems that the intergovernmental civil aviation organizations do not limit themselves merely to technicalities and to an

informative and coordinative function, but tend to give their activities a political dimension.[54] For these reasons, ICAO should not be too deeply involved in the activities of regional organizations.

The Caribbean commission for civil aviation could be the same as other regional civil aviation organizations, which represent an intermediate solution between the universal framework that is unable to harmonize the various national interests, and the national framework that is too narrow to contribute coherent solutions to problems requiring larger territorial approach, more commensurate with the nature of the aviation market. According to Folliot, two concepts of regionalism in aviation have developed in intergovernmental organizations: one that tends to favour cooperation on a regional basis; while the other seeks to form a kind of "defensive union" against states outside the region. He mentions AFCAC and LACAC as examples of this last concept of regionalism.

The second concept of regionalism manifests itself in either a restrictive or an extensive manner. In the restrictive manner, it deals with specific subjects and against one or more states. Examples of this are found in the "Arab cabotage" between the ACAC members; the restrictions on fifth freedom rights for extra-regional carriers in Latin America; and the "European principles" that ECAC members have to take into account when they negotiate with the United States.

In the extensive manner it functions as a means to contest the existing politico-legal system and use the political power that a regional group represents to achieve greater goals.[55] A prerequisite for this outward cooperation is a close internal political cooperation. The existing regional organizations are not only defensive unions, as there is active cooperation among member states. However, as Axline puts it, success in efforts towards integration (i.e. reducing dependence on metropolitan countries) is more likely to be achieved if the small countries (LDCs) can: link this issue to other political questions such as a common regional front in international negotiations; and if they can concentrate their bargaining efforts around issues which are crucial to the bigger countries (MDCs).[56] This suggestion can be applied to relations among the Caribbean islands themselves and to the relation between the Caribbean and Latin America.

2. The Establishment of the Caribbean Commission for Civil Aviation

Once Caribbean governments look beyond their bounderies long enough to realize that their neighbours suffer from the same problems as they have,[57] they should grasp that co-operation among themselves will lead to significant progress and set about establishing an organization to effect such co-operation.

This will not happen of its own accord, and the longer the delay the worse the situation gets. The delay may be reduced if representatives from the Caribbean countries are invited to leave their islands and come together to discuss the possibilities of establishing a regional Aviation Commission.

There are three existing organizations that are defined enough to arrange a meeting with all these Caribbean islands to plan the establishment of the Commission.

CARICOM: The positive side of this regional organization is that it covers a large territory of the Caribbean already. Puerto Rico has made a petition to become a member, while it was decided at the last CARICOM Summit that work should be speeded up on the negotiation of trade and economic co-operation agreements between CARICOM and the Dominican Republic, Haiti and Suriname, as well as countries of the Andean Pact, Brazil, and Mexico and the French and the Netherlands Antilles.[58]

The negative side of CARICOM is that it is still considered a closed group. Some non-English speaking islands have been applying for membership for years.[59] Also, it is somewhat politically oriented (there is no mention of rapprochement with Cuba) and, worst of all, recommendations are frequently made and resolutions frequently passed at CARICOM Summits which

are not being applied. This non-enforcement of its own agreements has strained the trust that is necessary among members of such an organization, has slowed down the process of integration among CARICOM members, and has encouraged the "go it alone" attitutde via bilateral agreements with third countries outside the region. The problem seems to be lack of consensus on regionalism and the reluctance of the member states to establish supranational organs with decision-making power.

THE ECONOMIC COMMISSION FOR LATIN AMERICA AND THE CARIBBEAN (ECLAC):

On the plus side of this organization, with reference to our situation here, is the fact that all the nations in the continent are members of ECLAC, together with the British Virgin Islands, the U.S. Virgin Islands, Montserrat and the Netherlands Antilles, which are associate members. One of ECLAC's Committees, CDCC, did some preparatory work already in the field of regional air transport in 1977-1979. However, on the other side, some experts find that ECLAC is too politicized.

LACAC: This is the only regional civil aviation organization in America. It has been very active in its field and has had considerable influence in ICAO Assemblies, defending the points of view of its members.

Currently, LACAC has little connection with the Caribbean, where only Cuba, the Dominican Republic and Jamaica are members. On the down side, LACAC aviation policy does not correlate with the policies of several of the Caribbean islands, and even of some Central American States. For this reason also, we suggest that LACAC change its structure.

A study was done, in 1964-1965, on Central American Transportation.[61] Within its recommendations, were the following points; that:

> (4) a Regional Air Transportation Organization be formed to act on behalf of the five countries in the planning and administration of regional air transportation; and
>
> (5) that the Department of Civil Aviation in each of the countries be given the responsibility and authority to conduct national aviation affairs.[62]

Although the proposal has been around for more than twenty years, and LACAC has been established in the meantime, it seems useful to revise it again, and include Panama, Belize and Mexico in this "Regional Air Transportation Organization".

In cooperation with ECLAC and the Central American Common Market (CACM),[63] LACAC should seek to establish a Caribbean Commission for Civil Aviation and a Central American Commission for Civil Aviation. Both regional Commissions should then be associated with LACAC. LACAC would then consist of a Caribbean section,

a Central American section and a South American section. Each section would have its own structure, with Assembly, Executive Committee, and Committees of Experts. The presidents of the three Executive Committees would form the Executive Committee of LACAC, and would, on a rotating basis, assume the presidency of this master-organization (see schedule of structure).

According to their needs and wishes, each section would work separately or, where necessary, collectively. Naturally, there would not always be a complete harmonization of all activities and recommendations of all three sections. Thus, when a section takes a stand on a certain issue, this should be respected by the other sections, and each section should get united support when negotiating with a third party.

This should also be followed when each section nominates its candidate for a seat on the ICAO Council. These three LACAC (new-style) candidates, or regional representatives, would need the full backing of all South, Central American and Caribbean member states of ICAO. In this way, there would be a more active participation among all the nations falling under the scope of art. 3 of the Statutes of LACAC.

Under no circumstances would this mean a weakening of the position of LACAC as it is functioning at the present time. To the contrary, more representative participation of all in the region would result in a stronger position for

each and every member state. Furthermore, each section would have the backing of the two other sections. This structure is more viable, since the problems of section members are more likely to be similar because of their size, geographical and economic situation.

SCHEDULE OF NEW STRUCTURE

LACAC

Assembly

South American States, Central American States, Caribbean States

Executive Committee

Presidents
Vice-Presidents S.Am/C.Am/Car.

Committees (if necessary)

South American Section	Central American Section	Caribbean Section
Assembly	Assembly	Assembly
South American States	Central American States	Caribbean States
Executive Committee	Executive Committee	Executive Committee
President Vice Presidents	President Vice Presidents	President Vice Presidents
Committees	Committees	Committees

3. The Relation Between the Caribbean Commission for Civil Aviation and Other International Organizations

A well functioning active regional organization can be formidable in defending the interests of its members. However, excessive or even moderate politicization of problems that are menacing the region can be detrimental to the idea of regional integration and the real interests of the member states. Air transport interests are surely common in all regions of the world. As ICAO is the universal organization for cooperation in air transport, the relationship among regional organizations and between a regional organization and ICAO should be positive and productive.

Art. 3 of ECAC states that:

> «The Conference shall maintain close liaison with ICAO in order, through regional cooperation, to help achieve the aims and objectives of that organization. It shall as much as possible avail itself of the services of the ICAO Secretariat.»

Art. 6 of LACAC enables the Commission itself to make recommendations for its member states on how to deal with certain aspects of air transport. However, it «...shall maintain close liaison with ICAO in order to ensure harmonization and coordination of its activities with the objectives and plans of that organization.» AFCAC gives more details in its art. 4.1, where it is stated that its functions include:

(f) encouraging the application of ICAO standards and the recommendations on facilitation and supplementing them by further measures aimed at greater facilitation of the movement by air of passengers, cargo and mail;

(g) fostering arrangements between States whenever this will contribute to the implemention of:

(i) ICAO regional plans for air navigation facilities and services; and

(ii) ICAO specifications in the field of airworthiness, maintenance and operation of aircraft, licencing of personnel and aircraft accident investigation.

For this, AFCAC «shall» work in close consultation and cooperation with, among others, ICAO.[64]

The Caribbean commission for civil aviation should work in close cooperation with ICAO. It should encourage the implementation of ICAO standards and recommendations and also coordinate the technical assistance this Organization is giving the states of this region. The ICAO Council position held in turn by Trinidad and Jamaica should be made available to the whole region on a rotating basis. The seat is intented for the representative of the Caribbean region, not a group of states or an organization.

The Caribbean representative to the ICAO Council is supposed to be a person who is aware of the problems of the whole region. This demands close cooperation among all states

of the region. In meetings or conferences of Civil Aviation Authorities the problems would be discussed and presented to the representative; the Commission would choose the representative of the Caribbean region to the ICAO Council. In order for there to be close cooperation, States will have to standardize some aspects of their aviation regulation to accord with the framework of ICAO standards and recommended practices.

Due to the importance of air transportation to the Caribbean economy, the Caribbean civil aviation commission must work together with other organizations that are active in the economic development of the region. Such organizations are the Caribbean Tourism Research and Development Centre (CTRDC), CARICOM and ECLAC.

4. Objectives of the Commission

The main objective of the Commission should be to deal with aviation problems encountered by those concerned, which can be dealt with more effectively on a multilateral basis. The Commission would serve as a forum and a consultative body for the discussion and elaboration of plans for the implementation of common rules for the improvement of air transport to benefit the Caribbean as a whole.

Specifically, this could mean stable and common rules for the operation of all commercial air services in the

Caribbean, including a standard bilateral air transport agreement for intra-Caribbean and one for extra-Caribbean activities. It could also: rationalize and integrate the route systems; simplify fare structures; encourage the implementation of generally accepted standards and recommendations; coordinate the use of the facilities for air navigation; encourage the adoption of ICAO specifications in the fields of airworthiness, maintenance and operation of aircraft, licencing of personnel, acceptance of other members' certificates of airworthiness and licences; and foster arrangements for the training of personnel in all fields of civil aviation, technical as well as administrative.

In addition, together with other organizations it should undertake studies in the development of civil aviation in the region to enable it to give guidance to its member states in their future air transport policies.

5. Structure and Members of the Commission

The Assembly: As the highest organ of the Commission, it would be the meeting of all member states. It would choose the members of the Executive Committee, nominate the experts of the various committees and stipulate the working programme for the committees, and elect the representative to the ICAO Council.

The Executive Committee: It would represent the Commission and coordinate the work of the committees of experts. The Executive Committee would consist of a President and Vice President(s). The Commission should find a formula to choose the members of the Executive Committee so as to have an adequate representation of the whole Caribbean without rendering the Committee unmanageable.

The Committees of Experts: The election of an expert should be based on his qualifications rather than on his country of origin.[65] In this way, we would have committees of experts, rather than committees of representatives. The technical, economic, legal, planning and training committees (and others that may be necessary) could submit the results of their studies to the Executive Committee.

One problem that has to be avoided in the administration of the Commission is the election of political figures to top positions. It often happens in the Third World that, when the government in power looses an election, most of its political nominees are replaced. This inadvertent change of personnel in high posts of the Commission would hamper the necessary continuation of its work and undermine its authority.

All the independent states of the Caribbean should become members of the Civil Aviation Commission. The problem is what

to do with non-independent territories. The Netherlands Antilles are more independent in their aviation matters than the Départements d'Outre Mer (Guadeloupe and Martinique and French Guyana), Puerto Rico, and the British Dependent Territories.[67]

The Netherlands Antilles and Aruba can negotiate their own bilateral air services agreements. Based on this, these territories could be admitted as full members of the Commission.[68] Although the other dependent territories could have the status of observers, they should be given the opportunity to express their feelings in the Assembly. The only difference would be that they would have no vote and could not participate in the work of the committees. The reasons are: (1) the political-aeronautical ties between these territories and the metropoles are still too strong; (2) the participation with voting right could result in conflict of interests.

At a more advanced stage of integration, the member states will be asked to coordinate their aviation policies sufficiently to produce a standard bilateral air transport agreement for intra and extra Caribbean networks. The participation of all Caribbean states, including the non-independent territories, is a conditio sine qua non for this «defensive union». Any contrary or non-cooperative act from anyone within the «union» would undermine the position of all members and also the Commission.

CHAPTER VI - FOOTNOTES

1. The countries of the Western Hemisphere held a convention in Habana in 1928 to regulate commercial air navigation. In 1935, these States convened again in Buenos Aires to conclude an additional convention to regulate the problem of customs regulations incurred by air traffic. See Matte, N.M., Treatise on Air Aeronautical Law, ICASL, McGill University, 1981, Chapters I, II, III; Videla Escalada, Federico N., Aeronautical Law, Sijthoff & Noordhoff, 1979, pp. 29-40; Tombs, Laurence C., International Organization in European Air Transport, Columbia University Press, 1936.

2. See Videla Escalada, note 1, p. 40.

3. Chicago Convention, arts. 43, 44.

4. Constitution of the European Civil Aviation Conference (ECAC), art. 1, para. 1 a), b).

5. Idem, note 4, para. 3.

6. Idem, note 4, arts. 4 and 15.

7. See Multilateral Agreement on Commercial Rights of Non-Scheduled Air Services in Europe, 1956, ICAO Document 7695.

8. See Farag, G., African Civil Aviation Commission, LL.M. thesis, McGill University, 1980.

9. Constitution of AFCAC, art. 3(a) and (b).

10. Idem, note 9, art. 4.1.

11. Idem, note 9, arts. 8, 9 and 12.

12. See Kamau, Lewis G., Recent Activities of the African Civil Aviation Commission (AFCAC) and the Association of African Airlines (AFRAA) in the Field of Traffic Rights and Tariffs, LL.M. thesis, McGill University 1985, p. 136.

13. Idem, note 12, Chapter V.

14. See Declaration of General Policy in the Field of Civil Aviation issued by AFCAC and approved by the Organization of African Unity, July 1980.

15. Fifth Plenary of AFCAC, Lomé 1977, para. 68, p. 24.

16. Rosenfield, Stanley B., The Regulation of International Commercial Aviation, The International Regulatory Structure, Booklet 17, Oceana Publications, 1984.

17. See Interavia Air Letter No. 10 662, January 4, 1985, pp. 3, 4.

18. See Araujo, Alvaro Bauza, «Desarollo y Perspectivas del transporte aereo en America Latina», Revista Latinoamericana de Derecho Aéronautico y Espacial, Julio-Diciembre 1969, II Epoca No. 2, pp. 68-69.

19. Art. 4 of LACAC Constitution; Of particular interest is the fact that the Statutes of LACAC have been approved by the national laws of each member state.

20. Idem, note 19, Art. 5.

21. El Programa de trabajo de la CLAC, Informe Especial, Comisión Latinoamericana de Aviación Civil, Décimo Aniversario, 1983, pp. 5,6.

22. Idem, note 19, arts. 8 and 9.

23. Idem, note 19, arts. 13a and Rules of Procedure for meetings of LACAC, rule 9(1).

24. See Resolution A4-7 LACAC Fourth Assembly, Bogota, December 1980.

25. Recommendation A3-1, LACAC Third Assembly, Santiago de Chile, December 1978.

26. There are two systems of baggage allowance in the Region. The pieces system is used on North American routes, while the weight system is used on the regional routes. LACAC experts found it was very difficult to introduce a uniform system. See also LACAC Resolution A6-9, LACAC Sixth Assembly, Rio de Janeiro, November 1984.

27. US$4000. has been allotted to translation services in the 1985 and 1986 budgets of LACAC. This amount represents around 3 per cent of the budgets.

28. This area covers South America, Central America including Panama and Mexico and the States of the Caribbean, the geographical area which, for the purpose of this instrument, is called Latin America (see art. 2 of the Constitution of LACAC).

29. One aviation expert of a Caribbean state described the actual situation as a «free for all».

30. Demas, William G., From CARIFTA to Caribbean Community, Georgetown, Guyana, May 1972, p. 121.

31. Demas, William G., «Some Thoughts on the Caribbean Community» in Essays on Caribbean Integration and Development, Institute of Social and Economic Research, University of the West Indies, Port of Spain, 1976, p. 144.

32. See ICAO Circular 175-AT/65, p. 34, Chapter 18, 19.

33. The Commonwealth Caribbean. The Integration Experience, Report of a mission sent to the Commonwealth Caribbean by the World Bank. Sidney E. Chernick, Chief of mission and coordinating author, A World Bank Country Economic Report, 1978, pp. 110, 115, 116.

34. «De bevordering van het toerisme uit Europa. Het Antilliaans luchtvaartbeleid», Study done by the Netherlands Economic Institute, Reported in Beurs-en Nieuwsberichten, Curaçao, October 7, 1980.

35. «Winds of Change», by Eric Anthony Abrahams, Director of Centro Interamericano de Capacitación Turística (CICATUR) in Proceeding of the Caribbean Tourism and Research Center, Regional Marketing Seminar on «A New Approach to Marking Caribbean Tourism», published by CRTC, May 1980, p. 206.

36. The Group of Experts' Report /The Caribbean Community in the 1980's/: An Overview, CARICOM Perspective supplement July 1981, p. 9.

37. Report on an Agenda for Transportation Planning in the Caribbean, prepared by Winston Dookeran, CDCC/TWG/T/82/3 ECLA Subregional office for the Caribbean, Port of Spain, February 1, 1982, pp. 9, 36, 37.

38. «A Review of the Development of the Transport System in the Caribbean with Reference to the Establishment of Regional Institutions and the Involvement of Aid Donors», paper presented to the INTAL Symposium on Transportation, Buenos Aires, Argentina, 1 June 1983, by Peter F. Wickenden, ECLA/CARIB 83/5, 1 June 1983, p. 26.

39. Idem, note 38, p. 36.

40. Conclusion 10(e), International Air Passenger and Freight Transport Latin America and the Caribbean, ICAO Circular 175-AT/65, 1983, p. xvi.

41. Idem, note 40, p. xvii, conclusions 14 and 15(d).

42. The Organization of Eastern Caribbean States has been established in 1981. The member states are Antigua, Dominica, Grenada, Montserrat, St. Kitts/Nevis, St. Lucia, St. Vincent and the Grenadines. Art. 3.2 of the Treaty of the Organization says that:

> «...the Member States will endeavour to coordinate, harmonize and pursue joint policies particularly in the fields of:
>
> (e) External Transportation and Communication including Civil Aviation;»

43. In March 1986 Cuba and the Dominican Republic reached an agreement to postulate themselves on a rotation basis as candidate to the ICAO Council representing the Caribbean. Jamaica declined to participate in the meetings. The result is now that the Dominican Republic and Cuba, backed up by LACAC and the British West Indies, are competing for one post on the ICAO Council. LACAC declares it is a LACAC seat representing the Caribbean region, while the British West Indies and Haiti in a jont declaration maintain that the seat on the Council of ICAO has been regarded as representing all these CARICOM members and associate members. See also LACAC Doc. CLAC/CE/22-S, 22nd Meeting of the Executive Committee, Rio de Janeiro 28-29, April 1986, Annex 3; LACAC Assembly Resolution A6-12, Rio de Janeiro, 20-23 November, 1984; 26th ICAO Assembly Working Papers A26-WP/83, P/40, 24/9/86; A26-WP/85, P/42, 24/9/86.

44. In this letter dated July 30, 1984 the Caribbean Governments expressed that:

> «...implementation of this regulation will cause serious injury to small U.S. and foreign concerns and will help undermine the reciprocal basis for U.S.-Caribbean and U.S.-Latin American trade. As a region, we stand to lose in excess of $500,000,000 a year as a direct result of the regulation.»

Aviation Daily, Sept. 4, 1984, pp. 8-9.

45. Cubana is the only Caribbean member of the Trade Association & Tariff Coordination. BWIA, Caricargo and Haiti Air are members of the Trade Association. Trans-Jamaica Airlines is an associate member. (Associate membership is for airlines flying only national routes) (Source: IATA Membership List (May 31, 1986)).

46. Okolo, Julius Emeka, «Integrative and Cooperative Regionalism: The Economic Community of West Africa», International Organization, 39, 1 Winter 1985, pp. 121, 122.

47. Idem, note 31, p. 145.

48. Hammarskjold, Knut, «About the Need to Bridge a Jurisdictional Chasm», AASL, Vol. VIII, 1983, p. 100.

49. A practical example occurred when, after the failure of the West Indies Federation in 1962, Trinidad and Tobago intended to establish a «Caribbean Economic Community». There were two important issues for Trinidad to address: both air and sea transport, in the context of the development of regional communication. This Community would consist of the ten members of the ex-Federation, the three Guyanas and all the islands in the Caribbean independent or not except Cuba, the Dominican Republic and Haiti because they had governments with a «different ideology». After discussions the Minister of External Affairs of Trinidad and Tobago noticed that:

- Puerto Rico did not want to work in an association with the French territories, Guadeloupe and Martinique and French Guyana;
- The French raised their eyebrows in respect to Puerto Rico because, behind Puerto Rico they saw the U.S. State Department;
- Suriname (Dutch Guyana) was reluctant to have anything to do with any association which would include either France or Puerto Rico.

See Forged from the Love of Liberty, Selected speeches by Dr. Eric Williams, compiled by Dr. Paul Sutton, Longman, 1981, p. 382.

50. Axline, W. Andrew, «Underdevelopment, Dependence, and Integration: The Politics of Regionalism in the Third World», International Organization, 31, 1, 1977, p. 90.

51. In the case of ECAC, the Conference was recommended by the European Council, but was convened by ICAO in 1954. AFCAC was founded in 1969 and was based upon an earlier conference that recommended that ICAO should consult with the Economic Commission of Africa (ECA) and the Organization for African Unity (OAU) with a view to establishing an African Civil Aviation Organization. The need to establish a regional civil aviation organization for Latin America was formally presented at the First Conference of Aeronautical Authorities of Latin

America in 1973 and the Conference of Civil Aviation Authorities of the South American Region. The constitution of LACAC was accepted at the Second Conference of Aeronautical Authorities of Latin America the same year in Mexico. ACAC was founded in 1965 under the auspices of the League of Arab States. ECAC, AFCAC, and LACAC are using facilities of the ICAO regional offices.

52. ICAO Doc. 9440, 18th Assembly of ICAO, 1971.

53. See ICAO Doc. 9227 AT Conf/2, 1980, p. 26, para. 36.

54. Folliot, Michel G, «Nouvelles Orientations des Organismes Intergouvernmentaux d'Aviation Civile», R.F.D.A. 1976, p. 318.

55. Idem, note 54, p. 319.

56. Idem, note 50, pp. 96 and 105.

57. Being associated with the Commonwealth, the EEC and COMECON have made positive contributions to the development of the Caribbean islands economies. At the same time, the effects have been negative on regional interdependence in the Caribbean, because they created automatically discriminating ties with regard to neighbouring states and increased the disparities in the economy, language or market. See Barot, Elizabeth, «Les Ameriques Latines dans le système mondial 1954-1984», Etudes internationales, Vol. XVII, no. 2, juin 1986, Université Laval, Québec p. 387.

58. Latin America Regional Reports, Caribbean Reports, 21 February 1986, RC86-02, p. 7, 24 July 1986, RC86-06, p. 4.

59. Boletín de la Integración, Banco Interamericano de Desarollo. Editado por el Instituto par al integracion de América Latina (INTAL), Ano X, Febrero 1975, no. 110, p. 71.

60. See Europa Yearbook, Vol. I, 1985, Europa Publications, London, England.

61. Central American Transportation Study 1964-1965, Vol. I-text, T.S.C. Consortium Transport Consultants, Inc., Washington, D.C. July 1965.

62. The first recommendation is that:

> «An airline be formed to provide the regional and international air services of Central America. As the exclusive operator on behalf of the five countries, (Guatemala, Honduras, El Salvador, Nicaraqua, Costa Rica) it should be required to offer the regional and international air transportation capability that will meet the needs of the region, with due consideration for each country's specific situation.»

Idem, note 61, p. 531.

63. For more details on the Central American Common Market, see Redden, Kenneth R., Modern Legal Systems Cyclopedia, Volume 7, Chapter 5; McClelland, Donald H., The Central American Common Market Economic Policies, Economic Growth, and Choices for the Future, Praeger Publishers, USA 1972.

64. AFCAC Constitution Art. 4.2.

65. Each candidate for a post in a committee should present his curriculum vitae at the election.

66. Puerto Rico is moving slowly to establish international relations with the Caribbean States. It even made a petition to become a member of CARICOM (see Latin America Regional Reports, Caribbean Reports, 21 Feb. 1986, RC86-02, p. 7). Still, it has a long way to go before being able to emerge from under the wings of the U.S. Departments of Transport and State, and start negotiating its own bilateral air services agreements.

67. The non-independent British Islands were allowed to join CARICOM with a grant of entrustment from the British Government. This entrustment was given subject to reservations:

(1) that the Community will not enter into any treaty or other international engagement affecting (the particular island) unless Her Majesty's Government in the U.K. has been apprised of the terms of the treaty or engagement and has signified to the territory that they have no objection to it;

(2) that no recommendation or decision of the Community or any Committee or Organ thereof to pursue any particular foreign policy is made in relation to the territory unless Her Majesty's Government in the U.K. has been apprised of the terms of the recommendation or decision and signified to the territory that it has no objection to it.

See Phillips, Fred, Freedom in the Caribbean. A Study of Constitutional Change, Oceana Publications Inc., New York 1977, p. 168. One has to note here that the CARICOM sphere of activities has only been among its members. Membership of the Caribbean Commission for Civil Aviation would imply more than that and the way the British Government has reacted to St. Kitts' request for self-attendance to its aviation affairs leaves little hope that it will react differently now for the other Department Territories (Anguilla, British Virgin Islands, Cayman Islands, Montserrat, and Turks and Caicos Islands). See footnote 56, Chapter II.

68. As long as they are not independent they cannot be eligible for the seat in the ICAO Council.

CHAPTER VII

THE CARIBBEAN AIRLINES ASSOCIATION

I - INTERNATIONAL AIRLINES ASSOCIATIONS

The Airlines Associations that have been established all over the world have one thing in common: they work for the benefit of their members. Even if they are entirely governmentally-owned and therefore receive some protection, there are some interests of these companies which can better be protected by the airlines themselves. The airlines have realized that individual efforts are not enough and that cooperation with other airlines produces advantages and benefits that individual efforts can not.

Many kinds of cooperation leave room enough for association members to compete in air transport without yielding all their rights. To the contrary, this cooperation should make each member more capable of competition as it is essentially intended to remove some of the major financial burdens of the airlines to make them more efficient and reduce their costs. These financial burdens force the airlines to stop their operations.

A country whose government wants its national airline to keep flying will have to subsidize it. The social costs of subsidizing airlines to keep them competitive and afloat are high. Money which could have been used for more urgent

economic development programmes, is being wasted to maintain inefficient airline operations which, in turn, adversely affect the consumer by producing high tariffs and inadequate frequencies of service.

Cooperation can occur among airlines in both the technical and commercial fields. Echoing what governments did in Chicago in 1944, the airlines performing scheduled international air services instituted their own instrument of cooperation on a worldwide bais in 1945: viz The International Air Transport Association.[1] The aims and objectives of the Association are:

> (1) to promote safe, regular and economical air transport for the benefit of the peoples of the world, to foster air commerce, and to study the problems connected therewith;
>
> (2) to provide means for collaboration among the air transport enterprises engaged directly or indirectly in international air transport services;
>
> (3) to cooperate with ICAO and other international organizations.[2]

However, as with ICAO, the activities of IATA are of a general character and do not provide solutions for the specific needs which many of the airlines have. As a result, airlines of the several regions decided to establish their own associations to increase the efficiency of their cooperation. Thus, over the years there have been established: the Association of European Airlines (AEA); the Orient Airlines Association (OAA);

the Air Transport Association of America (USA) (ATA); the Air Transport Association of Canada (ATAC); the Arab Air Carrier Organization (AACO); the African Airlines Association (AFRAA); the International Association of Latin American Air Transport (AITAL); the Airline Association of South Asia (AASA); and the Association of South Pacific Airlines (ASPA).

The reason for this proliferation of Associations is the fact that airlines of certain regions have different needs from those in other regions. Some of the Associations deal only with the administrative aspects of cooperation between their members, while others, like AFRAA and AITAL, also encourage technical cooperation among their airlines. Also, European airlines have established their own institutions for cooperation in the technical field, viz the KSSU and ATLAS consortia.

II - THE NEED FOR A CARIBBEAN ASSOCIATION

Caribbean Airlines have their own particular needs and are not associated with any of the regional associations in North or South America. A few topics requiring positive resolution for these airlines are:

(1) Maintenance: At present maintenance of Caribbean airlines is performed in Miami and in Scandinavia. The several airlines also have their individual maintenance departments.

The work forces of these individual departments should be amalgamated to concentrate on technical know-how, make more efficient use of man-power and reduce the cost of maintenance.

(2) Tariff coordination: As mentioned in the previous chapter (footnote 45), only three airlines are members of IATA. This means that the participation of the Caribbean airlines in IATA's Tariffs Conferences is minimal. Although these airlines are not bound to apply the IATA tariffs, a forum is necessary, where they can establish their fares and rates «at the lowest level consistent with high standard of safety and adequate return to efficient airlines.»[3]

(3) Competition: A total ban on competition is not desirable. Competition among Caribbean airlines must remain, in order to stimulate constant improvements in service. What has to be eliminated, however, is ruinous competition, i.e. that kind of competition where only the Caribbean airlines tend to loose. Where they are the potential losers, they should cooperate, especially on extra-Caribbean routes.

(4) Acquisition of New Aircraft: Caribbean airlines are of such a modest size, that they can only buy one or two aircraft at a time. Even in the case of leasing or purchasing of spare parts, they neither need nor can afford more than a very small number. The introduction of new aircraft on the world market will put extra-stress on the small airlines to

renew their fleets at a time when they do not have the finances to do so.

Another related matter is the nearing deadline by which airlines should comply with noise and pollution regulations. Although ICAO stipulated a general deadline (January 1, 1988) for implementation of these regulations,[4] the U.S. Government has unilaterally been applying its own restrictions and banning certain aircraft from airports in the U.S. since January 1, 1985. Without certain exemptions which the FAA has granted to some Caribbean airlines, a great deal of the Caribbean traffic in passengers, and especially cargo, would have been halted or lost to U.S. carriers. The exempted airlines are not using aircraft that comply with regulation FAR36/91E. Furthermore, most of the Caribbean airlines are neither in a position to order new aircraft nor even have the money at hand to retrofit their existing aircraft.[5] As the Caribbean Ambassadors have pointed out in a recent letter (see note 44, Chapter VI), «[compliance with this regulation] is a cost which cannot be afforded in this time by many carriers.» These carriers could have acted collectively to negotiate with the manufacturers for retrofitting.

III - THE CARIBBEAN AIRLINES ASSOCIATION

1. Fields of Cooperation

The same reasons which drove airlines in other regions to unite exist for Caribbean airlines also. The need is stronger when the politico-economic environment is becoming more hostile for small airlines.

A Caribbean Airlines Association could function as a forum for presenting joint views on civil aviation matters to the several governments. It could also serve as a forum to present practical ideas and work out plans in the different cooperative fields, such as:

Technical:
- -maintenance of the aircraft
- -establishing a spare parts pool
- -standardization of the certificates of technical personnel
- -standardization of fleets

Training:
- -training of administration personnel
- -training of technical personnel in aircraft or/and ground handling.

They can obtain assistance for this from institutions like the IATA Programme for Developing Nations Airlines (PDNA).

Financing:
- -forming a purchasing pool for aircraft and spare parts
- -negotiation of insurance premiums
- -joint leasing of aircraft when and where necessary
- -setting tariffs for the intra-and extra-Caribbean routes.

Legal: -study legal aspects of the operation of member airlines
-study legal aspects of agreements between members for routes outside the Caribbean.

Other forms of cooperation later at a more integrated stage are: a joint venture; and a multinational airline. These demand very close cooperation among the airlines and between the airlines and the respective governments. The positive results achieved by AFRAA[6] and the ambitious but very practical «Reinforcement Plan» drawn up by AITAL[7] indicate that airlines from developing countries appreciate the fact that cooperation changes their relationships with each other, resulting in concrete benefits.

A writer with experience in this type of venture offered the following advice:[8]

- define goals, objectives and principles;
- discuss matters thoroughly;
- be flexible;
- have an absolute faith in cooperation and its merits;
- trust people involved in the cooperative work and judge them on facts;
- leave aside self pride and soften national or individual peculiarities.

2. The Structure of the Association

The Association could consist of: A General Assembly where all the members of the Association meet and decide on the course of their association. It would also appoint the members of the Executive Committee.

An Executive Committee which would consist of a Secretary General and other members of the committee required to work on the many different subjects selected by the General Assembly.

A Secretary General would be elected by the Assembly and would be the principal person to coordinate the work of the committee and liaise between the Committee and members of the Association.

Due to the lack of personnel within the airlines themselves, it would not be possible to have a very large Executive Committee. At the same time, it is expected that members would assist the Executive Committee as much as possible by supplying the necessary information.

3. Members of the Association

Arts. 2.1 and 2.3 of the Statutes of AITAL stipulate that airlines owned by governments of Latin American countries, or those whose substantial ownership and effective control is in the hands of citizens of those countries, and which are performing scheduled international air services, may become members of the Association.

Arts. 6.1 and 6.2 of AFRAA stipulate that to qualify for membership the airline must:

- operate international air services in the carriage of passengers and/or cargo and/or mail;
- be registered in a state eligible of membership of the Organization of African Unity (OAU);
- be not less than 51% owned by such state or group of states or citizens of such state(s).

An additional requirement for airlines operating domestic air services, is that they should have an annual production of no less than two million ton/km. Under certain conditions, AACO admits non-scheduled airlines as members too.[9]

The Caribbean Airlines Association should consist not only of scheduled but also of non-scheduled airlines. This includes passengers only and/or cargo-only airlines within the whole region, whether dependent or non-dependent territories. A requirement would be that the airlines are both owned by the governments of the islands or group of islands (or citizens of those islands), and have their head office in the Caribbean. In this way, membership is open to all airlines established in the Caribbean.

The more members the Association has, the stronger it is and the better it can represent the rights of the members. In addition, more efficient use can be made of the possibilities and facilities of all members, resulting in the benefits that come with economies of scale.

CHAPTER VII - FOOTNOTES

1. For more details on IATA see Haanappel, P.P.C., Ratemaking in International Air Transport, Kluwer-Deventer, 1978; Chuang, R.Y., The International Air Transport Association, Sijthoff, Leiden, 1972.

2. Art. III of the Articles of Association.

3. Art. 12 para. (2) of the Bermuda II Agreement.

4. ICAO Resolution A23-10, 1980.

5. The price per hush kit ranges from US$2.5-2.8 million. To secure a delivery position an airline has to pay US$100,000 non-refundable down payment. See also «Hush kit Manufacturers Race to Save Aging Transports», Air Transport World, 2/85, pp. 34-39; see also, Aviation Daily, Sept. 27, 1984, p. 137.

6. Abonouan, Kouassi, L'Association Africaine des Compagnies Aériennes (AFRAA): Les Status et contributions au dévéloppement du transport aérien en Afrique, Chapitre III, Les Réalisations de l'AFRAA, LL.M. thesis, McGill University, 1984.

7. AITAL - Moving into a New Era, IATA Review, 2/86, p. 4.

8. Meline, Jacques, Secretary General of the ATLAS Group, «Current Regional Activities. A Regional Experience in Technical Cooperation. The European ATLAS Group: Concept and Realities; Regionalism in International Air Transportation: Cooperation and Competition». ITA Documents, Vol. II, 1983.

9. Art. 3, Statutes of AACO.

CHAPTER VIII

CONCLUSION

The Caribbean is heavily dependent on air transport for the movement of its passengers and cargo. Most of the Caribbean airlines are very small in size, compared to those flying in from North and South America, and from Europe.

The islands' economies are highly dependent on tourism and every island does its utmost to attract as many tourists as possible. The several governments negotiate and sign their bilateral air services agreement separately, most of the time according to the wishes of the traffic (tourist) generating governments. The needs of the national airlines of the Caribbean islands become subordinated to those of the tourist sector; and the authority in charge of tourism negotiates with foreign airlines. This results in unfair competition between the Caribbean airlines and the airlines from the traffic-generating countries. In addition, the revenues governments receive from the tourist industry are being used to subsidize the national airlines, and the deteriorating economies of the islands cannot support the burden of these airlines.

There is little coordination among governments and there is no coordination whatsoever among the airlines in the region. A solution to the above-mentioned problems requires the

cooperation and coordination of the civil aviation authorities and airlines of the Caribbean nations. The several governments should cooperate to establish a civil aviation commission to coordinate aviation policies and other aspects of civil aviation in the Caribbean. The airlines should cooperate in establishing an association to coordinate their manpower to help themselves and each other in the technical and administrative fields.

The ideal solution would be to have one standard bilateral air services agreement for intra-Caribbean and another for extra-Caribbean routes. These extra-Caribbean routes would be flown by a joint venture of Caribbean airlines and, later, by a multinational airline owned by all the Caribbean governments.

However, the reality may well be different. Any step in this direction must be practical. LACAC, together with ECLAC, are the best organizations to arrange a meeting of the Caribbean Civil Aviation Authorities with the objective of establishing a Caribbean section of LACAC. This Caribbean commission for civil aviation would recommend standard rules which the member states should apply to produce a more homogenous regional aviation policy. A well functioning civil aviation commission would also encourage cooperation between the airlines. Technical cooperation among the airlines should be the basis for an association of airlines. Unlike commercial arrangements, technical cooperation does not involve sacrifice

and the benefits are more immediate. These technical cooperation arrangements should start simply and slowly and be limited to smaller groups. When the process of integration is well underway other partners or groups may join.

There are political and ideological differences between the governments of the Caribbean. This should not discourage or hinder cooperation in aviation which is aimed at bringing benefits to all in the same region encountering the same problems.

> «Regional integration where it cannot be based on historic solidarity (if it has any value) will have to founded on a more pragmatic basis.»*

Pragmatism is the only way in which any regional undertaking in the Caribbean will succeed.

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* Idem, footnote 57, Chapter VI.

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ANNEX I

The Caribbean

The Caribbean region got its name from the indians who, at the time of the discovery of America by Columbus in 1492, were found to inhabit this region and the northern part of the South American mainland. The main island chain is known as the Antilles. It is geographically divided into the Greater Antilles, Cuba, Jamaica, Haiti, the Dominican Republic and Puerto Rico, and the Lesser Antilles, which consist of a string of islands extending toward South America.

The strait between Dominica and Guadeloupe divides the Lesser Antilles into the Leeward Islands in the north and Windward Islands in the south.

The Commonwealth of the Bahamas and the Turks and Caicos Islands are not part of the Caribbean. Yet, history and socio-economic similarities favour their inclusion as part of the Caribbean. Mutatis mutandi is the situation for the Guyanas to the southeast of Venezuela.

For the purpose of our study, we have defined the above-mentioned region as the Caribbean. Wherever the Caribbean islands are mentioned, it is understood that this includes the three Guyanas in South America.

The largest territory by area is the Cooperative Republic of Guyana, which is 214,969 square km., while the most populous is Cuba, with over 10 million inhabitants.

Beside the geographical distinction, there are also the distinctions which resulted from colonization. The Caribbean can be divided into Spanish, English, Dutch and French speaking territories.

Caribbean society has been shaped by many different peoples which came to the region over the centuries, and it has been a meeting place for numerous cultures from America, Europe, Africa and Asia.

The islands have many similarities:

- all were inhabited by Indians
- all have been colonies of one or more European powers
- most of them had a plantation economy, some still have
- most of them had flows of immigrant workers at the end of the last and the beginning of this century
- all of them have experienced emigration during the last decades
- all have had a rising unemployment rate and
- almost all are extremely active in attracting tourists to their islands.

Due to the organization of the economic system of the Caribbean, the metropoles have retained very influential roles, to such a degree that it made intra-Caribbean contacts «unnecessary». Routes go from a metropole to a Caribbean island and back again. Independence has not altered the situation much, except for the fact that the Caribbean now relies more on North America, especially the United States, for its tourists. This has been seen as the possible solution to the ailing economies of the islands.

The intra-Caribbean contact became even less possible with each island competing for the greatest share of North American tourists.' Tourism in the region as a whole is flourishing but the real gains for the islands are being eroded by the inefficient structure of the tourist industry. This erosion is caused by the lack of goods and services produced in local markets. (The U.S. tourist travels on a U.S. airline to a Caribbean island, stays in a hotel owned by the airline company, rents a car from a subsidiary of the airline company, eats food that is imported from the U.S., buys some jewels imported from Europe or Japan. For his convenience he pays everything with his credit card. On arriving home he relates to his friends the U.S. television programmes he has seen via satellite).

There are some aspects of the Caribbean tourist industry that cannot be changed because of the geography of the islands. There are, however, many deficiencies which could be corrected by cooperation among the island governments.

When this is done by the appropriate authorities, possibilities for increased benefits from tourism will emerge.

COUNTRY	Year of Independence	Population million	Official Language
Cuba	1898	10	spanish
The Dominican Republic	1844	6.10	spanish
Puerto Rico	U.S. territories	3.27	spanish
U.S. Virgin Islands	U.S. territories	0.10	english
The Bahamas	1973	0.23	english
Jamaica	1962	2.26	english
St. Kitts-Nevis	1983	0.04	english
Antigua-Barbuda	1982	0.08	english
Dominica	1978	0.08	english
St. Lucia	1979	0.13	english
St. Vincent & the Grenadines	1979	0.10	english
Grenada	1974	0.11	english
Barbados	1966	0.25	english
Trinidad & Tobago	1962	1.15	english
Guyana	1966	0.92	english
Anguilla	British dependent territories	0.008	english
Montserrat	British dependent territories	0.01	english
British Virgin Islands	British dependent territories	0.015	english
Turks and Caicos	British dependent territories	0.007	english
Cayman Islands	British dependent territories	0.018	english
St. Maarten	autonomous Netherlands territories	0.26	dutch
St. Eustatius	autonomous Netherlands territories	0.26	dutch
Saba	autonomous Netherlands territories	0.26	dutch
Curaçao	autonomous Netherlands territories	0.26	dutch
Bonaire	autonomous Netherlands territories	0.26	dutch
Aruba	autonomous Netherlands territories	0.26	dutch
Suriname	1975	0.35	dutch
Haiti	1804	5.18	french
Guadeloupe	French Overseas departments	0.33	french
Martinique	French Overseas departments	0.33	french
French Guyana	French Overseas departments	0.07	french

Source: U.N. Monthly Bulletin of Statistics
Vol. 39, No. 7, July 1985 - Table 1

ANNEX II

THE PARTIES AND THE CONTENTS OF THE BILATERAL AGREEMENT

Antigua and Barbuda - United Kingdom

Type of agreement: Bermuda I

Change of guage: restrictions art. 10.

(1) the airline shall not hold itself out to the public by advertisement or otherwise as providing a service which originates at the point where change of aircraft is made.

(2) for every aircraft inbound flight there will be only one outbound flight.

Route: London intermediate points - St. John's - points beyond

St. John's - intermediate points - London - points beyond.

no traffic rights between intermediate points and St. John's or St. John's and beyond except as may be agreed between aeronautical authorities of Contracting Parties.

Antigua and Barbuda - United States

Type of agreement: Bermuda I
Idem St. Lucia as amended on December 4, 1980 (adherence by means of succession).

Aruba - United States

Type of agreement: Liberal

Route: U.S.A. - via intermediate points - Aruba - points beyond.

Aruba - via intermediate points - 4 points in U.S.A.

Annex with liberal charter provisions.

Bahamas - Jamaica

Type of agreement: Bermuda I

As signed by the Government of Jamaica and the United Kingdom of Great Britain and Northern Ireland for air services between and beyond their respective territories which was signed at Kingston on the 25 March 1970.
(In its letter dated Nov. 26, 1973 the Government of Jamaica expressed its wish to continue to provide service according to the above mentioned agreement if the Government of the Bahamas has no objection and that the arrangements should be formally regularised by means of an Exchange of Notes between the two Governments until a bilateral air transport agreement is concluded.
The Government of the Bahamas replied in its letter dated November 29, 1973).

Route: I (a) Jamaica - Nassau - Chicago
(b) Jamaica - Nassau - Detroit

The Government of Jamaica granted reciprocal rights to a Bahamian airline.

Bahamas - United States

Type of agreement: Bermuda I
(as signed by the U.K. - U.S. November 2, 1946)
(adherence by means of succession).

Barbados - Belgium

Type of agreement: Bermuda I. Idem Barbados - Denmark

Route: I Barbados - Brussels and beyond.
II Belgium - Bridgetown and beyond.

4 points for each party with 5th freedom rights.

Barbados - Cuba

Type of agreement: Bermuda I
Capacity: predeterminated
Route: Cuba - points in the Caribbean (excluding Haiti - Dominican Republic - Puerto Rico - the U.S. Virgin Islands) - Bridgetown - Port of Spain - Georgetown - Conakry or Freetown.

Barbados - points in the Caribbean (see above) - Habana - a point in Mexico - a point in Canada.

Barbados - Denmark

Type of agreement: Bermuda I. Frequency and scheduling of services are subject to prior approval.

Route: Denmark - Germany - Barbados - Trinidad
Netherlands — Netherlands Antilles
Switzerland — Panama
Spain — Colombia
Portugal — Peru
West Africa — Chile

Barbados - London - Copenhagen - Oslo
Frankfurt — Stockholm
Amsterdam — Helsinki
Madrid
Zurich
Antigua
Lisbon
West Africa

Barbados - Norway

Type of agreement: Bermuda I. Idem Barbados - Denmark.

Route: (1) Norway - Germany - Netherlands - Switzerland - Spain - Portugal - West Africa - Barbados - Trinidad - Netherlands Antilles - Panama - Colombia - Peru - Chile.

(2) Barbados - London - Frankfurt - Amsterdam - Madrid - Zurich - Antigua - Lisbon - West Africa - Oslo - Copenhagen - Stockholm - Helsinki.

Barbados - Sweden

Type of agreement: Bermuda I. Idem Barbados - Denmark.

Route: (1) Sweden - Germany - Barbados - Trinidad
Netherlands — Neth. Antilles
Switzerland — Panama
Spain — Colombia
Portugal — Peru
West Africa — Chile

(2) Barbados - London - West Africa - Stockholm - Oslo
Frankfurt Copenhagen Helsinki
Amsterdam
Madrid
Zurich
Antigua
Lisbon

Barbados - United Kingdom

Type of agreement: Bermuda I

Change of gauge: idem Antigua and Barbuda - U.K. agreement.

Route:

A - (1) Barbados - Antigua - London - Brussels
Bahamas Frankfurt
Windsor Geneva
Tenerife Beirut
Luxembourg

(2) Another route or routes to be agreed. The designated airline or airlines shall not pick up traffic including interline or stopover traffic in Luxembourg to be set down in London or visa versa.

B - (1) Points in U.K. - Montreal - Barbados - Trinidad
or Toronto Georgetown
New York Caracas
Bermuda Bogota
Bahamas Lima
St. Kitts Santiago
Antigua de Chile
St. Lucia

(2) Another route or routes to be agreed. There will be no service between Montreal or Toronto and Barbados while the airline(s) is (are) operating New York - Barbados visa versa.

Barbados - United States

Type of agreement: liberal

Route: U.S. territories - intermediate points - Barbados - points beyond.

Unless otherwise agreed U.S. airlines may not operate with full traffic rights between Barbados and any point in Africa located below 20 degrees south latitude.

Barbados - Kingston — 4 points in U.S.A.
Antigua
St. Kitts
St. Lucia

Upon the effective date of this agreement the Government of Barbados may select two points from Atlanta, Boston, Chicago, Washington/Baltimore; one additional point.

Three years after the effective date of this agreement the Government of Barbados may select a fourth point.

Annex II liberal charter air service.

Cuba - Canada

Type of agreement: Bermuda I
Designation: one airline (Art. III).
Frequency, capacity and type of aircraft subject to approval by aeronautical authorities of Contracting Parties (Art. X(5)).

Route: (1) any point or points in Cuba - Montreal and Ottawa.

(2) any point or points in Canada - Havana and/or Varadero

When more than one terminal point is named, services may be operated to one or more such terminal points on any or all flights at the option of the designated airline.

Cuba - Belgium

Type of agreement: Bermuda I. Predetermination of capacity (Art. 6).

Route: (1) points in Cuba - Lisbon - Brussels - Switzerland - Stockholm - Berlin - Warsaw.

(2) points in Belgium - Lisbon - Habana - Guatemala - Panama - Bogota - Guayaquil - one point in South America.

Cuba - German Democratic Republic

Type of agreement: Bermuda I. Predetermination of capacity between the airlines subject to governmental approval (Art. 7).

Route: (1) points in Cuba - intermediate points - Berlin and points beyond.

(2) points in Germany - intermediate points - Habana and points beyond.

Traffic rights to and from intermediate points and points beyond will be subject to the agreement of the aeronautical authorities.

Cuba - Guyana

Type of agreement: Bermuda I.
Frequency and capacity subject to approval by aeronautical authorities of the other party.

Route: (1) Cuba - Kingston - Bridgetown - Port of Spain - Caracas other points in the Caribbean (excluding Haiti, Dominican Republic, Puerto Rico, U.S. Virgin Islands)-Georgetown- Conakry - Freetown - points in Africa - Asia - Latin America, south of Guyana and Europe.

(2) Guyana - Port of Spain - Bridgetown - Guadeloupe or Martinique - Antigua - Kingston- Caracas, Curaçao - La Habana- Mexico City - Panama - Nassau, Toronto.

Cuba - Jamaica

Type of agreement: Bermuda I

Route:

A - (1) points in Jamaica - Cayman Islands - Habana - Bahamas 3 points in North America - 3 points in Europe - 1 point in the Middle East.

(2) points in Jamaica Habana, one point in Mexico points in Central America.

B - (1) points in Cuba - Cayman Islands, Kingston, Bridgetown, Port of Spain, Georgetown, Freetown, Conakry, Guinea Bissau, Accra - Malabo, Bzazaville, Point Noire.

(2) points in Cuba, Kingston, Caracas.

Cuba - Mexico

Type of agreement: Bermuda I. Predetermination of capacity, third and fourth freedom, four frequencies with no more than 250 seats per aircraft (Art. 10).

Route: (1) Mexico City - Merida - La Habana

(2) La Habana - Mexico City.

Cuba - Spain

Type of agreement: Bermuda I. Single designation Art. IV 1(a). Predetermination of capacity (Annex (d)).

Route:

A - (1) Spain - Lisbon - Azores (Gander) - Bermudas - Nassau - Habana and beyond.

(2) Spain - Isla de la Sal - Paramaribo - Cayenne - Georgetown - Trinidad - Puerto Rico - Santo Domingo - Habana and beyond.

B - (1) Cuba - Nassau - Bermudas (Gander) - Azores - Lisbon - Madrid and beyond.

(2) Cuba - Santo Domingo - Puerto Rico - Trinidad - Georgetown - Cayenne - Paramaribo Belem - Natal - Isla de la Sal - Madrid and beyond.

Cuba - Switzerland

Type of agreement: Bermuda I

Route: (1) Cuba - Nassau - Bermudas - Azores - Lisbon - London - Brussels - Amsterdam - one point in Switzerland - Stockholm or Copenhagen - Berlin - Warsaw - Budapest - Sofia.

(2) Switzerland - Amsterdam - Brussels - London - Lisbon - Azores - Bermudas - Nassau - Habana - Acapulco - Panama - Bogota - Quito or Guayaquil.

Cuba - Trinidad and Tobago

Type of agreement: Bermuda I. Frequency and scheduling of services subject to the approval of the aeronautical authorities of the other party (Art. 5).

Route: A. Points in Cuba - Grenada - Barbados - St. Lucia - Martinique - Guadeloupe - Dominica - Antigua - St. Kitts - St. Maarten - Jamaica - Port of Spain - Georgetown - Conakry - Freetown and other points in Africa.

B. Trinidad & Tobago - Grenada - Barbados - St. Lucia - Martinique - Guadeloupe - Dominica - Antigua - St. Kitts - St. Maarten - Jamaica - Habana - Nassau and points in Canada and Mexico.

Cuba - United Kingdom

Type of agreement: Bermuda I.

Route: A - (1) London - Lisbon and/or Azores - Bermudas - Nassau - Habana - Belize and/or Mexico City.

(2) Nassau - Habana - Belize

(Two other routes from Trinidad but because of independence and Trinidad's own agreement with Cuba this will not be applicable anymore.)

B - (1) Habana - Nassau - Bermuda - Azores - Lisbon - London and hence to such point or points beyond in Europe as may be subsequently agreed but which shall be on reasonably direct route between point of first arrival in Europe and ultimate destination; in both directions.

(2) Habana - Nassau - Bermuda - Azores - Lisbon to Madrid and hence to a point or points in Europe (excluding London); in both directions.

(3) from a point in Cuba to Belize and beyond.

(4) from Habana to Nassau.

Cuba - United States

Type of agreement: Bermuda I.

Route: (1) Miami - Camaguey and beyond.
Miami - Habana and beyond.
New York, Washington - Habana and beyond.
Tampa/St. Petersburg - Habana and beyond.
Houston, New Orleans - Habana and beyond.
West Palm Beach-Fort Lauderdale - Habana.

(2) Habana - Miami
Varadero - Miami
Habana - New York
Habana - Key West
Habana - Fort Lauderdale, West Palm Beach
Habana - St. Petersburg

(There is no regular air service at the present time between Cuba and the U.S.A. Under the Carter Administration there were weekly charter services between Cuba and Miami but these had been stopped by the Reagan Administration).

Cuba - U.S.S.R.

Type of agreement: Bermuda I. Predetermination of capacity by agreement between airlines subject to approval by aeronautical authorities (Art. 2).

Route: (1) Moscow - Rabat - Conakry - Habana.
Moscow - Oslo - Keflavik - Gander - Habana.
Moscow - Habana - beyond. The points to be determined later by the aviation authorities of both parties.

(2) Habana - Gander - Halifax - Goose Bay - Montreal - Dublin - London - Prague - Moscow.
Habana - Bermuda - Azores - Madrid - Vienna - Prague - Moscow.
Habana - Port of Spain - Belem - Recife - Conakry - Rabat - Algiers - Prague - Moscow.
Habana - Moscow and beyond. The points to be determined later by the competent aviation authorities of both parties.

Dominica - United States

Type of agreement. Bermuda II. Idem St. Lucia - United States

Dominican Republic - France (DOM)

Type of agreement: Bermuda I. Predetermination of capacity by airlines (Art. XV).

Route: (1) French Antilles - Antigua, St. Maarten, San Juan, Santo Domingo beyond via Haiti and Jamaica to Guatemala and Mexico.

The French airline can carry to/from Puerto Rico and Mexico only those passengers originating at other points than the Dominican Republic.

(2) Dominican Republic, intermediate points - Point-à-Pitre, Fort de France and beyond to Barbados, Trinidad and a point in the Netherlands Antilles.

Dominican Republic - Italy

Type of agreement: Bermuda I. Single designation.
Predetermination of capacity (Art. VII(2))
Predetermination of frequency.

Route:

A - (1) Dominican Republic - Lisbon - Madrid - Rome - Geneva, Paris - Bonn - London.

(2) Dominican Republic - Lisbon - Madrid - Rome - Athens, Cairo - Beirut.

B - (1) Italy - Madrid - Lisbon - Dominican Republic - Kingston or Montego Bay - Mexico City.

(2) Italy - Madrid - Lisbon - Dominican Republic - Kingston or Montego Bay - Panama City - Bogota - Quito - Lima La Paz - Santiago de Chile.

Dominican Republic - United Kingdom

Type of agreement: Bermuda I.

Route: (1) Jamaica - Port au Prince - Santo Domingo - San Juan - St. Kitts - Antigua - Barbados - Trinidad.
Trinidad - Barbados - Antigua - St. Kitts, San Juan - Santo Domingo - Bahamas - Miami.
Trinidad - Caracas - Curaçao - Santo Domingo - Jamaica.

(2) Santo Domingo - Kingston
Santo Domingo - Aruba and/or Curaçao - Port of Spain.
Santo Domingo - South Caicos and/or Grand Turk
Santo Domingo - South Caicos - Nassau - Miami.

Dominican Republic - the United States

Type of agreement: Bermuda I.

Route: (1) United States - intermediate points - Santo Domingo - beyond to points in the Caribbean and South America.

(2) Dominican Republic - Miami
Dominican Republic - Puerto Rico - San Juan
Dominican Republic - New York

Dominican Republic - Venezuela

Type of agreement: Bermuda I. Tariffs, predetermined by government authorities (Art. 11).
Frequencies: 4 flights a week (Annex 2b)
Aircraft and capacity: DC-9 or similar (Annex 2d)

Route: Santo Domingo - Curaçao - Caracas
Caracas - Curaçao - Santo Domingo

Fifth freedom rights will be subject to agreement between the aeronautical authorities of both parties.

France (DOM) - Canada

Type of agreement: Bermuda I.

Route: (1) Point-à-Pitre and/or Fort de France - Montreal.

(2) Canada - intermediate points - Point-à-Pitre and/or Fort de France

The Canadian designated airline may transport stopover traffic on its service between Point-à-Pitre and Fort de France. It has no traffic rights in either direction between:

* Fort de France - Barbados – Dominica - Miami Port au Prince – St. Vincent - St. Lucia – San Juan.

* Point-à-Pitre - Antigua – Dominica – Miami – Port au Prince – St. Maarten – San Juan.

* Dominican Republic - intermediate points - Point-à-Pitre - Fort de France - Barbados Trinidad and a point in the Netherlands Antilles and visa versa.

France (DOM) - Guyana

Type of agreement: Bermuda I. Single designation.

Route: (1) Guadeloupe, Martinique, Cayenne - Port of Spain, Paramaribo - Bridgetown - Georgetown.

(2) Georgetown - Paramaribo - Port of Spain Bridgetown - Cayenne, Martinique, Guadeloupe

France (DOM) - United States

Type of agreement: Bermuda I

Route: Schedule I (applicable to the D.O.M.)

route 6. Martinique and Guadeloupe via intermediate points to Puerto Rico and beyond via the Dominican Republic and Haiti to Miami.

route 7. Martinique and Guadeloupe – New York.

Schedule II

route 5. The United States via intermediate points to Guadeloupe, Martinique and beyond via intermediate points to French Guyana, and beyond in South America.

France (DOM) - Venezuela

Type of agreement: Bermuda I

Route:

A - (1) France - Madrid - Lisbon - Azores - Canary Islands - Bermudas – French Antilles - Caracas and beyond to Colombia and beyond.

(2) France - Madrid - Lisbon - Dakar - Cayenne - French Antilles - Caracas beyond to Colombia and beyond (no traffic rights is allowed beyond Caracas).

B - (1) Venezuela - French Antilles - Bermudas - Canary Islands or Azores - Lisbon - Madrid - Paris to Rome and beyond.

(2) Venezuela - French Antilles - Cayenne - Dakar - Lisbon Madrid - Paris to Rome and beyond. (No traffic rights is allowed beyond Paris).

Grenada - United States

Type of agreement: Bermuda I. Signed by the U.K. and the U.S.A. on February 11, 1946. Adherence by means of succession.

Guyana - Brazil

Type of agreement: Bermuda I. Single designation. Frequency and scheduling of services to be operated shall be subject to the approval of the aeronautical authorities (Art. 4).

Route: (1) Guyana - Paramaribo - Belem
Guyana - Boa Vista and Manaus.

(2) Brazil - Cayenne - Paramaribo - Georgetown - Port of Spain, Bridgetown.

(This agreement supersedes the agreement between the U.K. of Great Britain and Northern Ireland and the Federative Republic of Brazil, Oct. 31, 1946 11 U.N.T.S. 115 and Annex in vol. 160.)

d States

eement: Bermuda I. Signed by the U.K. and the U.S.A. Feb. 11, 1946.
Idem Grenada - U.S.

ent: Bermuda I. (single designation)

Route: Any point or points in Canada - Port au Prince - one point beyond to be named by Canada - one point in the Caribbean to be agreed.

(Traffic coming from or destined for points beyond Haiti may be granted stopover privileges in the territory of Haiti.)

Any point or points in Haiti - one point in the Caribbean to be named by Haiti - one point in the United States to be agreed - Montreal.

No fifth freedom traffic rights between Canada and the U.S.A.

No stopover rights at the intermediate point in the U.S.A. for traffic to/from Canada.

Haiti - France

Type of agreement: Bermuda I.

Route:

A - (1) points in Haiti - intermediate points - Puerto Rico - other points in the Caribbean - French Antilles. The transcontinental routes will be determined later.

B - (1) points in France - intermediate points - United States - Spain - Portugal - the Antilles - Puerto Rico - Haiti and beyond to Central and South America.

(2) French Antilles - intermediate points - Haiti - beyond to the United States and Central America.

Jamaica - Canada

Type of agreement: Bermuda I.

Route: (1) Jamaica - Montreal and Toronto.
Jamaica - Cayman Islands the Bahama Islands Philadelphia to Toronto.
Jamaica - Cayman Islands - the Bahama Islands - New York to Montreal.

(2) Canada - Cayman Islands - Bahama Islands to Kingston and/or Montego Bay and beyond to Haiti - the Dominican Republic - Puerto Rico - the Netherlands Antilles - Barbados - Trinidad and Tobago and South America.

Jamaica - Federal Republic of Germany

Type of agreement: Bermuda I. Predetermination of capacity and frequency.

Route: Federal Republic of Germany - New York - Kingston and/or Montego Bay - Bogota and/or Guayaquil or Quito - Lima - La Paz - Santiago.

A Jamaican airlines will have equivalent traffic right.

Jamaica - Sweden

Type of agreement: Bermuda I.

Route: (1) points in Jamaica - points in Sweden.

(2) points in Sweden - points in Jamaica.

Stops may be made at points outside the territory of the Contracting Parties, however no traffic rights can be enjoyed by the airlines of either party.

Jamaica - Switzerland

Type of agreement: Bermuda I.

Route: (1) Switzerland - Madrid or Malaga - Lisbon - Casablanca - Las Palmas - Santa Maria - Bermuda Nassau - Port au Prince - Santo Domingo - two points in Jamaica - two points in Mexico - Guatemala - Panama - Bogota - Quito or Guayaquil - Lima - Santiago.

(2) Jamaica - San Juan - Santo Domingo - Port au Prince - Nassau - Lisbon or Madrid - Paris - London

Brussels or Amsterdam – Copenhagen - Oslo or Stockholm - Helsinki – Frankfurt or Hamburg – two points in Africa – two points in Switzerland - Prague - Vienna - Rome or Milan – Athens – Cairo - Tel Aviv – Beirut - Istanbul.

Jamaica - United Kingdom

Type of agreement: Bermuda I.

Route: A-(1) points in Jamaica - Havana – Haiti – San Juan – Bahamas – London – Prestwick – Amsterdam – Frankfurt – points in Switzerland – Rome or Milan – Copenhagen – Stockholm.

(2) points in Jamaica - New York - London.

(3) points in Jamaica - Bermuda - London.

(4) points in Jamaica - Haiti - Curaçao - Aruba - Santo Domingo - U.S. Virgin Islands - Antigua - St. Kitts – Nevis Anguilla – Montserrat - Dominica - St. Lucia - St. Vincent - Barbados - Trinidad and Tobago - Guyana - points in Africa - points in Central and South America.

(5) points in Jamaica - Grand Cayman.

(6) points in Jamaica - Haiti – points in Turks and Caicos Islands - points beyond in Bahamas - North America and Mexico.

(7) points in Jamaica - Belize - points in Mexico - points in Central America.

B-(1) points in the United Kingdom - New York - Bermuda - Bahamas - Antigua - Montego Bay - Kingston - Mexico – Guatemala – Panama - points in South America.

(2) Antigua - Barbuda - St. Kitts – Nevis – Anguilla – Montserrat – Dominica – St. Lucia – St. Vincent – St. Maarten - British Virgin Islands - U.S. Virgin Islands – San Juan - Santo Domingo – Port au Prince - Kingston Montego Bay - Cayman Islands - (a) Bahamas or - (b) points in Central America.

(3) Points in Cayman Islands - Kingston.

Jamaica - United States

Type of agreement: Liberal bilateral charter air services agreement

Route: Jamaica - via points in the Caribbean[1] and the Bahamas[2] to ten points in the United States[3] and beyond (a) continental United States point to three points in Canada[4] and (b) Puerto Rico to one point in Europe.[4]

United States - via points in Mexico, Central America, Panama, the Bahamas and the Caribbean[1] (including Puerto Rico and the Virgin Islands) Panama, South America, Africa.

United States - via points in the Dominican Republic and Haiti to Kingston and Montego Bay and beyond to points in Panama, Central America, and the United States.

Footnotes:

1. The term Caribbean shall comprise the following: Cayman Islands, Cuba, Haiti, Dominican Republic, St. Maarten, British Virgin Islands, Antigua, St. Kitts; Nevis, Anguilla, Montserrat, Guadeloupe, Dominica, Martinique, St. Lucia, St. Vincent, Grenada, Barbados, Trinidad and Tobago, Aruba and Curaçao.

2. With traffic rights between the Bahamas and three of the U.S. points.

3. These ten U.S. points are to be selected by the Government of Jamaica and notified to the U.S. Government. Changes in the points selected may be made at intervals not less than six months with 60 days' notice to the U.S. Government.

4. To be selected and changed in accordance with the procedure set forth in footnote 3.

Jamaica - U.S.S.R.

Type of agreement: Bermuda I.
Designation: single.

Route: (1) Jamaica - 2 points in the Caribbean - Havana - Zurich - Milan - Vienna - Budapest - Moscow or/and Leningrad.

(2) U.S.S.R. - Luxemburg - Madrid - Lisbon - Rabat - Havana - Kingston/Montego Bay - San José - Panama City - Bogota - Quito - Quayaquil - Lima.

Charter flights shall be subject to prior authorization.

Jamaica - Venezuela

Type of agreement: Bermuda I. Predetermination of capacity, frequency, aircraft.

The designated airlines may negotiate in order to reach a formula of cooperation on the agreed services; if such agreement is reached it will be submitted for consideration to the aeronautical authorities.

Route: Jamaica - Netherlands Antilles - Caracas-Maracaibo. Venezuela - Netherlands Antilles - Kingston or Montego Bay.

No traffic rights between Netherlands Antilles - Venezuela neither between Netherlands Antilles - Jamaica. The designated airlines will abstain from announcing directly or indirectly to the travelling public that the agreed services provided hereunder extend beyond their own territories (Art. 3(c)(ii)).

Netherlands (Neth. Antilles) - Brazil

Type of agreement: Bermuda I.

Route: one of the routes in Schedule II is: Brazil, via Paramaribo and/or Curaçao to points in third countries by reasonably direct routes in both direction. (No routes from Neth. Antilles to Brazil.)

Netherlands (Neth. Antilles) - Canada

Type of agreement: Bermuda I.

Route: Schedule II

A. The Netherlands Antilles - two points in the continental U.S.A. to be named by the Netherlands Antilles or one point in the continental U.S.A. to be named by the Neth. Antilles and one point in the Caribbean to be agreed - a point in Canada to be named by the Neth. Antilles and vice versa.

* The exercise of fifth freedom and stopover traffic rights between intermediate points and the point in Canada shall be subject to prior agreement between the aeronautical authorities of Canada and the Neth. Antilles.

B. Canada - two points in the Caribbean (excluding San Juan Puerto Rico) to be named by Canada - a point in the Neth. Antilles to be named by Canada - points beyond to be agreed and vice versa.

* The exercise of fifth freedom and stopover traffic rights between the point in the Neth. Antilles and points beyond shall be subject prior to agreement between the aeronautical authorities of the Neth. Antilles and Canada.

Netherlands (Neth. Antilles) - Mexico

Type of agreement: Bermuda I.

Route:

I Points in Mexico - Toronto and/or Montreal - Amsterdam.

II(b) Points in the Netherlands Antilles - Baranquilla - Panama - San José - Guatemala - Kingston - Montego Bay - Cozumel - Cancum-Mexico City.

(Route (a) is for the Netherlands designated airline.)

III-3 The airline designated by the Government of the Kingdom of the Netherlands in route (b) of Sec. II shall be an airline domiciled in the Netherlands Antilles and shall be entitled to operate three frequencies per week in both directions with Douglas DC9 or any similar type of aircraft.

III-7 The airline designated by the Government of the Kingdom of the Netherlands in route (b) of Sec. II shall enjoy commercial traffic rights only between the Netherlands Antilles and Mexico City and between the Netherlands Antilles, Baranquilla and Guatemala on the one hand and Cozumel and Cancum on the other.

Netherlands Antilles - Netherlands

Type of agreement: Very restrictive for Neth. Antilles.

Protocol of Conclusions to regulate air transport relations between the Kingdom partners.

Sec. I
* in their relation to third countries the partners have to protect the grand cabotage rights.
* promotion of a close coordination of and taking into account the interest of the partners in their relation with third countries.

Sec. II
Partners will see that there will be a fair competition between their airlines on the grand cabotage route.

The same tariffs will be approved for these airlines.

Sec. IV
Approval of tariffs for international air transport shall be according to the bilateral agreement with a third state.

if the route is between the Neth. Antilles and a third country and the Netherlands has designated the airline than the Netherlands authorities after deliberation with the Neth. Antilles' aeronautucal authorities will approve/disapprove tariffs, and vice versa.

where another than a Netherlands designated airline is servicing the route the Neth. Antilles aeronautical authorities will have the authority to approve/disapprove.

as for grand cabotage transport, the country of origin approval applies (after consultation with both aeronautical authorities).

IATA - tariffs between Europe and Central America/Northern part of South America and the Caribbean region shall be approved.

Sec. V Charter flights for grand cabotage transport shall be subject to approval of the aeronautical authorites of both partners.

Charter flights between the Kingdom and a third party shall be subject to country of origin or destination rules.

Netherlands (Neth. Antilles) - Trinidad and Tobago

Type of agreement: Bermuda I.

Route:

Sec. I (1) Trinidad and Tobago - Aruba, Curaçao - Jamaica - Miami.

(2) Trinidad and Tobago - Guyana - Surinam - Cayenne, points in Brazil, points in Argentina.

Sec. II (1) Aruba, Curaçao - Trinidad & Tobago - Georgetown - Paramaribo.

(2) Aruba, Curaçao - St: Lucia* - Barbados - Trinidad and Tobago.

* only stopover rights between St. Lucia and Trinidad & Tobago.

(3) Surinam - Georgetown - Trinidad & Tobago - Grenada.

Barbados - San Juan

After the independence of Surinam this country by declaration of succession took over the rights of the Kingdom of the Netherlands i.e. also these from this agreement with Trinidad & Tobago.

Prior to the exercise of fifth freedom rights on route 2 of Sec. I and route 3 of Sec. II there will be consultation and prior agreement between the designated airlines operating such route.

The exercise of fifth freedom rights between Barbados - Trinidad & Tobago on route 2 of Sec. II will be restricted to one flight weekly. This limitation will disappear when the airline designated by Trinidad & Tobago notifies the authorities of the Neth. Antilles of its intention to exercise fifth freedom rights on route 1 of Sec. I.

Netherlands (Neth. Antilles) - U.K.

Memorandum of agreement Oct. 1, 1964 modifying the Annex of the Air Services agreement between the Kingdom of the Netherlands and the United Kingdom August 13, 1946.

Type of agreement: Bermuda I.

Route: St. Maarten - St. Eustatius - St. Kitts - Anguilla.
St. Kitts - St. Eustatius - St. Maarten - Anguilla.

Windward Islands Airways subsidiary of Antillean Airlines (ALM) was designated by the Neth. Antillean Government and LIAT designated by the Government of the United Kingdom.

Netherlands (Neth. Antilles) - U.S.

Type of agreement: Liberal bilateral
Charter air services agreement (Annex II)

Route: (1) points in the United States and its territories via intermediate points to points in the Neth. Antilles and beyond to points outside the Neth. Antilles.

(2) Neth. Antilles via intermediate points to Puerto Rico, St. Croix, St. Thomas, Miami, New York, and five additional points in the United States[1] and beyond.

(i) the continental United States to two points in Canada.[2]

(ii) Puerto Rico to one point in Europe.[3]

Footnotes:

1. These additional five points are to be selected by the Government of the Neth. Antilles and notified to the U.S. Government. Two of the five points may be served

immediately upon the effective date of this agreement. The remaining 3 additional points may be served after the expiration of the MoU to this agreement.

2. One point in Canada may be served immediately, while the second point may be served after the expiration of the MoU to this agreement. The right to serve Canada may be exercised from up to two points in the continental U.S. during any given 24-hour period.

3. The one point in Europe may be selected only after expiration of the MoU (March 31, 1983).

The Netherlands (Neth. Antilles) - Venezuela

Type of agreement: Bermuda I (Art. 4).

Route: (1) Caracas - Curaçao (maximum 6 frequencies/weekly)
Caracas - Aruba or Bonaire (max. 2 freq./wk)
Maracaribo - Neth. Antilles (max. 3 freq./wk)
Venezuela - Neth. Antilles (with a max. of 6 additional non accumulative flights a week)
Venezuela - Neth. Antilles - with a max. of 4 non accumulative cargo flights/week.
Venezuela - Neth. Antilles and beyond to points in the Caribbean-Panama and points in the U.S.A. with a maximum of 7 flights a week.
Venezuela - Neth. Antilles and beyond to Paramaribo Lisbon - Madrid - Geneva or Zurich, Paris - Frankfurt - London - Amsterdam with a maximum of 3 flights per week.
Venezuela - Neth. Antilles - Santo Domingo - New York and beyond to points in Canada and beyond to Amsterdam, with a maximum of 7 flights a week.

(2) Neth. Antilles - Caracas - maximum 6 flights a week of which a maximum of 4 weekly services from/to Curaçao.
Neth. Antilles - Maracaibo - maximum 3 flights a week.
Neth. Antilles - Venezuela - maximum of 4 additional non accumulative flights a month.

Neth. Antilles - Venezuela - maximum of 2 non accumulative cargo flights per week.
Neth. Antilles - Caracas - maximum of 7 flights a week with a maximum of 4 flights from and to Curaçao.
The Netherlands - Frankfurt - Zurich or Geneva - Madrid - Lisbon - Paramaribo - Caracas - Caraçao maximum 3 flights a week.

Saint Christopher and Nevis - United States

Type of agreement: Bermuda II (as signed by the U.K.-U.S.A. July 23, 1977 and amended by agreement Dec. 27, 1979 and Dec. 4, 1980.

(adherence by means of succession)

Saint Lucia - Canada

Type of agreement: Bermuda I

Route: (1) Saint Lucia - points in the Caribbean (to be named by St. Lucia) - Toronto & Montreal.

Fifth freedom traffic rights between intermediate points and points in Canada shall become available at points to be agreed only at such time as the Government of Saint Lucia designated an airline acceptable to Canada other than BWIA International.

BWIA International can co-mingle the traffic that is being carried according to air agreements between the Government of Canada and other Governments provided that Canada has accepted the designation of BWIA to exercise the traffic rights granted to such other governments by the Government of Canada.

(2) Points in Canada - 2 points in the Caribbean to be named by Canada - St. Lucia - 2 points beyond to be named by Canada.

St. Lucia - United States

Type of agreement: Bermuda II
(as signed by the U.K.-U.S.A. July 23, 1977 and amended by agreement of April 24, 1978)
(adherence by means of succession)

St. Vincent and the Grenadines - United States

Type of agreement: Bermuda II
Idem St. Lucia - United States

Suriname - United States

Type of agreement: Bermuda I
(as signed by the Kingdom of the Netherlands April 3, 1957 and amended Nov. 25, 1969 and February 23, 1978).

Route: Paramaribo - Curaçao - Miami.

Trinidad & Tobago - Canada

Type of agreement: Bermuda I.

Route: (1) points in Canada - Bermuda Antigua - Bahamas - Martinique - Guadeloupe - St. Lucia - Jamaica - Port of Spain, Trinidad.

(2) points in Trinidad & Tobago - Bermuda Antigua - Bahamas - Martinique - Guadeloupe - St. Lucia - Jamaica - Toronto.

Passengers have stopover rights at the intermediate points en route.

Trinidad & Tobago - Denmark

Type of agreement: Bermuda I.

Route: Trinidad & Tobago - Barbados - Windward Islands - Leeward Islands - French Antilles - Portugal - Spain - United Kingdom - France - Belgium - Netherlands - Federal Republic of Germany - Switzerland - Scandinavia.

Scandinavia - Federal Republic of Germany - France - the Netherlands - Belgium - Switzerland - Spain - Portugal - West Africa - Antigua - Barbados - Trinidad & Tobago - Colombia - Panama - Ecuador - Peru - Chile.

Trinidad & Tobago - France (DOM)

Type of agreement: Bermuda I.

Route: (1) Trinidad & Tobago - Grenada – St. Vincent - Barbados – St. Lucia - Dominica –Martinique – Guadeloupe - Dominica – Antigua - St. Kitts - U.S. Virgin Islands - British Virgin Islands - Puerto Rico – Santo Domingo – Haiti – Jamaica – Cayman Islands - Cuba - Bahamas – Miami – Toronto - Central America (except Mexico City).

(2) Guadeloupe/Martinique and dependencies - St. Lucia – Barbados – Grenada - Trinidad & Tobago - Georgetown – Paramaribo - Cayenne – points in Brazil - Curaçao, points in Venezuela, points in Colombia.

Trinidad & Tobago - Sweden

Type of agreement: Bermuda I.

Route: (1) Trinidad & Tobago - Barbados Windward Islands Leeward Islands French Antilles Portugal Spain United Kingdom France Belgium Netherlands Fed. Republic of Germany Switzerland - Scandinavia.

(2) Scandinavia – Fed. Republic of Germany - France - Netherlands – Belgium - Switzerland - Spain - Portugal - West Africa - Antigua - Barbados - Trinidad & Tobago – Colombia –Panama – Ecuador - Peru – Chile.

Trinidad & Tobago - Switzerland

Type of agreement: Bermuda I.

Route: (1) Points in Switzerland - Paris - Brussels - Amsterdam - London – Madrid - Lisbon - Santa Maria – Casablanca – Las Palmas – Tenerife, Dakar - Paramaribo – Bermudas - Bridgetown – one point in Trinidad & Tobago – Panama - Bogota - Quito - Guayaquil - Lima - Santiago.

(2) Points in Trinidad & Tobago - Barbados - St. Lucia – Antigua - Martinique – Guadeloupe - Bermudas - Lisbon – Madrid – London - Paris - Brussels – Amsterdam - one point in Switzerland - Frankfurt – Copenhagen - Stockholm - Oslo – Rome.

Trinidad & Tobago - United Kingdom

Type of agreement: Bermuda I.

Route:

I - (1) Trinidad & Tobago - Barbados - Martinique - Guadeloupe - Grenada - St. Vincent - St. Lucia - Dominica - Antigua - Barbuda - Montserrat - St. Kitts Nevis - Anguilla - British Virgin Islands - U.S. Virgin Islands - Puerto Rico - the Dominican Republic.

(2) Trinidad & Tobago - Barbados - Martinique - Guadeloupe - Grenada - St. Vincent - St. Lucia - Dominica - Antigua - Santo Domingo - Haiti - Jamaica - Cuba - Nassau - * points in Mexico - Miami - New Orleans.

* without traffic rights to or from Miami.

(3) Trinidad & Tobago - Barbados - Martinique - Guadeloupe - Grenada - St. Vincent - St. Lucia - Dominica - Antigua - St. Kitts - Miami - New York - Montreal - Toronto.

(4) Trinidad & Tobago - Barbados - St. Lucia - Antigua - St. Kitts - London - Paris - * Amsterdam - * Lisbon.*

* without traffic rights to or from London.

II - (1) Points in the United Kingdom - Bermuda - St. Kitts - Antigua - Barbados - St. Lucia - Trinidad & Tobago - points in South America.

(2) points in the United Kingdom - Bermuda - a point in Canada - New York - St. Kitts - Antigua - Dominica - St. Lucia - St. Vincent - Barbados - Grenada - Trinidad & Tobago - Guyana.

Trinidad & Tobago - United States

Type of agreement: Bermuda I
(as signed by the U.K. and the U.S.A. Feb. 11, 1946 and as amended by

exchange of notes constituting an agreement between the Government of the U.S.A. and Trinidad & Tobago, Oct. 8, 1962.)

Route:

I - (1) Trinidad & Tobago - Barbados - St. Kitts - Grenada - St. Vincent — St. Lucia - Antigua - St. Thomas - San Juan - Santo Domingo - Port au Prince - Jamaica - Cuba - Nassau - Bermuda - Miami.

(2) Between the terminal point Barbados and the terminal point New York.

(3) Between the terminal point London, England, Shannon, Iceland, the Azores, Bermuda, Gander, Montreal, New York, Jamaica.

(4) Antigua - New York.

(5) Trinidad - New York*

* Route 2-5 are according to Dockets 13962, 23399, 33183. (Order 79-2-67 Jan. 17, 1979 80 CAB Reports 415.)

II New York - Miami - Cuba - Port au Prince - Santo Domingo — San Juan - St. Thomas - Point-à-Pitre - Fort de France - Antigua - St. Lucia —Trinidad - Guyana - via South American points to Buenos Aires.

(These routes are according to Annex III(a)(5) and Annex III(b)(12) of the Bermuda I, 3 UNTS 253.)

PARTIES OF THE BILATERAL AGREEMENT AND THE DATE(S) ENTERING INTO FORCE

Antigua and Barbuda - the United Kingdom, March 25, 1985 ICAO No. 3187.

Antigua and Barbuda - the United States of America, Dec. 4, 1980, TIAS 9722, 32 UST 524; TIAS 10059, Treaty Series No. 21, 1981 Cmnd 8222.

Aruba - the United States, Jan. 8, 1986. Aviation Daily Jan. 17, 1986.

Bahamas - Jamaica, Nov. 29, 1973, ICAO No. 2462.

Bahamas - the United States, 1946, TIAS 1507.

Barbados - Canada. Canada and Barbados air transport services are performed under an interim accord. These services have been governed by interim accords since 1976. Barbados insists on landing rights in Toronto but the Canadian Government had put restriction allowing additional airlines to operate scheduled services into Toronto because it is now too full. See the «Nation», December 1, 1978. (Newspaper of BARBADOS, Fontabelle, St. Michael, Barbados). The same newspaper published on July 24, 1977 the following news:

> «Air Martinique has been given permission to fly into Barbados. This was to stave off plans by regional French civil aviation authorities to ban LIAT flights between Barbados and the French islands, unless Air Martinique or Air Guadeloupe was allowed to operate the Grantley Adams International Airport.»

Barbados - Cuba, Dec. 7, 1973, ICAO No. 2659.

Barbados - Denmark, October 27, 1969, ICAO No. 2166, 723 UNTS 23.

Barbados - Belgium, February 20, 1973, ICAO No. 2397.

Barbados - Norway, October 29, 1969, ICAO No. 2167, 794 UNTS 283.

Barbados - the United Kingdom, Sept. 6, 1971 ICAO No. 2310, 817 UNTS 171.

Barbados - the United States, April 8, 1982, TIAS 10370.

Barbados - Sweden, October 31, 1969, ICAO No. 2168, 794 UNTS 305.

Cuba - Belgium, October 22, 1975, ICAO No. 2609

Cuba - Canada, August 3, 1976, ICAO No. 2629, Canada Treaty Series 1976 No. 26.

Cuba - Trinidad & Tobago, Sept. 6, 1974, ICAO No. 2530.

Cuba - Guyana, July 26, 1973, ICAO No. 2502.

Cuba - Jamaica, date of signature October 30, 1974, ICAO No. 2556.

Cuba - the German Democratic Republic, August 21, 1967, ICAO No. 2039.

Cuba - Mexico, July 31, 1971, ICAO No. 2299.

Cuba - the United Kingdom, May 28, 1953, ICAO No. 608, 1036 U.N. No. 2294, 175 UNTS 23, 53.

Cuba - the United States, July 30, 1957, TIAS 3891

Cuba - Spain, June 19, 1951, ICAO No. 995 and 3006, U.N. No. 19177.

Cuba - Switzerland, February 14, 1974, ICAO No. 2533, U.N. No. 14422

Cuba - the U.S.S.R., July 17, 1962, ICAO No. 2024, U.N. No. 10123

Dominican Republic - France (D.O.M.), December 15, 1970, ICAO No. 2307

Dominican Republic - Italy, May 9, 1978, ICAO No. 2828

Dominican Republic - the United Kingdom, May 4, 1951, ICAO No. 938. This agreement is from the time that all the islands were non-independent. Now that they are independent the privileges acquired by the U.K. through this agreement have gone over to the islands by means of succession.

Dominican Republic - the United States, July 19, 1949 and October 19, 1971, ICAO No. 739 and 2332, 822 UNTS 355. According to Aviation Daily, Feb. 18, 1986, p. 263, the Governments of the U.S.A. and the Dominican Republic are negotiating a new procompetitive agreement.

Dominican Republic - Venezuela, February 19, 1971, ICAO No. 2308

France (D.O.M.) - Canada, June 15, 1976 and December 21, 1982, ICAO Nos. 2675 and 3207

France (D.O.M.) - Guyana, March 9, 1976, ICAO No. 2890, 1014 UNTS 25.

France (D.O.M.) - the United States, March 27, 1946 and August 27, 1959, TIAS 1679 and TIAS 4336, 10 UST 1791

France (D.O.M.) - Venezuela, August 16, 1954, ICAO No. 1116

Guyana - Brazil, March 4, 1975, ICAO 2598, 997 UNTS 149.

Guyana - The United States, TIAS 1507, adherence by means of succession.

Grenada - the United States, May 27, 1966 by means of succession. TIAS 1507 amended by TIAS 6019

Haiti - Canada, October 12, 1978, Source Can. Dept. of Transport

Haiti - France (D.O.M.) Working Paper Civil Aviation Experts of CDCC.

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Surinam - the United States, April 3, 1957 and November 25, 1969, TIAS 4782 and TIAS 6797. In the bilateral agreement between the Government of the United States and the Netherlands there was no mention of a route with terminal points Paramaribo and U.S.A. After the independence of Surinam, Surinam Airways was flying Paramaribo - Neth. Antilles with interline connection to Miami. In 1978 Surinam Airways asked and received authorization to fly Paramaribo - Curaçao - Miami. (76 CAB Reports 261, February 23, 1978, Docket 31108)

Dominica - the United States, April 25, 1978, TIAS 8965, 29 UST 2680

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Trinidad & Tobago - the United States, October 8, 1962, ICAO No. 1679, TIAS 1507 and TIAS 5209, 13 UST 2463. (The title says: Continued Application of Certain Agreements to Scheduled Services between the United States and the Caribbean Area by U.S. and Trinidad & Tobago Airlines, October 8, 1962.) 462 UNTS 145

Trinidad & Tobago - Sweden, November 2, 1969, ICAO No. 2339, 826 UNTS 108

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ANNEX III

CARIBBEAN ROUTE NETWORK

3. a) The principal hubs in the sub-region are San Juan, Port of Spain, Bridgetown, Curaçao and Kingston.

b) Only the principal hubs, and Antigua, St. Lucia and Guadeloupe have extensive direct links with the other islands of the sub-region. Although the route network is most dense in the eastern Caribbean island chain extending from San Juan to Port of Spain, there are relatively few inter-island links between the east and west Caribbean, necessitating flight connexions in either San Juan, Port of Spain, Bridgetown, Kingston or Miami (in the case of the Bahamas).

c) There are few links between the Caribbean and Central America and Mexico. A total of seven airports in the Caribbean have through-plane service to one or more points in Central America and Mexico, in most cases to Panama City.

d) Service to South America is better, the greatest number of cities being served from San Juan and Curaçao. A total of 12 airports in the Caribbean are linked to cities in South America. There are no through-plane services between the eastern Caribbean (except through San Juan or Curaçao) and cities in south and southeast Latin America (i.e. in Brazil, Argentina, Uruguay, Bolivia, Chile and Paraguay), although there are links with other west coast States.

e) Direct services to North America are moderately good, being mainly to Miami, New York, Toronto and Montreal. Most of the small dependent territories in the sub-region rely on feeder services from San Juan, Port of Spain, Bridgetown and Kingston.

f) Eighteen airports in the sub-region have direct service to cities in Europe, those with the most links being San Juan, Havana and Port of Spain. The European cities with the most links are London and Madrid.

Source: ICAO Circular, International Air Passenger and Freight Transport, Latin America and the Caribbean Circular 175-AT/65, 1983, pp. 36-37.