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The Problem of Registration and Nationality of Aircraft

THE PROBLEM OF REGISTRATION AND NATIONALITY OF AIRCRAFT OF INTERNATIONAL OPERATING AGENCIES AND THE I.C.A.O. COUNCIL'S RESOLUTION ON THE PROBLEM.

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ABSTRACT

The last sentence of Article 77 of the Chicago Convention of 1944 provided that the Council of I.C.A.O. shall "determine in what manner the provisions of this Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies". In 1967 that Council, as an interpretation of this last sentence, has recognized a new form of registration of aircraft with respect to these agencies, non-national registration, and provided guarantees for the application of the above provisions of the Convention in the case of aircraft so registered.

The adoption of the Resolution is one of the most significant events in the history of international air law. Until that adoption, only national registration of aircraft had been accepted, for about sixty years. Thus the Resolution made it possible for aircraft of international operating agencies to traverse the international aerospace without nationality or the requirement of being registered in a "state". Instead such aircraft may be registered on other than a national basis. In fact the question of interpreting the last sentence of Article 77 proved to be not an easy one, and it took I.C.A.O. several years to solve it.

In this study the writer attempts to explore the problem created by that last sentence and its settlement by the Council's Resolution of 1967. This includes an examination of the fundamental problem, the reasons or need for making the Resolution, the events which preceded the Resolution, the Resolution itself, and the effect of this Resolution.

Thus Part I of this study contains the fundamental problem.

In Part II the writer surveys the existing transnational organizations regarding their nature, the manner in which their aircraft are registered and the nationality of their aircraft.

In Part III he considers the efforts which were made in I.C.A.O. with respect to finding a solution to the problem.

Part IV contains an analysis of the Resolution of the Council of I.C.A.O. on the problem.

The last part is an evaluation of the whole position.

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by

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DEDICATION

To My Father

To Whom I Owe My Being

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To bring this research from a visionary thought to a tangible work, I needed a Midas touch that would bridge the gap between the visionary world and the realistic one, and provide the vehicle that would enable me to traverse the endless oceans which separate my home from McGill. In addition, I needed reliable guidance to clear my way in the cloudy, helpless moments. McGill was there, generous and eager to help: its eminent scholars provided the enlightening guidance, its Institute of Air and Space Law offered, through their scholarship, the Midas hand I needed and the vehicle I rode to my destination. Inasmuch as I needed a vehicle, I needed the fuel to run it, which I readily found in the inspiration I drew from my people, the people of the Sudan, towards the furtherance of whose interest my education ultimately works.

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FOREWORD

Twenty-three years after Article 77 of the Chicago Convention was drafted and twenty years after that Convention came into force, the Council of the International Civil Aviation Organization exercised, in 1967, the powers conferred on it by the last sentence of that Article to "determine in what manner the provisions of this Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies". The Council's determination, as an interpretation of this last sentence, has recognized a new form of registration of aircraft, non-national registration, and provided guarantees for the application of the above provisions of the Convention in the case of aircraft so registered.

The adoption of the Resolution (or determination) is one of the most significant events in the history of international air law. Until its adoption, only one form of registration of aircraft

had been accepted, for about sixty years. The Resolution made it possible for aircraft of international operating agencies to traverse the international aerospace without nationality or the requirement of being registered in a state. Instead, such aircraft may be registered on other than a national basis. Hence the Council's Resolution constitutes a radical break with past traditions and practices.

Although, as will be shown later, the Resolution has, between states, legally settled a controversial issue of interpreting the last sentence of Article 77, it may still have not secured the hearty approval of all international lawyers. The main purpose of this thesis is, therefore, to explore this problem created by that last sentence and its settlement by the Council's Resolution of 1967. This includes an examination of the fundamental problem, the reasons or need for making the Resolution, the events which preceded the Resolution, the Resolution itself and the effect of this Resolution.

The last sentence of Article 77, which is the core of the problem and upon which the Resolution was based, seems to have been inspired by the

inadaptability of the provisions of the Chicago Convention relating to nationality of aircraft to aircraft of international operating agencies, not nationally registered. Hence it follows that non-national registration had been contemplated by the drafters of that sentence and in fact it may have been the reason for the insertion of that sentence. On the other hand, nothing in the Convention precludes the possibility of registration of aircraft of international operating agencies on a national basis. Thus, while in Part I of this thesis the writer intends, inter alia, to describe the inadaptability of the above provisions of the Convention and hence deduce that non-national registration could have been contemplated by the drafters of the Chicago Convention, he surveys in Part II the existing transnational airlines and recognizes the manner in which their aircraft are nationally registered. Had these two ways of registration of aircraft been seen reconcilable as such, with respect to international operating agencies, by both those who opposed the registration of aircraft on other than a national basis and those who stood for it, no serious controversy might have attended the matter and a lot of effort might have been saved

in reaching the Council's Resolution. Accordingly, the presentation of the problem and its solution with the above approach in mind is hoped to reveal the basis for and implications of the Council's Resolution, and thus contributes to a further appreciation of the significance of its contents.

The question of interpreting the last sentence of Article 77 involves rather complex issues, and the Resolution of the Council settling this question has its origin in certain studies where these issues were raised. Hence, in Part III, an analytical approach to these studies was made, with the intention of reaching an explanation of the problem in issue and, ultimately, clarifying all the aspects of the Council's decision.

It will be noted that one of the above studies was made by I.C.A.O.'s Legal Sub-Committee and another by the Legal Committee itself. However, since these two studies are more or less similar, only the first one was fully analyzed, to avoid unnecessary repetition.

All these studies were related in their sequence of occurrence, with a view to enable the reader to follow gradually and in succession the

issues which arose or the views which were tendered, regarding the problem in issue, until the passing of the Council's Resolution. This systematic process of illuminating the different aspects of the matter is hoped to lead to a clear understanding of the problem of interpreting the last sentence of Article 77 and, consequently, the I.C.A.O. Council's Resolution, which stands, together with its contents, as a solution to it and an outcome, not without justifications, of all the studies concerned.

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PART ONE

THE FUNDAMENTAL PROBLEM

(A) Article 77 of the Chicago Convention:[1] History

At the opening of the Chicago Conference of 1944 the nations of the world expressed their various views on the future of international air transport. The subject of internationalization of air services was much discussed at the Conference.[2]

The United Kingdom and Canada advocated international control of civil aviation by an authority which should have wide economic powers, but without authority actually to own and operate

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[1] The Chicago Convention (Convention on International Civil Aviation signed at Chicago on December 7, 1944), is the main treaty regulating international civil aviation. The Convention came into force on 4th August 1947, the thirtieth day after deposit with the Government of the U.S.A. of the twenty-sixth instrument of ratification thereof or notification of adherence thereto, in accordance with Article 91 (b) of the Convention. By 30th June, 1965, one hundred and nine states had ratified or adhered to the Convention. See Keenan, Lester and Martin, Shawcross and Beaumont on Air Law, Vol. 1, 3rd ed. (London 1966), p. 40.

[2] J. C. Cooper, "Internationalization of Air Transport", Explorations in Aerospace Law, ed. I. A. Vlasic (Montreal, 1968), p. 401.

international air services.[3]

The United States desired to see the establishment of a world organization to take care of technical and safety problems while leaving each nation with uncontrolled and wide competitive and economic powers.[4]

On the other hand, Australia and New Zealand brought forward a scheme for the internationalization of civil air trunk routes along certain lines. The scheme called for the establishment of a world organization to operate on "prescribed" international trunk routes; and to own its aircraft on behalf of all states. This scheme was finally worded in the form of a Resolution. This draft resolution reads as follows:

> RESOLVED THAT we, the nations and authorities represented at this International Civil Aviation Conference
> being determined that the fullest measure of co-operation should be secured in the development of air transport services between the nations of the world

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[3]According to Canada the international air authority would ensure that "so far as possible, international air routes and services are divided fairly and equitably between the various member states". I.C.A.O. DOC. 5230, A2-EC/10, April 1948, p. 68. In the opinion of U.K. the authority would allocate the air routes on the world and determine the frequency of air services on these routes together with fixing the rates. H. A. Bowen, "Chicago International Conference", 1945, 13. George Washington, Law Review, pp.308-327.

[4]J. C. Cooper, supra note 2, p. 401.

believing that the unregulated development of air transport can only lead to misunderstanding and rivalries between nations
being convinced that air transport can and should be utilized as a powerful instrument in the cause of international security and in the attainment of 'Freedom from Fear' as embodied in the Atlantic Charter
believing that the interests of all nations, both large and small, can best be advanced by the joint utilization and the material, technical and operational resources of all countries for the development of air transport
believing that the creation of an effective economic and non-discriminatory instrument responsible for the ownership and operation of air transport services between nations of the world is in the best interests of orderly world progress

AGREE THAT these objectives can best be achieved by the establishment of an international air transport authority which would be responsible for the operation of air services on prescribed international trunk routes and which would own the aircraft and ancillary equipment employed on these routes; it being understood that each nation would retain the right to conduct all air transport services within its own national jurisdiction, including its own contiguous territories subject only to agreed international requirements regarding landing and transit rights, safety facilities, etc., to which end it is desirable that this Committee of the Conference should consider the organization and machinery necessary for the implementation of this resolution.[5]

However, the above proposal was met with strong opposition in the Conference. Hence an amendment thereto was moved by the Brazilian delegation which introduced a motion to the effect that

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[5]J. C. Cooper, supra note 2, pp. 401-402.

> while Brazil shares the determination of those delegations (Australia and New Zealand) that civil air transport should be a source of benefit and security to the world, Brazil is not in a position to accept such a proposal and therefore suggests that this Committee declare that there is no opportunity and necessary unanimity for the organization, at the present time, of an all embracing international company.[6]

In the opinion of the Chairman of the delegation of Brazil, "Our times are not yet ripe for the internationalization of aviation, and perhaps the time will never be ripe for it" and, "we cannot accept internationalization of aviation or international ownership of aircraft - the ownership of aircraft must continue to be national".[7]

In supporting the Brazilian position, the Chief of the United States delegation, while expressing a feeling of being "impressed with a senseof great tragedy" in opposing the above proposal, stated that the world has built up its life through national effort, and questioned the efficiency of such a proposed international organization, which the United States considered as a "more complicated task of putting the interests of many people in the hands of an instrument still unfashioned and whose potentialities are still

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[6] J. C. Cooper Ibid., p. 402.

[7] Ibid.

unknown."[8]

In the face of this opposition the New Zealand-Australian proposal was rejected, upon the passing of the Brazilian amendment.[9]

Nevertheless, the Chicago Conference kept the subject alive,[10] by including in the Convention on International Civil Aviation, which it drew up, Articles 77, 78 and 79 concerning "joint operating organizations" and pooled services. Article 77 was based on a proposal made in a Canadian draft Convention submitted to the Conference.[11] That article reads as

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[8]Ibid., p. 403.

[9]Proceedings of the International Civil Aviation Conference, Chicago, Illinois, Nov. 1 - Dec. 7, 1944 (Publication No. 2820) 2 vols. (The Department of State, Washington, D.C., 1948), p. 546.

[10]G. F. FitzGerald, "Nationality and Registration of Aircraft Operated by International Operating Agencies and Article 77 of the Convention on International Civil Aviation, 1944," Can. Yearbook of International Law (1967), p. 196. According to Bin Cheng "the draftsman of the Convention clearly envisaged, therefore, that notwithstanding the rejection of the Canadian proposal", and the New Zealand and Australian proposal, "the seeds of internationalism broadcast by these proposals at the Chicago Conference might yet in post-war world germinate and grow." Bin Cheng, "Nationality of Aircraft Operated by Joint or International Agencies," 32, J.A.L.C. (1966), p. 20.

[11]For the text of that draft, see Canadian revised Preliminary Draft of an International Air Convention (Doc. 50 of the Chicago Conference, supra note 9), p. 581.

follows:

> Nothing in this Convention shall prevent two or more contracting states from constituting joint air transport operating organizations or international operating agencies and from pooling their air services on any route or in any regions, but such organizations or agencies and such pooled services shall be subject to all the provisions of this Convention, including those relating to the registration of agreements with the Council. The Council shall determine in what manner the provisions of this Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies.[12]

The Chicago Convention in its Article 77 permits, inter alia, the formation of international operating agencies, but omits to lay down how the Convention's provisions relating to the nationality of aircraft shall apply to aircraft operated by such agencies,[13] while leaving in the last sentence of this

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[12]Articles 78 and 79 respectively, read as follows:

78: Function of Council.

The Council may suggest to contracting States concerned that they form joint organizations to operate air services on any routes or in any regions.

79: Participation in operating organizations

A state may participate in joint operating organizations or in pooling arrangements, either through its government or through an airline company or companies designated by its government. The companies may, at the sole discretion of the State concerned, be state-owned or partly state-owned or privately owned.

[13]It will be noted that while the first sentence of article 77 includes, inter alia, the expressions "joint

Article the determination of the matter to the Council of the International Civil Aviation Organization.

This last sentence of Article 77 gave rise to the problem under discussion in this study. Apparently Article 77, while subjecting international operating agencies to all the provisions of the Convention, contemplates a difficulty and leaves it to the Council of the International Civil Aviation Organization to find a solution to the difficulty. The difficulty, as inferred from the last sentence of the article, is associated with the provisions of the Convention relating to the nationality of aircraft.

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air transport organizations" and "international operating agencies", the last sentence of that article, which requires action by the Council, refers only to international operating agencies. However, since both types of organizations are likely to face the problem of nationality and registration of aircraft, then it has been suggested that the two terms have been used interchangeably by the drafters of the Convention. See, for example, G. F. FitzGerald, supra note 10, p. 200. A different view is embedded in Imam's thesis, A. I. Imam, infra note 83 pp. 53-54. It will be noted that the Chicago Convention gives no concrete definition of either organization. It may be noteworthy in this respect that some writers took a somewhat extreme view of an international operating agency. According to Bin Cheng, for example, "the distinctive feature of international operating agencies consists in either their being directly endowed with separate international legal personality or their being subsidiary organs of international organizations possessing separate international personality. International operating agencies are, furthermore, closely associated with the idea of internationalization of international air transport." (Bin Cheng, supra note 10, p. 30).

It is also apparent that the last sentence of Article 77 refers to the concept of nationality and registration of aircraft under the Convention. In order to understand the problem contemplated by the last sentence, an explanation of this concept is essential.

(B) The Chicago Convention and Nationality

Article 20 of the Chicago Convention contemplates that every aircraft[14] engaged in international air navigation shall have nationality and be registered. According to Article 17 of the Convention aircraft will have the nationality of the state in which they are registered.

The concept of nationality and registration of aircraft is one which has evolved with the developments in air transportation.[15] It was thought that

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[14] A definition of the word "aircraft" found in the Chicago Convention has been made in the Annexes thereto. Those Annexes define the word "aircraft" as any machine that can derive support in the atmosphere from the reactions of the air. This definition was amended by the Council of I.C.A.O. in November 1967 to read that "aircraft" means: "Any machine that can derive support in the atmosphere from the reactions of the air other than the reactions of the air against the earth's surface."

[15] It was first advocated by Fauchille in 1901. J. C. Cooper, "The Legal Status of Flight Vehicles," Explorations in Aerospace Law, ed. I. A. Vlasic (Montreal, 1968), p. 217.

aircraft, like ships, should possess nationality.[16] In maritime law this concept of nationality was extended to vessels to enable the state of the flag to control a vessel's activities and to protect it.[17] According to Professor Cooper it was thought, as in maritime law, that the nationality of an aircraft should be the basis for determining the state responsible for its conduct and protection and also the basis for determining which aircraft can enter the aerospace above any given state.[18] The strength of

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[16]Nationality has been described as the status of a natural person who is attached to a state by the tie of allegiance. "Harvard Research in International Law Nationality," American Journal of International Law vol. 23 (1929, Supplement), pp. 13, 22.

[17]A. P. Higgins and C. J. Colombos, The International Law of the Sea (London, New York, Toronto, 1943), p. 189.

[18](J. C. Cooper, supra note 15, pp. 215, 218). The International Aeronautical Congress held in 1909 in Nancy concluded by noting that registration of aircraft would presumably be the only way to assure liberal regulation of air navigation. (J. C. Cooper Ibid. p. 220). In 1910 the draft Paris Convention accepted the principle of nationality. The majority of states present at the Conference felt that aircraft should be under the control of a particular state responsible for it to other states and that aircraft itself should be entitled to the protection of such state (Cooper, Ibid., p. 224). This principle was first formally incorporated in the body of international air law by its adoption in the Paris Convention of 1919, it being clearly envisaged in Article 5 thereof.

the doctrine, however, seems to have been contributed to also by certain other considerations.[19]

Thus under the Chicago Convention it is only the aircraft that have the nationality of a contracting state that are entitled to the rights and privileges under the Convention. The Convention attaches these privileges and rights to aircraft having such a nationality, the criterion being, according to Article 17, the place of registration of aircraft.[20]

It will be seen from Article 5 of the Convention, for example, that aircraft are given certain transit and non-scheduled traffic privileges in each of the contracting states, provided that they have the

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[19]For example, aircraft constitute part of the national defensive potentialities. See the discussion on air power: J. C. Cooper, "Notes on Air Power in Time of Peace", Explorations in Aerospace Law, ed. I. A. Vlasic (Montreal, 1968), p. 17. Again, hoisting the national flag abroad creates some prestige. Furthermore, the operation of aircraft produces an economic value and air transportation industry also constitutes some source of income to the national state when being subjected to taxes. For a discussion relating to this last matter, see "Air Transport's Place in the National Economy," Stephen Wheatcroft, Air Transport Policy (London, 1964), p. 13.

[20]This article which appears to be a statement of customary international law clearly prescribes that "aircraft have the nationality of the state in which they are registered." In Paris Convention of 1919 this principle had been previously incorporated. Article 6 of that Convention provides that "aircraft possesses the nationality of the state in the register of which they are entered."

nationality of these states. Article 7, also, gives a contracting state "the right to refuse permission to the aircraft of other contracting states to take on in its territory passengers, mail and cargo carried for renumeration or hire and destined for another point within its territory."[21] Again, according to Article 9 (a) of the Convention, aircraft of contracting states, engaged in international scheduled airline services, are entitled to non-discriminatory treatment, irrespective of nationality, with regard to prohibited areas. It will be noted also that a similar treatment is promulgated by Article 35 which relates to cargo restrictions. Similarly, Article 27 safeguards aircraft of a contracting state engaged in international air navigation against seizure on patent claims in certain events.

Again Article 26 of the Convention requires that "in the event of an accident to an aircraft of a contracting state occurring in the territory of another contracting state, and involving death or serious injury, or indicating serious technical defect in the aircraft or air navigation facilities, the state in which the accident occurs will institute an inquiry

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[21]Underlining supplied.

into the circumstances of the accident. . . ."[22] Thus this inquiry according to the Article will be held only in the case of an accident involving an aircraft registered in a contracting state. Also, according to the same article, "the state in which the aircraft is registered shall be given the opportunity to appoint observers to be present at the inquiry and the state holding the inquiry shall communicate the report and findings in the matter to that state."

Again, according to Article 31, the state of registry is also the authority to issue or render valid the certificates of airworthiness to its aircraft engaged in international navigation. It issues, again, according to Article 32, the licenses of personnel. Furthermore Article 33 requires contracting states to recognize certificates of airworthiness and certificates of competency and licenses issued or rendered valid by the contracting state "in which the aircraft is registered", provided that the requirements under which these certificates or licenses were issued are not below certain standards.[23]

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[22]Underlining supplied.

[23]"Minimum standards which may be established from time to time pursuant to this Convention."

These are only examples of the rights or privileges which the Chicago Convention attaches to the state of registry of aircraft or the aircraft registered in a contracting state.

On the other hand, the Convention attaches certain responsibilities to the state of registry of aircraft. For example, Article 12 thereof provides that each contracting state "undertakes to adopt measures to ensure that every aircraft flying over or manoeuvring within its territory and that every aircraft carrying its nationality mark, wherever such aircraft may be, shall comply with the rules and regulations relating to the flight and manoeuvre of aircraft there in force.",etc. According to this article, the rules in force, over the high seas, "shall be those established under the Convention." This article also provides that the "state of registry of the aircraft" will ensure the prosecution of all persons violating the rules of the air. Thus each contracting state of the Chicago Convention guarantees the behaviour of its aircraft in respect of the rules mentioned in the Article.[24] In fact identifying one aircraft from

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[24]Myres S. McDougal, Harold D. Lasswell and I. A. Vlasic, Law and Public Order in Space (New Haven and London, Second Printing), p. 584; J. C. Cooper, supra note 15, p. 240.

another for purposes of the effective administration of safety laws appears to be a cardinal function of registration of aircraft.

Another obligation, though of a different nature, is found in Article 3 (c) of the Convention, where state aircraft (e.g. military, customs and police aircraft) of a contracting state are prohibited from flying over the territory of another contracting state except under authorization by special agreement or otherwise and in accordance with the terms thereof.

Again Article 21 requires, inter alia, that each contracting state should supply other contracting states, or the International Civil Aviation Organization, on demand, with information concerning the registration of aircraft "registered in the state." Also Article 29 of the Convention implicitly obliges the registering state to issue certificates of registration as well as that it requires the state of nationality to comply with the requirements of the Article regarding the documents to be carried in the aircraft. The Article prescribes that

> every aircraft of a contracting state, engaged in international navigation, shall carry the following documents in conformity with the conditions prescribed in the Convention:-
>
> (a) Its certificate of registration;
> (b) Its certificate of airworthiness;

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

Also it will be inferred from Article 30 that contracting states are responsible for the activities of the aircraft bearing their nationality.[25] This article provides that such aircraft should respect the regulations of the subjacent states concerning the use of radio transmitters on board the aircraft. The same inference can also be derived from Article 11 respecting the air regulations. This Article reads:

> Subject to the provisions of this convention, the Laws and regulations of a contracting state relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of all contracting states without distinction as to nationality, and <u>shall be complied with by such aircraft</u> upon entering or departing from or while within the territory of that state.[26]

It will certainly be seen that under this Article the

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[25] McDougall, Lasswell and Vlasic, supra note 24.

[26] Underlining supplied.

obligations of a contracting state to control the behaviour of its aircraft are implied.

These, too, are but examples of the obligations of contracting states under the Chicago Convention. It will be noted that the above-mentioned provisions, as do the others relating to the privileges under the Convention, refer in one way or another to the state of registry. As mentioned already, the Chicago Convention attaches the rights and privileges thereunder to the state of registry and only aircraft registered in a contracting state are entitled to these rights and privileges. Similarly the obligations under the Convention attach to that state; and in order to ensure the proper application of the provisions of the Convention in this respect, Article 20 thereof requires all aircraft of a contracting state engaged in international air navigation to bear their nationality and registration marks. Article 17, as mentioned earlier, specifies that the aircraft will have the nationality of the states in which they are registered.

On the other hand, Article 77 of the Convention while permitting, inter alia, the formation of international operating agencies subjected these

agencies to "all the provisions of this Convention." It goes further in its last sentence to declare that the Council of the International Civil Aviation Organization "shall determine in what manner the provisions of this Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies." As previously mentioned it is apparent that the drafters of the Convention contemplated that a certain difficulty would arise with respect to the application of these provisions to aircraft operated by international operating agencies. It is submitted that no such difficulty would arise should the aircraft of these agencies be registered in a state, for the provisions of the Convention are drafted on the assumption that an aircraft would be nationally registered and the rights and obligations thereunder were therefore made attachable to the state of registry. This is one point. The other is that since international operating agencies, by their very transnational nature, are likely to register their aircraft on other than a national basis, then the question arises whether the last sentence of Article 77 contemplated non-national registration of aircraft; for this would explain the difficulty which obsessed the

minds of its drafters. Should the aircraft of an international operating agency be registered on other than a national basis, then it would be difficult to see how the provisions of the Convention attaching rights and obligations solely to the state of registry could be made applicable with regard to such aircraft. It is submitted that this is the problem. The problem would be further appreciated when realizing that the application of some of these provisions e.g. Article 12 to aircraft of international operating agencies appear to be indispensable to the safety of air navigation.[27]

On the other hand, it is equally true, particularly under Chapter III of the Chicago Convention that aircraft should be registered, a thing which would facilitate, as indicated earlier, the application of the provisions of that Convention. Apart from Articles 17, 20 and 21 mentioned earlier, Chapter III spells out in Article 18 that an aircraft "cannot be validly registered in more than one state, but its registration may be changed from one state to another." Thus this Article prohibits dual or multiple

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[27]Regarding the importance of Article 12 see Arnold Kean, "Nationality and Interchange of Aircraft," The Freedom of the Air, ed. Edward McWhinney and Martin Bradley (The Netherlands, 1968), p. 201.

registration of aircraft in a further effort to preserve the effectiveness of the principle of registration and nationality of aircraft under the Convention. In this way, certainly, the provisions of the Convention could smoothly be applied.[28]

The registration or transfer of registration of aircraft in any contracting state is made, according to Article 19, in accordance with its laws and regulations.[29] Hence it may be safely asserted that the Chicago Convention clearly preserves the

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[28]In maritime law, also, once a state confers her nationality on a vessel, other states are precluded by international law from doing so with the same vessel. Myres S. McDougal, Harold D. Lasswell and I. A. Vlasic, supra note 24, p. 550 para. 2.

[29]Thus like the Habana Convention of 1928 (Pan American Convention signed at Habana, February 20, 1928) and the revised Article 7 of the Paris Convention of 1919, the Chicago Convention does not insist on ownership of aircraft by a national of the registering state as a sine qua non of allowing registration of aircraft. It will be noted that Fauchille (J. P. Honig, The Legal Status of Aircraft (The Hague, 1956), p. 42), Article 3 of the draft Paris Convention of 1910 and the original Article 7 of the Paris Convention of 1919 all adhered to the genuine link principle. For instance this Article 7, provided that "no aircraft shall be entered on the register of one of the contracting states unless it belongs wholly to nationals of such state. No incorporated Company can be registered as the owner of an aircraft unless it possesses the nationality of the state in which the aircraft is registered, unless the President or Chairman of the Company and at least two-thirds of the directors possess such nationality."

principle of the exclusive competence of each contracting state to determine for itself appropriate criteria for registration of aircraft in its territory. Indeed it may be sufficient, for the purpose of enforcement of the obligations under the Convention, that a contracting state merely register an aircraft in its territory even if this aircraft is owned by a non-national.[30] In this, a justification could be found for the drafters of Article 19 when they gave each contracting state the absolute competence to decide for itself the basis upon which it will allow registration of aircraft in its territory.[31]

The importance of registration of aircraft to the effective application of the rules of the Chicago Convention is also reflected in the adoption of Annex 7 of the Convention. This Annex adopted pursuant to Article 37(f) of the Convention prescribes detailed rules for registration and nationality of

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[30] In this concern see John Westlake, International Law, Part I (2nd ed. 1910), p. 169.

[31] Article 19 should not be interpreted as affected by Article 21, referred to earlier, which binds a contracting state to give other contracting states or I.C.A.O. information regarding, inter alia, the ownership of aircraft it registers (McDougal, Lasswell and Vlasic, supra note 24, p. 553). For other arguments against the application of the genuine link principle to aircraft - see Keenan, Lester and Martin, supra note 1, p. 221, footnote 13.

aircraft.[32]

Article 2 of Annex 7 reads as follows:

2.1 The nationality and registration marks appearing on the aircraft shall consist of a group of characters.

2.2 The nationality mark shall precede the registration mark, when the first character of the registration mark is a letter it shall be preceded by a hyphen.

2.3 The nationality mark shall be selected from the series of nationality symbols included in the radio call signs assigned to the State of Registry by the International Telecommunications Regulations. The nationality marks selected shall be notified to I.C.A.O.

2.4 The registration mark shall be letters, numbers, or a combination of letters and numbers, and shall be that assigned by the State of Registry.

2.5 When letters are used for the registration mark, combinations shall not be used which might be confused with the five-letter combinations used in the International Code of Signals, Part II, the three-letter combinations beginning with Q used in the Q code, and with the distress signal SOS, or other similar urgent signals, for example XXX, PAN and TTT.

Other important Articles are as follows:

3.1 The nationality and registration marks shall be painted on the aircraft or shall be affixed by other means ensuring a similar

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[32]With regard to the binding force of annexes (other than Annex II) it seems, however, that the Chicago Convention has left it to the states to act bona fide using their best endeavours to give effect to these annexes. See Article 38 of the Convention and J. C. Cooper, supra note 15, p. 252.

degree of permanence. The mark shall be kept clean and visible at all times.

4. The letters and numbers in each separate group of marks shall be of equal height.

5.1 The letters shall be capital letters in Roman characters without ornamentation. Numbers shall be Arabic numbers without ornamentation.

6. Each Contracting State shall maintain a current register showing for each aircraft registered by that State, the information recorded in the certificate of registration.

8. An aircraft shall carry an identification plate inscribed with at least its Nationality and Registration Marks. The plate shall be made of fireproof metal or other fireproof material of suitable physical properties, and shall be secured to the aircraft in a prominent position near the main entrance.

It will also be noted that this Annex was drafted on the assumption that aircraft would be registered on a national basis. Its provisions clearly vary from referring to "nationality" to reference to the "state of registry." It seems that the fact that the Chicago Convention and Annex 7 refer clearly only to national registration of aircraft has led some authorities to conclude that the only manner in which an aircraft, be it a national or transnational aircraft, can be registered is on a national basis. Thus

Professor Richardson[33] argues that Chapter III of the Convention "contemplates registration solely on a national basis."[34] If registration on other than a national basis is adopted then, "a violation of the first sentence of Article 77 would have resulted immediately because it is there stated that international operating agencies among others "shall be subject to all the provisions of this Convention."[35] According to him "international registration" would render inapplicable certain provisions of the Convention drafted on the assumption of national registration. These "would include the very important Article 12 dealing with the rules of the air" and the "equally important Article 32, dealing with licenses of personnel." He thus believes that if the Council of the International Civil Aviation Organization allows non-national registration of aircraft this would constitute a departure from the Convention. According to him "Article 77 does not state that the Council is to determine whether the provisions of Chapter III

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[33]Jack E. Richardson, "Nationality and Registration of Aircraft Operated by International Operating Agencies," The Freedom of the Air, ed. Edward McWhinney, and Martin Bradley (The Netherlands 1968), pp. 208-225.

[34]Ibid., p. 209.

[35]Ibid., p. 212.

apply. Their application is assumed."[36]

A reading of Professor Richardson's article indeed indicates the delicacy of the subject under discussion in this study. The assumption that any aircraft can only be registered nationally under the Convention clearly adds up to the difficulty of the question whether under the last sentence of Article 77 an aircraft operated (owned and operated)[37] by an international operating agency can be registered on other than a national basis and if so how to bring such aircraft within the application of the provisions of the Convention.

The advocates of limiting the aircraft of international operating agencies to national registration refer to the manner in which aircraft of existing forms of transnational cooperation are registered. According to Richardson these "comfortably fit within the framework of the Chicago Convention as long as each aircraft under the mutual arrangement is on the register of one or other of the participating contracting states."[38]

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[36]Ibid., p. 215.

[37]The last sentence of Article 77 seems to have assumed basically that the operator and owner are the one and same person. Implications from the article written by Arnold Kean, supra note 27, p. 197.

[38]Jack E. Richardson, supra note 33, p. 210.

Hence we intend to assign the next part to the nature of these transnational arrangements and the manner in which their aircraft are registered.

PART II

THE EXISTING TRANSNATIONAL ORGANIZATIONS AND THE QUESTION OF AIRCRAFT NATIONALITY AND REGISTRATION

The economic characteristics of air transport industry[39] and the Jet Revolution,[40] shortages in financial resources and experienced personnel, and inadequate equipment,[41] all have generally retarded the progress of civil aviation. Realizing these difficulties and with the background of common history and culture, mutual political relations and geographical proximity, states have tended toward the integration of their national airline enterprises in many regions of the world.

Thus the world has witnessed the establishment of multi-national enterprisory organizations like

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[39]The industry by itself is oligopolistic in character, Stephen Wheatcroft, Air Transport Policy (London, 1964), p. 55.

[40]The transition to jets has been accompanied by a general problem of excess capacity throughout the competitive industry. Ibid., p. 95.

[41]Ibid., pp. 103-104.

the Scandinavian Airlines System (S.A.S.), Central African Airways (C.A.A.),[42] East African Airways (E.A.A.) and Air Afrique.

According to the representative of the Congo (Brazzaville) in the Council of I.C.A.O., "The need for viable airlines by countries whose financial resources were meagre, but for many of which civil aviation was the only means of communication had given birth to the Central African Airways, East African Airways and Air Afrique."[43]

It appears, therefore, that the drafters of the Chicago Convention foresaw the need for such co-operative efforts of nations in air transportation and provided for them, particularly in Article 77 of the same Convention. That article welcomed transnational cooperation, in more than one form, well in advance of the expensive Jet Revolution "and at a time when a commercial supersonic aircraft was but a theoretical

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[42]This organization no more exists. The decision to dissolve it was taken on the 31st of August 1967. For information on this organization and the reasons for its dissolution, see "The Split up of Central African Airways," ITA Bulletin No. 26 of 24th June 1968, 408/n pp. 607-610.

[43]I.C.A.O. Doc. 8446-18 (Closed), C/954-18 (22.2.65) para. 4.

gleam in designers' eyes."[44]

Thus while referring to the economic difficulties associated with air transport industry, Dr. FitzGerald states that "Article 77 is seen to contain, at least in the field of civil aviation, the solution for one of the major problems of our time, namely, the transfer of the benefits of modern and expensive technology to developing countries for their enjoyment on an autonomous basis."[45]

A) THE SCANDINAVIAN AIRLINES SYSTEM (SAS)

i) The Formation of SAS

In 1938 negotiations started between the three Scandinavian Countries (Norway, Sweden and Denmark) with a view to consider the possibility of

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[44] G. F. FitzGerald, supra note 10, p. 216. It will be recollected that within the terms of Article 77 a contracting state may participate in "joint air transport operating organizations or international operating agencies" or in pooling arrangements. In accordance with Article 79 a state may participate inter alia, in the "joint-operating organizations" either through its government or through an airline company or companies designated by its government. The companies may, at the discretion of the state concerned, "be state-owned or partly state-owned or privately owned."

[45] G. F. FitzGerald, Ibid.

joint operation of a route to North America.[46] However, the outbreak of World War II barred the success of this project.[47]

In 1946, the Norwegian national airline (DNL), the Danish national airline (DDL) and the Swedish national airline (SILA) entered into a consortium agreement for the operation of intercontinental air services.[48] "The various Scandinavian national companies had a keen realization of the fact that they could further their interests to greater advantage by acting in concert than they could hope to do acting separately."[49]

Between the parties, the consortium was called OSAS (Overseas Scandinavian Airlines System), though its scheduled air services to North and South America were run under the name of "SAS."[50]

The consortium agreement called for contributions of capital and equipment to OSAS in the

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[46]H. Bahr, "The Scandinavian Airlines System, Its Origin, Present Organization and Legal Aspects," Arkiv for Luftrett (1961), p. 204.

[47]Ibid.

[48]Ibid., pp. 204-205.

[49]I.C.A.O. - Report On the Scandinavian Airlines System (SAS), Circular 30 - AT/5, p. 4 para. (5).

[50]Bahr, supra note 46, p. 205.

proportions of 3 (SILA), 2 (DNL), and 2 (DDL). The operations were to be conducted for joint profit. Rights and obligations together with profits and losses were to be shared between the three parent companies, according to their respective interests in OSAS.[51]

In 1949, the national airlines of the three Scandinavian countries were also able to arrive at a consortium agreement to govern services on routes in Europe, the Near East and Africa.[52] The Swedish participant in this new consortium, internally named ESAS, (European Scandinavian Airlines System)[53] was ABA, a company that had operated in Europe since before the war, i.e. not SILA.[54] The consortium was in reality a pooling arrangement whereby each constituent airline operated its own share of a previously agreed traffic program arranged so as to divide ton-kilometres performed in the proportions of 3, 2 and 2, as nearly as possible.[55] Total traffic revenues went into a

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[51] Ibid.

[52] This arrangement was first established in 1948 and was later extended in 1949. See I.C.A.O. Circular, supra note 49, page 5 (para. 6).

[53] Here also the activities covered by the consortium agreement were carried out in the name of SAS. See Bahr, supra note 46, p. 205.

[54] I.C.A.O. Circular, supra note 52.

[55] Ibid.

pool which was divided between the constituent airlines in proportion to traffic actually carried. Joint traffic and ticket offices were established in foreign cities. The administration of the pool's activities were vested in a Board of Directors which consisted of the same persons elected as members of the Board of OSAS,[56] while each constituent airline continued to function as a separate entity operating its agreed share of the international routes together with its own domestic services. Each airline bore all its own costs.[57]

The form of this second arrangement was probably influenced by the pre-war history of operations on at least some of the routes involved, coupled with a familiarity with cooperative arrangements which were in force during that period.[58] The chief advantages of the arrangement were the elimination of excessive competition on a number of routes and the savings resulting from the consolidation of ticket offices together with other activities abroad.[59]

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[56]Bahr, supra note 50.

[57]I.C.A.O. Circular, supra note 52.

[58]Ibid.

[59]Ibid., para. 7.

Yet, the arrangement gave rise to certain problems.[60]

> Revenues and expenses from total aggregate operations had to be allocated first between the ESAS and the OSAS enterprises and the various internal services before the remainder could be allocated between the four national companies - two Swedish and one each Danish and Norwegian - according to the different formulae under the two agreements. Numerous inter-company billings were required, and these often gave rise to differences of opinion. Moreover, the national companies had sufficient financial reverses of varying severity which made their capacity to participate in the consortium to the fullest extent somewhat uncertain.[61]

As the financial situation of the three companies steadily deteriorated, the Norwegians in September 1949 gave notice to the other two parties to terminate the ESAS agreement..[62]

In 1950 negotiations between the three participating companies were opened to overcome these difficulties. These negotiations resulted in a comprehensive agreement which brought into existence

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[60]With regard to the practical results of the other arrangement, OSAS, it appears that the consortium was successful (Bahr, supra note 50).

[61]I.C.A.O. Circular, supra note 49, p. 5, para 7.

[62]The termination to be effective as from April, 1950: Bahr, supra note 46, pp. 205-206.

the present Scandinavian Airlines System (SAS).[63]

SAS replaced both OSAS and ESAS and has since been running the services previously operated by the national airlines of the Scandinavian countries. However, the proportions of ABA 3, DDL 2 and DNL 2 of the assets of the Consortium, are still kept by these airlines.[64] It may be mentioned here that the new project of SAS involved, inter alia, "the expenditure of a considerable amount of money. This necessitated an increase of the capital of the three mother companies, and the money had to be supplied in part, by the three states. For that reason, the consent of even the Parliaments of the three states had to be obtained."[65]

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[63]Part of the negotiations, from January to March 1950, resulted in concrete proposals. It is noticed that these proposals were revised by the Ministers of Communications of the Scandinavian countries. Further negotiations continued throughout the summer of 1950 and resulted in the present Consortium agreement. This agreement had effect as of October 1950, though signed on 8 February 1951. I.C.A.O. Circular, supra note 49, pp. 5-6, para. 8. Subject to the possibility of withdrawal or expulsion under certain eventualities, the agreement is to run for twenty-five years terminating on 30 September, 1975. (para 18 thereof).

[64]Para, 2 (2) of the Agreement.

[65]Bahr, supra note 46, p. 206.

Activities of SAS under the Agreement cover all "commercial air traffic, and other business in connection therewith."[66] The parties undertook not to engage, directly or indirectly in any activity in competition with SAS.[67] Each party had the right under the Agreement, on request of its government, to require the Consortium to operate, on conditions to be agreed, domestic services which are not considered "acceptable from a sound business viewpoint."[68] Business activities are allocated reasonably between the constituent companies.[69]

After the conclusion of SAS Agreement, still "there remained much to be done in the way of governmental measures to bring the situation thereunder properly within the framework of the different national laws, regulations and operating concessions."[70] This work continued throughout most of the year 1951 and was completed by the signatures of certain agreements e.g. The Agreement regarding cooperation in the field

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[66]Para 1 (1) of the Agreement.

[67]Agreement, para. 1 (3).

[68]Ibid., para. 1 (4).

[69]Ibid., (para. 3).

[70]I.C.A.O. Circular, supra note 49, p. 6 (para. 9).

of Civil Aviation between the Governments of Sweden, Norway and Denmark, of October 1951.[71]

ii. The Nature of the Enterprise

I.C.A.O. Circular 30-AT/5[72] describes the enterprise as resembling an ordinary company asfar as it concerns operation and management.[73] This enterprise differs from the more familiar forms of corporations in that the former has no governmental charter conferring legal personality.[74] A further difference, according to the Circular, is that the property of the consortium is not completely vested in it. Real estate in the three Scandinavian countries is retained by the parties and placed at the disposal of the Consortium on a lease basis.[75] Though aircraft and

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[71]Ibid.

[72]I.C.A.O. Circular, supra note 49, p. 8 (para. 12).

[73]See paras. 7-10 of the Consortium Agreement.

[74]I.C.A.O. Circular, supra note 72. It will be noted here that under para. 2 (1) of the Consortium Agreement the parties to the agreement are liable jointly and severally to third parties; this liability being unlimited. On the other hand, according to Bahr, the Consortium has in Sweden been accepted as a party in civil actions and has also in Germany, appeared as a party in a lawsuit. (Bahr, supra note 46, p. 221).

[75]Para. 5 (1) of the Consortium Agreement.

equipment are regarded internally between the parties as owned by the Consortium,[76] they are placed at the disposal of the enterprise "in a manner that makes it possible to withdraw the same in case of national emergency".[77] It will also be noted that the legal title of aircraft, for purposes of registration, is retained by the separate parties. In this respect, it is stipulated that each type of aircraft shall be allocated for registration approximately in the ratio of 3, 2, 2.[78] Furthermore, as stated in the Circular, the maintenance and technical ground services retain, for reasons of national defense, a certain degree of independence.[79]

SAS is radically different from the ordinary form of partnership "in that the individual partners are not active in the direct control of the day-to-day

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[76]The Consortium exercises, with regard to third parties, the power to control and dispose of aircraft, including the power to sell. See para. 4 (3) of the Agreement.

[77]I.C.A.O. Circular, supra note 72. See also the relevant provisions of the Agreement of 20 December 1951, referred to above, in the same Circular, p. 12 (para. 25).

[78]See paras. 3 and 6 of the Consortium Agreement, respectively.

[79]Circular, supra note 72.

activities of the Consortium".[80]

The Consortium should not be identified with any of the more familiar forms of commercial undertaking; it is a "creature of the particular arrangement out of which it grew". The amount of specialized Government action, e.g. the previously mentioned Agreement of 20 December 1951, that was found necessary to bring SAS into existence is "a further ground for not trying to apply any standard label". The Consortium is exempt from taxation in all of the three Scandinavian countries.[81]

With regard to the place of SAS in the pattern of international cooperation and the question

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[80] Ibid. With regard to the resemblance between SAS and partnerships, it is noted that SAS Agreement, as mentioned earlier, provides that the parties are jointly and severaly liable to third parties respecting the activities of the Consortium and prescribes a system of sharing the profits and losses by the constituent members according to the ratios of their subscription to the capital of the Consortium.

[81] Ibid., Justice Bahr similarly described SAS as "a creation sui generis". See Bahr, supra note 46, p. 223. To Nelson, SAS is a partnership of the three parent companies: R. A. Nelson, "Scandinavian Airlines System Cooperation in the Air" 20 JALC (1953), 180. Wassenberg characterises SAS as a "Consortium or Syndicate without juridical personality". See H. A. Wassenberg, Post War International Civil Aviation Policy and the Law of the Air (The Hague, 1962), p. 78. Sundberg, however, views SAS as possessing legal personality: Jacob Sundberg, "Is SAS a Legal person?", Arkiv for Luftrett (1964), pp. 165-172.

whether it represents any form of international company, Mr. Justice Bahr places SAS "in the category of its own between pools and international companies". According to him, the Consortium Agreement goes much further than a pooling arrangement since the parties have renounced all independent activities as air carriers for the period of validity of the agreement. "On the other hand, the Consortium, being subject to national laws,[82] is not an international company."[83]

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[82] In page 221 Justice Bahr states that the Consortium is not registered in any of the Scandinavian countries and since it possesses no nationality, and is subject to the laws of all these countries. Bahr, supra note 46, p. 221.

[83] Bahr, supra note 81. Bahr, has in view - "an association or combination of airlines, or even governments, possessing a legal personality of its own, as distinct from that of each of the participants. It may be perhaps possible to constitute a company of this kind in such a manner that it acquires a truly international character." (Bahr, Ibid., p. 202). Other views have been expressed in this regard. Thus Mr. Imam argued that "it is evident that the Consortium cannot be regarded as a company, since it has not been incorporated in any of the three countries. Likewise it is not an international company, subject to international Law, since it is the product of a contractual relationship between private corporate bodies." A. I. Imam, Transnational Cooperation in Air Transport towards the Establishment of International Airlines. p. 96 - Thesis of the Institute of Air and Space Law, McGill University, Montreal (1966). It is also noteworthy that in I.C.A.O. Doc., infra note 174 (para. 11) SAS has been referred to as a Consortium formed by the national airlines of the three Scandinavian states and not an international operating agency.

iii. Aircraft Nationality and Registration

According to paragraph 4 (1) b of the SAS Agreement, the participants are regarded as joint owners of all assets of the Consortium, including aircraft and excluding real estate located in the Scandinavian Countries. Paragraph 4 (3) of the Agreement qualifies this statement with respect to aircraft and its registration as follows:

> It is agreed that, notwithstanding the provisions in sub-paragraph 1 (b) of this paragraph 4 the ownership of each aircraft is retained by the party registered and recorded as owner thereof in accordance with the provisions of para. 6, but all aircraft shall internally between the parties be regarded as owned by the Consortium, which later shall, with regard to third parties, exercise any and all powers appertaining to ownership of aircraft, including without limiting the generality thereof - the power to control, use, charter and lease such aircraft as well as to dispose of same by sale or otherwise.[84]

Bahr explains the reason for limiting the ownership of aircraft to operate only between the parties, and providing that "ownership of each aircraft is retained by the party registered and recorded as owner thereof". Norway insisted on the adoption of

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[84]According to Imam the parent companies retain the aircraft on behalf of the consortium in a manner analogous to a trust relationship in English law, though "it cannot be a real trust relationship, since there is no clear intention to create a trust". A. I. Imam, Ibid., pp. 118, 148.

para. 4 (3) since its national law requires that aircraft registered in its territory should be owned by nationals.[85]

We may turn now to the provisions of the SAS Agreement relating to the manner in which the aircraft of the consortium is registered. Para. 6 of the Agreement requires that

> Aircraft contributed by the parties to the Consortium as capital, in connection with its formation, as well as aircraft later acquired by the consortium, shall be registered, within each type of aircraft, by approximately 3/7 of each type of aircraft in ABA's name in Sweden, by approximately 2/7 in DDL's name in Denmark, and by approximately 2/7 in DNL's name in Norway, without this having any other effects on rights and liabilities under this Agreement. Deviation from this allocation principle can be made should practical reasons so require, as for instance, if certain types are solely or mainly used within one party's national area. At the time of the formation of the Consortium, the allocation between the parties for registration purposes shall be as specified in the Appendix hereto.

Such method of registration as is followed by SAS helps to avoid multiple registration of aircraft which is precluded by Article 18 of the Chicago Convention.[86] Article 19 of the Convention leaves it

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[85]The Consortium would not be a Norwegian owner, since two of the partners, representing 5/7 of the total interests, were companies having respectively Danish and Swedish nationalities. See Bahr, supra note 46, p. 225.

[86]There is no provision of the Chicago Convention which clearly prohibits the registration of aircraft of transnational organizations on a national basis.

it to contracting states to decide the basis on which they register aircraft in their territory[87] and hence no problem arises in this respect regarding the possibility of registration of aircraft of trans-national airlines on a national basis. National Laws which incorporate the genuine link principle can be amended.

The aircraft of SAS being registered in the national registers of the three Scandinavian countries respectively, each aircraft is marked with the nationality and registration marks of its Scandinavian State of registry, in accordance with Article 17 and 20 of the Chicago Convention. In addition to these marks all SAS aircraft carry the SAS emblem.[88]

Since the aircraft of SAS are nationally registered, then no problem appears to arise with regards to rendering applicable to these aircraft such provisions as those of the Chicago Convention attaching the rights and obligations thereunder to the state of registry. For instance with respect to certification of airworthiness, the concerned certificates are issued in the case of SAS by the competent authority of the

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[87] E.g. Whether or not they allow registration of aircraft owned or partially owned by non-nationals.

[88] Bahr, supra note 85, p. 226.

state of registry as required by Article 31 of the Chicago Convention,[89] and in accordance with Article 33 thereof, the parties of the Convention are obliged to recognize as valid these certificates.[90]

Regarding the licences of the crew, Article 32, as explained in Part I of this study, requires that the crew be provided with certificates of competency and licenses issued or rendered valid by the registering state. Article 33, mentioned above, also requires contracting states to recognize such certificates or licenses, subject to the qualification of standards. In the case of SAS, the flight personnel have to get their certificates of competence from the authorities of the State of their nationality, but these certificates are validated for the service, also, in SAS aircraft registered in the other two states, by the authorities of these other states issuing a special document called the "insertion card". Thus a certificate of a Danish pilot is declared valid by the Swedish and Norwegian civil aviation authorities

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[89] Ibid.

[90] Provided of course that the requirements under which such certificates are issued are equal to or above the minimum standards established by I.C.A.O. (Both Articles 31 & 33 are referred to in Part I of this study).

for use in Swedish and Norwegian registered aircraft.[91] Thus Article 32 of the Convention is observed in that the certificates of competence are "rendered valid" by the state in which the aircraft is registered and the contracting states of the Convention have no choice under Article 33 thereof but to recognize the certificates.

Also in conformity with Article 30 (a) of the Convention,[92] the aircraft of the SAS Consortium carrying radio transmitting apparatus are provided with the necessary licence to install and operate such apparatus, issued by the appropriate authorities of the Scandinavian state of registry. In Norway, for instance, the authority empowered to issue such licenses is the Telegraph Authority.[93] As regards the special licensing of the operators of the radio transmitting apparatus required by Article 30 (b), such operators serving on board SAS aircraft are given certificates issued by the appropriate authority of the state of which they are nationals. However, for service in aircraft registered in the other two

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[91]Bahr, supra note 85, p. 227.

[92]Referred to also in Part I.

[93]Bahr, supra note 91.

Scandinavian states, these certificates are "recognized", as in the case of licences of the crew, by the authorities of the two states.[94]

Now it may be useful to consider whether the peculiar legal construction of SAS (including the manner in which its aircraft are registered) affected its ability to obtain operating concessions in foreign states. Of course in order to operate international air services, SAS needs commercial traffic rights, in particular the fifth freedom, to be able to effect the landings of its aircraft for commercial purposes in foreign countries. Since such a situation is not covered by the Chicago Convention, bilateral agreements with the governments of foreign countries have to be concluded. Those bilateral agreements naturally involve exchange of rights and the sovereignty of all the states concerned. Hence the agreements have to be secured not by SAS or its parent companies but by the governments of the three Scandinavian countries. The legal construction of SAS

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[94]Ibid., p. 228. Appreciation of this device may require a liberal interpretation of Article 30 (b) of the Convention, since this article requires the concerned licence to be "issued" by the state of registry of the aircraft. It could be apprehended that recognition by such state of a licence issued by another state would suffice for the purposes of the intention of the drafters.

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and the manner of registration of its aircraft, calls for the negotiation of three bilateral agreements, instead of one, with each foreign country. One of the agreements would be negotiated by the Norwegian Government, another by the Danish and a third by the Swedish Government, and this, of course, would involve "setting many wheels in motion".[95] However, one of the parties negotiate the agreement as a constituent of and an agent for the Consortium[96] and a clause to this effect, called the "SAS clause", is inserted in the agreement. As is mentioned in some writings,[97] this approach helps also to solve the question of substantial ownership and effective control of aircraft. In practice third parties have shown a greater willingness to grant concessions to SAS than they might have shown to any one of its members, since the possibility of having to deal later with the other two did not exist. This is because that "through SAS, three countries are negotiating in concert vis-a-vis

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[95]Bahr, Ibid., p. 230.

[96]According to I.C.A.O. Circular 30-AT/5, in one instance, however, it was necessary to create a corporate body subsidiary to SAS to hold the rights on its behalf; Circular, supra note 49, p. 9 (para. 14).

[97]A.I. Imam, supra note 83, p. 178.

the outside world".[98] The tendency has also been "to regard the Scandinavian countries as a single territory for the purpose of granting traffic rights, with the result that fifth freedom rights have sometimes been obtained where this might otherwise have been impossible".[99]

B. THE EAST AFRICAN AIRWAYS CORPORATION (EAA)

(i) Introductory Notes

The East African Airways Corporation was established by the East African (Air Transport) Order in Council 1945.[100] This Order also created the East African Air Authority, consisting of the Governors of the East African territories and the British Resident of Zanzibar, with powers to regulate commercial air services. The Authority appointed the Board of Directors of the Corporation and the Board reported to the Authority under the Order. The functions of the East African Air Authority were transferred to the East African High Commission when

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[98] Circular, supra note 96, p. 8 (para. 14).

[99] Ibid., pp. 8-9 (para. 14).

[100] S.R. and O. 1945 No. 1427.

it was established in 1947.[101]

E.A.A.C. commenced operations on 3rd April 1946. In its first ten years it developed local and regional international air services. In 1957, with aircraft leased (subsequently purchased) from B.O.A.C., it commenced international air services to U.K. and India. In 1960 Comet aircraft were purchased and entered service to be replaced in 1966/67 by SVCIO aircraft.[102]

The initial and subsequent capital for E.A.A.C. was provided by the territorial Governments and Zanzibar. It consisted of loans and overdraft guarantees. No equity capital was contributed.[103]

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[101] East Africa (High Commission) Order in Council, 1947, S.R. and O. 1947 No. 2863. For a description of the East Africa High Commission see East Africa, Report of the Economic and Fiscal Commission, Feb. 1961, CMd. 1279, paras. 11-19 and 29-38. This report is hereafter referred to as the Raisman Report. Broadly speaking, the powers of the Commission in Civil Aviation were the same as those of the East African Community which will be referred to later. Structurally, there were substantial differences mainly because it was a trans-colonial rather than a trans-national body. One major difference was that the Commission was not financially autonomous.

[102] R. E. G. Davies, A History of the World Airlines (London, 1964), 416-417 and E.A.A.C. Annual Report and Accounts for year ending 31st December 1966.

[103] Poulton, a Review of Civil Aviation Organization in East Africa (1961), p. 28 (the Poulton Report). The Constitutional Position of East African Airways, Report of the Commission under Chairmanship of Stephen Wheatcroft (1965) (the Wheatcroft Report) pp. 4-5 (Confidential).

Under the Commission, losses were shared amongst the territories on an agreed formula.[104] In fact, this formula has not been used for a long time as E.A.A.C. has made a profit since 1955.[105]

There have been no new infusions of capital by the partner Governments over and above the loans and permanent guarantees described above. The practice has been followed of the corporation itself arranging the finance for the purchase of new aircraft. Sometimes the territorial Governments or later the Partner States jointly and severally guarantee the repayment of the loans and sometimes not.[106]

With the establishment of the East African Common Services Organization in 1962 to replace the East Africa High Commission, E.A.A.C. was placed under it. Broadly speaking, E.A.C.S.O. was a politicized version of the High Commission with, in the field of civil aviation, powers and functions similar to those

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[104]Raisman Report para. 37. The formula adopted for E.A.A.C. is described in the Poulton Report para. 59.

[105]Raisman Report para. 134.

[106]Information obtained from Professor Bradley of the Institute of Air and Space Law, McGill University, Montreal (M. Bradley).

of the East African Community,[107] but its relation with E.A.A.C. were substantially identical to those between the Commission and E.A.A.C. The sole alteration was to repeal the East African (Air Transport) Order in Council and substitute new constitutive legislation, the East African Airways Corporation Act 1963.[108] The main change in this legislation was to authorise the appointment of some of the Directors by the member States.

The E.A.C.S.O. has, since the 1st December 1967, been superseded by the East African Community, and E.A.A.C. has been reconstituted by the Treaty for East African Cooperation, signed by the Governments of The Three East African Countries of Kenya, Uganda and Tanzania, referred to in the Treaty as the Partner States, and the Legislation made under it.[109]

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[107] For a general description of E.A.C.S.O. see the Future of East Africa High Commission Services, Report of the London Discussions, June, 1961 Cmd. 1433. For a review of the civil aviation institutions of the Organization and the text of its constitution see 1965 Yearbook of Air and Space Law, p. 130 et seq. and 232 et seq.

[108] No. 4 of 1963.

[109] The Treaty was signed on the 6th June, 1967. It came into force on 1st December, 1967 - Article 91 of the Treaty. The text of the Treaty is in 6 International Legal Materials (1967), 933. For a general description of the Treaty see Orloff, "Economic

According to the Treaty the headquarters of EAA must be at Nairobi, Kenya.[110] Future development should so far as possible be sited in Uganda and Tanzania with first priority being given to development in Uganda.[111] A partner state may require the Corporation to provide air services within its boundaries but, in that case, the Corporation is entitled to be compensated for any loss which it suffers by virtue of that requirement.[112]

The Corporation and its servants enjoy certain immunities. Persons employed in the Corporation have immunity from civil process in respect of acts performed by them in their official capacity and are accorded such immunities from immigration restrictions or alien restrictions as the East African Authority[113]

Integration in East Africa: The Treaty for East African Co-operation," 7 Columbia Journal of Trans-National Law (1968) 302. The Treaty is given effect to by the East-African Airways Corporation Act 1967, Legal Notice No. 4 of 1967.

[110]The Treaty, Ibid., Article 87.

[111]The Treaty Ibid., Annex xxiv Part B para. 4. Specific arrangements are made in relation to Uganda.

[112]East African Airways Corporation Act 1967, supra note 109, sec. 16.

[113]This is an institution of the Community which will be referred to in some detail later.

determines.[114] The Corporation is exempt from income tax and stamp duty.[115] In fact, the arrangement under which the East African Airways Corporation now exists makes its nature a subject of an interesting survey. We intend below to discuss further the nature of this Organization as far as that nature could reflect on its legal status, together with the manner of registration of its aircraft.

ii. The Nature of the Corporation, Its Effects and the Registration of the Aircraft of the Corporation.

The East African Airways Corporation is re-constituted, specifically, by Article 43 of the Treaty for East African Cooperation. This Treaty, establishes inter alia the East African Community.[116] The Community comprises a number of Institutions including corporations like East African Airways established under it. The most important Institutions, however, are

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[114]The Treaty, supra note 109, Article 3 (para. 4). The determination of the Authority is contained in the East African's Community (Immunities and Privileges) Order 1967, Legal Notice No. 7 of 1967.

[115]Treaty Ibid., Article 72 (para. 6).

[116]Article 1 establishes the Community. Article 3 enumerates the institutions of the Community.

those for exercising the executive (the East African Authority and the Councils) and the legislative (the East African Legislative Assembly) powers conferred by the Treaty on the Community, for each of them has carefully defined powers over the Corporation and its operations. Each Partner State undertakes to take all steps within its power to secure the enactment and continuation of such legislation as is necessary to give effect to the Treaty and, in particular, to confer on the Community the legal capacity and personality required for the performance of its functions and to confer upon Acts of the Community the force of law within its territory.[117]

East African Airways is one of the Institutions of the Community[118] and as such is required to perform the functions and act within the limits of the powers conferred upon it by the Treaty or any other law.[119] Furthermore it is obliged "on behalf of the States and in accordance with the Treaty and the laws of the Community" to administer the service

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[117]Article 95 (para. 1) of the Treaty. See for an example of the enabling Legislation: The East African Cooperation (Implementation) Act 1967 (No. 42 of 1967) of Tanzania.

[118]Article 3 (para. 1) of the Treaty.

[119]Article 3 (para. 2) of the Treaty.

specified in relation to it in Part B[120] of Annex IX of the Treaty and take over the corresponding service administered by the East African Common Service Organization.[121]

The establishment and constitution (the equivalent of the memorandum and articles of association of a company) is provided for in part in the Treaty and in part in the East African Airways Corporation Act 1967. These define its powers and duties and its relation to the other Institutions of the Community and the Partner States of the Community.

In common with the other corporations E.A.A. is enjoined to conduct its business according to commercial principles and to perform its functions in such a manner as to secure that, taking one year with another, its revenue is not less than sufficient to meet its outgoings which are properly chargeable to revenue account and the East African Authority is empowered to fix a target percentage annual return on net fixed assets.[122]

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[120]Para. 4 of Part B of Annex II specifies in relation to the East African Airways Corporation - Services and facilities relating to East African and international air transport.

[121]Article 43 (para. 3).

[122]The Treaty, Article 72 (paras. 1, 2); The Act, Sec. 18.

In addition it is under a duty to have regard to its revenues in the Partner States as a whole and not to its revenues in any particular Partner State,[123] to regulate the distribution of its non-physical investments to ensure an equitable contribution to the foreign exchange resources of each of the Partner States,[124] and its purchases so as to ensure an equitable distribution of the benefits thereof in the Partner States,[125] taking into account inter alia the scale of its operations in each.

There is a board of directors for the Corporation "responsible for its policy control and management".[126] It comprises ten directors, appointed directly or indirectly by the East African Authority and two appointed by each Partner State. Those appointed directly by the Authority are the Chairman and two other members. The Director General who is appointed to that office by the Authority[127] is a member

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[123] Ibid., Article 72 (para. 3) Ibid., Sec. 18(3).

[124] Ibid., Article 72 (para. 4).

[125] Ibid., Article 72 (para. 5).

[126] Article 73. Further powers are specified in Annex XIII of the Treaty. See also sections 5, 6, and 9 of the Act.

[127] Article 76. The Act Sec. 10.

ex officio.[128] The Board appoints the staff other than the Director General.[129] The Corporation is required to submit accounts and a report annually to the Communications Council which must table them in the East African Legislative Assembly.[130]

The relationship between the Director General and the Board and between these and the other institutions of the Community and their respective powers are defined.[131] Broadly speaking, the Director General is responsible for the day to day management of the Airline and the submission of programmes to the Board.[132] The Board is charged with responsibility for major policy issues and major programmes of a capital nature and is obliged to submit certain matters to the Communication Council.[133] The Communications

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[128]Article 75. The Act Sec. 5.

[129]The Treaty Article 77 and the Act Sec. 24 as to the appointment of staff. Provision is made for appeals by aggrieved staff. As noted above, Article 76 of the Treaty and Sec. 10 of the Act provide that the Director General shall be appointed by the Authority.

[130]The Treaty Articles 78, 79; The Act, Secs. 20, 21.

[131]Annex XIII, Part D of the Treaty, The Act, Secs. 11-14.

[132]The Treaty paras. 1, 2; The Act, Sec. 11.

[133]The Treaty paras. 3, 4; The Act, Sec. 9, 11.

Council receives information and may give advice and directions in respect thereof and directions of a general nature, controls tariffs charged by the Corporation within the Partner States, approves international tariff proposals, annual and five-year programmes, major alterations in salaries or conditions of service, major capital expenditures, and gives directions concerning agreements with, or the interests of, a foreign country. Finally it reports to the East African Authority.[134] The East African Authority is invested with responsibility for the general direction and control of the Corporation and in particular may give directions of a general nature to the Communications Council and to the Board as to any of the corporation's functions which appear to affect the public interest, and determines matters referred to it by Council or Board. Finally it resolves differences of certain types between the Board and the Council.[135]

The most striking feature of the examination in paragraphs 3 - 5 is the resemblance of East African Airways to any normally constituted public corporation. Its powers and duties are similar. It has a board.

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[134]The Treaty paras. 5, 6; The Act, Sec. 13.

[135]The Treaty paras. 7, 8, 9; The Act Sec. 14.

It reports normally to the executive government and the executive exercises certain controls over the corporation but these are, on the whole, the normal range that an executive government enjoys over public corporations. Even one of the major factors which distinguishes a public corporation from a department of the executive government, namely that the corporation appoints its own staff, is present.[136]

On the other hand, and most significantly, it is established by a treaty and an Act made under the treaty. The Treaty vests legislative authority over certain matters including civil aviation in the East African Legislative Assembly, an institution of the Community.[137] Bills passed by the Assembly become Acts of the Community when assented to by the Heads of the Partner States[138] and as already noted the Partner States are obliged under the Treaty to enact

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[136]Articles 61 and 64 of the Treaty relating to offices in the service of the Community do not apply to offices in the service of a Corporation (see article 61 para. 3 of the Treaty).

[137]Article 43 (para. 7) empowers the Community to enact measures with respect to the matters set out in Annex X. Matter 4 is civil aviation. The Community's power to enact measures is vested in the East African Legislative Assembly established by article 56. It comprises ex officio members and 27 members, nine appointed by each Partner State (see articles 56-58).

[138]Articles 59 and 60 of the Treaty.

laws to give effect within their territories to acts of the Community.[139] The Assembly is the body in which E.A.A.'s accounts and reports are tabled and is the source of part of the rules regulating the internal operation of the corporation. As will be seen shortly it is also the source of the law which regulates generally E.A.A.C. as an airline engaging in civil aviation activities in East Africa.[140]

The East African Authority has been referred to as having powers in relation to E.A.A.C. This is another Institution of the Community established by article 46 of the Treaty as the principal executive authority of the Community. It comprises the Heads of the Partner States. It is responsible for, and has the general direction and control of, the performance of the executive functions of the Community. It is assisted in the performance of these functions by a series of Councils and by the East African Ministers all of which are subject to its direction and control.[141] If a member records an objection to a proposal submitted for decision, the Authority may not proceed with the

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[139]The first para. of this survey.

[140]The fourteenth para. of this survey and the following four paras.

[141]Articles 47 and 48.

proposal.[142]

The East African Ministers are three in number, one nominated by each Partner State but all are appointed by the Authority.[143] The East African Ministers are permanently stationed at the headquarters of the Community and are responsible for the day to day exercise of the executive power of the Authority. They make decisions on matters lying within the scope of the powers delegated to them by the Authority.[144] With respect to E.A.A.C., they sift the proposals coming from it before submission to the Communications Council and they are members of that Council.[145] Their most important specific function in relation to E.A.A.C. is their responsibility, with the assistance of representatives of E.A.A.C. and such other persons as may be appropriate, to negotiate bilateral air service agreements on behalf of the Partner States and to conduct such negotiations in accordance with the criteria laid down by the Communications Ministerial

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[142]Annex XI, para. 3 (a) of the Treaty.

[143]See Article 49 of the Treaty as to appointment. Tenure of office is governed by Article 50 thereof and Article 51 defines their function.

[144]Article 51 (para. 1).

[145]See the next paragraph.

Committee of the Common Services Organization and any amendment of such criteria which may be made by the Communications Council.[146]

The Communications Council, an institution of the Community, comprises the three East African Ministers together with the three other Ministers, one from each Partner State, who are responsible for communications in their respective States. It is a forum for consultation on communications matters and exercises the functions conferred upon it by the Treaty (one is referred to at the end of the preceding paragraph).[147] Its functions in relation to E.A.A.C. have already been described.[148] The East African Director of Civil Aviation comes under its supervision as do all the other activities of the Community relating to communications. It is thus, de facto, the principal executive authority of the Community responsible for communications both in their internal and international aspects. It is, of course, subject to the Authority. When business relating to a corporation is being considered, the chairman of the Board and the

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[146]Article 51 (para. 5) of the Treaty.

[147]Articles 53-55.

[148]The sixth para. of this survey.

Director General of that corporation are entitled to attend and speak.[149] If a member of the Council records an objection to a proposal submitted for a decision, the proposal has to be submitted to the Authority for decision; if a decision taken by the Council is contrary to a proposal submitted by the Board of Directors of a corporation, the Board may refer the question at issue through the East African Ministers to the Authority for a decision and no action may be taken on the proposal while it is under consideration by the Authority.[150]

These are the principal Institutions of the Community which exercise authority over E.A.A.C. Although all are comprised of representatives of the Partner States, they are established by the Treaty and exercise authority by virtue of it. It is true, however, that the Community exercises its functions on behalf of the Partner States through its appropriate institutions (E.A.A.C. is one)[151] and the Corporations administer their services on behalf of the Partner States,[152]

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[149] Annex XI Para. 7 (c) of the Treaty.

[150] Annex XI (para. 8).

[151] Article 43 (para. 1).

[152] Article 43 (para. 3).

but they have come into existence by virtue of the Treaty and their respective powers, functions, duties, and obligations arise from or are imposed by the Treaty.

The financial arrangements under which E.A.A.C. operates are of relevance. It is not under any obligation to pay profits to any Partner State of Community. It may, as has already been described, be required to meet a financial target.[153] But no provision is made for payments of any kind to the Partner States or the Community. In the event, however, that E.A.A.C. requires financial assistance, provision is made for the appropriation of the amounts required from the General Fund of the Community. Basically, the General Fund of the Community comprises various taxes collected by the Community - income, company, excise, and customs taxes are the principal ones. A portion of these has to be paid to the Partner States, the residue is retained by the Community for the purpose of financing its activities. While E.A.A.C. has not since 1956 required subsidies, as an institution of the Community, it would be lawful for the East African Legislative Assembly to make appropriations for it from that part of the General Fund to which the

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[153]The fourth para. of this survey.

Community is entitled under the Treaty.[154] Thus E.A.A.C. would not receive financial subventions through the Partner States but from the Community. In this very vital aspect, institutions created by the Treaty are empowered to service E.A.A.C.

The safety aspects of E.A.A.C. operations are regulated by an Institution of the Community, the East African Directorate of Civil Aviation, under authority of legislation made by the predecessor of the Community, the East African Common Services Organization; these laws remain effective and can be enacted de novo or amended by the Community in pursuance of its legislative power in relation to Civil Aviation.[155]

Among the services administered by the Community on behalf of the Partner States is the East African Directorate of Civil Aviation.[156] Substantially that Directorate is the agency by which the Authority exercises control over the safety and operational aspects of Civil Aviation. The power of the Authority

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[154]Articles 65-70 thereof.

[155]The eighth para. of this survey and the notes thereto.

[156]Article 43 (para. 2) and Annex IX Part A of the Treaty.

to control civil aviation stems from the East African Civil Aviation Act 1964.[157] This Act invests the Authority inter alia with the general duty of organizing, carrying out and encouraging measures for the development of civil aviation and for the promotion of safety and efficiency in the use of civil aircraft.[158] The Act empowers the Authority to make regulations on about twenty subjects, e.g. to give effect to the Chicago convention and its annexes, to make provision for the registration and marking of aircraft in the States or any of them and with respect to licenses for personnel and aerodromes, etc.[159] The Act and regulations made under it apply to all aircraft (other than State aircraft) whilst over or in East Africa and all East African aircraft and the crew and other persons on board thereof wherever they may be.[160] An East African aircraft is one which is registered in any of the member States.[161]

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[157] Act No. 22 of 1964.

[158] Ibid., Section 3.

[159] Ibid., Section 12.

[160] Ibid., Section 21.

[161] Ibid., Section 2. E.A.A.C.'s aircraft are therefore subject to the Act and Regulations.

In pursuance of these powers the Authority made the East African Air Navigation Regulations 1965.[162] The range and scope of these is equivalent to that of the United Kingdom Air Navigation Order and the regulations made under it. By and large, most of the powers conferred by the regulations are vested in the Director (now the Director General)[163] of Civil Aviation. An aircraft may not fly unless it is registered, amongst other places in one of the Partner States.[164] The Director is the authority for registration in the East African countries.[165] The registration marks for the member States are specified.[166] The application for registration of an aircraft must contain information sufficient for the Director to determine whether it should be registered in one member state or another member state.[167] The Director is

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[162]Legal Notice No. 46 of 1965.

[163]See The Treaty Annex XIV (para. 3) constituting this office and providing for decentralization of his functions to the Directors of his Directorate in the member states.

[164]East African Air Navigation Regulations, reg. 3 (1).

[165]Ibid., reg. 4 (1).

[166]Ibid., reg. 5 (2) and First Schedule Part B (para. 1).

[167]Ibid., reg. 4 (6).

required by implication to maintain a register for each Partner State.[168] With respect to licenses of various kinds and certificates of airworthiness, no distinctions as to member states appear to be made.

E.A.A.C. is subject, therefore, to a single aviation authority and a single aviation safety law both arising out of the Treaty. In the safety laws the only distinction made, based on the separate identities of the member states, is aircraft registration. But the separate registration marks for the aircraft of each of the countries derive from a law made under the Treaty and not from the separate and direct actions of each of the Partner States.

E.A.A.C., in order to operate air services for reward on a scheduled or non-scheduled basis, requires an air service license from the East African Civil Aviation Board. The Board, established by the East African Civil Aviation Act[169] and comprising members appointed by the Partner States and ex officio members from the Community,[170] licenses, by virtue of the East African Licensing of Air Service Regulations,

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[168] Ibid., reg. 4 (7).

[169] Act No. 22, supra note 157, Sec. 4.

[170] Ibid., Section 6.

1965,[171] air services between places in East Africa, between places within an East African country and between places in East Africa and places outside thereof.[172] Here again a body established under legislation under the Treaty is the only authority responsible for licensing E.A.A.C.'s air services. There is no licensing legislation by the Partner States and in any event, it would violate the Treaty to enact such legislation.

Industrial disputes involving servants of the E.A.A.C. are placed under the jurisdiction of an East African Industrial Court established by the Treaty. It derives its powers from the laws relating to the settlement of industrial disputes in force in the member state where the employee is. Such powers are to be exercised in accordance with the principles laid down by the Authority.[173]

From the above it may be concluded that E.A.A. is not subject to any national law but is rather subject

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[171]Legal Notice No. 47 of 1965.

[172]Ibid., regs. 3, 14, 17, 18 and 19. An appeal lies to an appeal tribunal in respect of applications for domestic service and decision is subject to confirmation by the Authority. See part V of the Regulations.

[173]The Treaty Articles 84 and 85.

to an international legislation. In the international Civil Aviation Organization, it was once concluded[174] that the "body contemplated in the last sentence of Article 77 has an international character and is not constituted under the national law of any particular state. . . ." Thus should this definition be upheld, E.A.A. may well be considered as an international operating agency.

With regard to the registration of aircraft of E.A.A., it is done according to a certain formula. An equal number of each type of aircraft is registered in each of the Partner States, or in other words the aircraft of E.A.A. by types are registered 1/3 in each country.[175] More details relating to registration of aircraft of the Corporation are of course given above.

Since the aircraft of E.A.A. are nationally registered, then, as in the case of SAS, no problem as such will occur with respect to the application of the provisions of the Chicago Convention containing the rights, privileges and obligations to such aircraft. An aircraft, of the Corporation, in accordance with

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[174]Report of the Panel of Experts: I.C.A.O. Doc. PE/77/Report (30.6.60), p. 4 (para. 10).

[175]Information obtained from Professor Bradley: M. Bradley, supra note 106.

Article 17 of the Convention, will have the nationality of the Partner State where it is registered which state is bound by the obligations and is entitled to the rights and privileges of the national state under the Convention.

It remains to see the effect of the nature of E.A.A. on bilateral agreements.

The nature of E.A.A. has caused some diversion from the ordinary concepts of bilateral air transport agreements. For example, as noted above, bilateral air service agreements are not negotiated by a Partner State but by "the East African Ministers" on behalf of the Partner States. This clearly marks a deviation from the ordinary concepts of negotiations of bilateral agreements.

Another incident of deviation resulting from the nature of the Corporation is noticed with respect to the "substantial ownership and effective Control" clause usually insisted upon by bilateral air agreements and which requires that the airline to be designated for exercising the traffic rights under the agreement must be substantially owned by the other contracting state or by its nationals.

The Agreement between Kenya and France of

28.7.1964, while providing for such clause in Articles 3 and 4, has, however, later in Article 5 restricted that requirement. In this article it is provided that

> The provisions of the present Agreement relating to substantial ownership and effective control shall not apply to or in relation with the designated airlines of the government of Kenya or any airline designated by that Government to enjoy the rights specified in Paragraph (3) of Article 2 of the present Agreement if and so long as the airline or airlines are effectively controlled by the countries comprising East Africa.[176]

Of course, the provision refers to East African Airways.

Similarly we find the following example of deviation with respect to the ordinary practice regarding bilateral agreements that the routes to be operated by both contracting parties must begin from points situated in the territory of the party whose airline will operate the route. Section II of the schedule to the Agreement between Kenya and Ethiopia, numerating the air routes to be operated by the airline designated by Kenya, begins with "Points in East Africa". Article 1 of the Agreement defines this term as meaning Kenya, Tanzania and Uganda.[177]

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[176]Underlining added. See I.C.A.O. Registration No. 1812.

[177]I.C.A.O. Registration No. 2051.

C) AIR AFRIQUE

i - Origin and Nature

The Conference of Heads of 12 West African States and Governments, held at Brazzaville on 15 December 1960, formed a committee to work out practical measures of economic cooperation.[178] The Committee formed met in Dakar in January 1961 and proposed the creation of a permanent organ of Afro-Madagascar economic cooperation to be composed of 13 states.[179] This proposal was, on 28 March 1961, approved by the Conference of Heads of States at Yaoundé (Cameroun) and the inter-governmental organization established was given the name L'Organization Africaine et Malgache de Coopération.[180] It has its headquarters at Yaoundé.[181]

Similarly, at the Conference held at Brazzville on 15 December 1960, the twelve heads of states and governments present agreed in principle to a scheme for the creation of a common company. They left it to the

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[178] I.C.A.O. Doc. C-WP/4115 of 1.12.64 Annex 3, p. 7. This is the 2nd Conference held in this regard. It convened from 15th to 19th December 1960. See Air Afrique an 5 (printed in France, October 30th, 1966), p. 2.

[179] I.C.A.O. Doc. Ibid.

[180] Ibid.

[181] Ibid.

Survey Committee of Dakar to draft, in their final form, the various texts to be submitted to the next meeting at Yaoundé.[182] In fact, the idea of the formation of this company crystalized on the 26th October 1960 at the first Conference of the West African states held at Abidjan. In that Conference it was arranged that an investigation of the creation of a common airline, in association with Air France and UAT, should be carried out. The outlines and schemes of the plan were then sent to each head of state on the 28th of November 1960.[183]

On 28th March 1961, eleven of the West African states concluded at Yaoundé a treaty regarding air transport in Africa.[184]

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[182] Air Afrique an 5 supra note 178.

[183] Ibid.

[184] Treaty relating to Air Transport in Africa, Yaoundé March 28, 1961 (translation). The African states were: the Republic of Dahomy and the Republic of the Congo (Brazzaville), the Republic of the Ivory Coast, the Republic of Cameroun, the Central African Republic, the Republic of Gabon, the Republic of Upper Volta, the Islamic Republic of Mauritania, the Republic of Senegal, the Republic of Chad and the Republic of Niger. Later the State of Togo adhered to the treaty of Yaoundé and became a shareholder in the company. I.C.A.O. Doc., supra note 43. It will be noted that adherence to the treaty is open to all interested states subject to the requirement of unanimous agreement on the part of the participant states. See Article 13 of the treaty of Yaoundé.

In accordance with Article 1 of this treaty, the contracting states created an air transport company, referred to as "La Société Commune", for the operation of air traffic between their territories as well as beyond them. The treaty also contains a provision that each contracting state would have an equal share of the capital of the Société.[185]

On the same day, namely 28 March 1961, the eleven West African States also concluded an agreement establishing the Statutes of the afore-mentioned "Société Commune".[186] These statutes provided for the constitution of "société par actions", i.e. a joint-stock company, named "Air Afrique",[187] the object of the company to be the operation of air transport services.[188] According to Article 4 of the Articles of Incorporation, the company is established for 99 years, subject to the renewal of the application of these articles. Article 3 thereof provides that the

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[185] Article 6 of the Treaty.

[186] The Statutes, consisting of 46 Articles, have as complementary instruments a protocol of signature and a protocol annexed to the treaty and signed on behalf of the eleven states on the one hand and on the other, of Air Afrique (Société de Transport aerien en Afrique, which is an organization different from the one under survey here, and which has its headquarters at Paris. See I.C.A.O. Doc. supra note 178, p. 8).

[187] Article 1 of the Articles of Incorporation.

[188] Ibid., Article 2.

company would have an establishment having the attribute of a head office in the capitals of each of the contracting states.[189]

Article 5 fixes the capital of the corporation at 500 million francs C.F.A., divided into 50,000 shares of 10 thousand francs C.F.A. each. Of these shares, 33,000 shares are subscribed by the eleven states who signed the treaty and 17,000 shares by the other Air Afrique.[190]

On 28th March 1961, the two French companies Air France and L'Union Aéromaritime de Transport confirmed in a letter for the cognizance of the then eleven constituent states of Air Afrique that a special agreement would be concluded between them and the Corporation concerning the operation by it of the services which would be decided in agreement with those two French companies to meet the needs of long distance operations of the latter. The agreement would contain relevant terms and conditions including financial ones.[191]

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[189]Thus the corporation has artificially twelve domiciles. However, in practice Air Afrique maintains its headquarters in Abidjan. See Ward Wright, "Air Afrique Emphasizes Measured Growth," Aviation Week and Space Technology (November 29, 1965), p. 33.

[190]The shares assigned to this Air Afrique constituted 34% of the shares. They were later held by UTA and Caisse Dé Pots et Consignation and were reduced to 28% upon the adherence of Togo to the Treaty in 1964. See Ward Wright, Ibid.

[191]I.C.A.O. Doc., supra note 178, p. 9.

In this respect it is noted that Article 2 of the Treaty of Yaoundé stipulates that the parties undertake to designate Air Afrique as the instrument chosen by them to operate international air services. This is because, as indicated earlier, bilateral air transport agreements usually contain a standard clause giving each contracting party the right to designate one national airline or more to operate the services allocated to such party under the agreement. Strictly speaking, Air Afrique, however, is not a national airline and hence the application of Article 2 would constitute a deviation from the ordinary concepts of bilateral agreements. This, for instance, actually occurred with respect to the air transport agreement between the Republic of Niger and the Republic of Mali signed 15th January 1964. This agreement provides in the Exchange of letters (dated the same) and annexed thereto that "The Government of the Republic of Niger designates Air Afrique Company as the air Carrier of Niger for the operation of the agreed services, and the Government of Mali accepts such designation".[192]

The Treaty of Yaoundé also prescribes in Article 3 thereof that contracting states may commit

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[192]Translation: See I.C.A.O. - Registration No. 1730.

to the joint Corporation the operation of the domestic air services within their territory. The terms and conditions of the operation would form the subject of a protocol agreement between the contracting states and the joint-Corporation. However, if these services are entrusted to a national air carrier, the activities of such carrier should be coordinated with those of the joint-Corporation.[193]

Such national air carriers may also conduct regional air services if authorized to do so, after consultation with the Committee of Ministers.[194]

The Committee of Ministers is constituted by Article 8 of the Treaty of Yaoundé. It is composed of Ministers responsible for civil and commercial aviation in the contracting states or their representatives and is established to function as a medium for discussing their "common policy, prospects for the development of air transport and programmes and, in a general manner, all questions relating to

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[193]Article 3. See also Article 1 of the Signatory Protocol to the Treaty of Yaoundé where the contracting parties further agreed to take the necessary measures to coordinate the activities of the national corporations with those of Air Afrique.

[194]Article 2 of the Signatory Protocol.

Civil and Commercial Aviation".[195] Article 10 thereof further appears to emphasize as an object of the Committee collaboration and general coordination of the policy between contracting states with respect to civil aviation. It stipulates, inter alia, that "the contracting states undertake to adopt for the purpose of negotiating air traffic rights within the framework of intergovernmental agreements, a position in co-ordination with that of the other contracting states, due account being taken of the operation and interests of the joint Corporation. . . ." To this effect, it requires that each contracting state should submit to the Committee for its opinion any air traffic draft agreement to be concluded by that state. In this regard, however, the committee appears to act as an advisory body, for Article 10 proceeds to declare that each contracting state "shall endeavour" to take into the "highest consideration" the Committee's opinion so as to avoid concluding intergovernmental agreements that may be prejudicial to the interest of Air Afrique.

We may now focus our attention on the legal status of the Corporation.

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[195]Article 8 of the Treaty of Yaoundé.

Article 4 of the Yaoundé Treaty endows the Corporation with "the fullest legal capacity recognized by the laws of contracting states in the case of bodies corporate "and prescribes that the Corporation "shall be deemed as possessing the nationality of each contracting state, both in respect of said States and in respect of other States." However, this provision does not appear to be intended to render the Corporation a subject of municipal laws, for Article 1 of the Articles of Incorporation of Air Afrique causes the Corporation to be primarily governed by the Treaty of Yaoundé and the articles of Incorporation attached to that treaty.[196] It is true that, under the last part of Article 1, the Corporation may be governed by the "principles pertaining to the laws of the signatory states" of the treaty, but as the Article, itself, prescribes this would occur only "residuarily and only in so far as they are compatible with the provisions of the Treaty and the Articles of Incorporation". Again the Article clearly contemplates resort in such a case, to the general "principles" involved in the laws of all contracting states and not to those contained in the laws of any

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[196] See Article 1 (1) of the Articles of Incorporation.

individual contracting state. Thus Article 5 of the Treaty of Yaoundé appears further to emphasize that the Corporation is primarily subject to its domestic law as embodied in the Treaty and its annexes. This article reads:

> This treaty and its annexes including the Articles of Incorporation of the joint Corporation (Société commune), shall determine the legal terms of existence and operation granted to the Corporation by the contracting states by departing, if need be, from the present or future provisions of their national laws.

This brings the status of Air Afrique in some similarity with that of East African Airways.

Also with respect to the nature of Air Afrique, we find the following paragraph in the preamble of the treaty of Yaoundé in connection with the formation of the Corporation:

> Whereas articles 77 and 79 of the convention of International Civil Aviation signed in Chicago on 7 December 1944 aiming at the setting up by two or more states of joint operating organizations and international operating agencies and the participation of the states in these organizations and agencies. . . .

In the Tokyo Conference on Air Law (1963), the representatives of the Congo (Brazzaville) and Senegal, on discussion of the question as to how the Tokyo Convention would apply in the case of aircraft operated

by international operating agencies as contemplated by Article 77 of the Chicago Convention, indicated that Air Afrique is specifically an international operating agency whose aircraft might be in future registered on other than a national basis. They, therefore, proposed that the International Civil Aviation Organization's Council be empowered to determine, if necessary, the manner in which the provisions of the Tokyo Convention should apply to aircraft so registered.[197]

Similarly, the Union Africaine et Malgache de Coopération Economique,[198] acting on behalf of Air Afrique, requested the International Civil Aviation Organization in 1964 to have a study made of the problems relating to nationality and registration of aircraft of international operating agencies.[199]

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[197] G. F. FitzGerald, "Offences and Certain other Acts Committed on Board Aircraft: The Tokyo Convention of 1963," 2. C.Y.I.L. (1964), pp. 201-202. Congo (Brazzaville) and Senegal are members of Air Afrique and hence their statements may throw light on the intentions of the drafters of the Preamble.

[198] This Organization was later succeeded by the "Organization Commune Africaine et Malgache". See I.C.A.O. Doc. 8743, infra note 287, p. 27.

[199] I.C.A.O. Docs., infra note 258.

ii - Nationality and Registration of the Aircraft of Air Afrique

It may be inferred from the first sentence of Article 7 of the Yaoundé Treaty that the aircraft of Air Afrique belong to the joint Corporation and not to any of its constituent states. The relevant part of this sentence reads: "Failing the possibility of joint-registration, each aircraft belonging to the joint corporation. . . ."[200]

Regarding the registration of these aircraft, Article 7 contemplates joint-registration of aircraft, as seen from the quotation above, and that, in case such registration is not possible, the aircraft of Air Afrique would be "registered in one of the States". According to the Article, "The States shall reach agreement concerning the apportionment among themselves of the registration of the aircraft belonging to the joint Corporation (Société commune), it being specified that the aircraft may be used freely and indiscriminately to perform the Corporation's services, whatever their registration".

The provision for an alternative method of registration was due to the fact that, as partly

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[200]Underlining supplied.

inferred from the article,[201] it was contemplated that joint registration of aircraft depends, under Article 77 of the Chicago Convention, on the approval (or determination) of the Council of the International Civil Aviation Organization, whose determination was not released at the time Air Afrique was under formation. This explains the above mentioned request made to the International Civil Aviation Organization on behalf of Air Afrique.[202]

Thus the aircraft of Air Afrique were not registered on a joint register. However, all these aircraft are registered in the Ivory Coast, a constituent member of the joint enterprise, and bear Ivory Coast nationality marks.[203] Indeed as Article 17 of the Chicago Convention prescribes, aircraft have the nationality of the place in which they are registered.

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[201] "Failing the possibility of joint registration" etc.

[202] Information obtained on personal communication with Mr. Diallo, the Representative of Senegal in the Council of I.C.A.O., dated 13.11.69.

[203] Personal communication, Ibid.

(D) AN ASSESSMENT

It will be recalled that there is no clear provision in the Chicago Convention which precludes the registration of aircraft belonging to transnational airlines on a national basis. As emphasized earlier in this Part, national registration as that followed by SAS, EAA and temporarily Air Afrique avoids, in conformity with Article 18 of the Chicago Convention, multiple registration of aircraft. Furthermore, as implied from Article 19 of the Convention a state may, inter alia, register aircraft not wholly owned by its nationals. For this purpose, national laws that require the genuine link connection may be amended. Since the aircraft of Air Afrique, SAS and EAA are registered on a national register, then no problem as such appears to arise with regard to rendering applicable to these aircraft the provisions of the Chicago Convention relating to nationality. This is because these provisions attach to none but the state of registry.

However, it seems that national registration of aircraft may not appeal to all transnational airlines. According to the representative of Senegal in the Council of the International Civil Aviation

Organization, certain policy considerations have led Air Afrique to seek non-national registration of its Aircraft.[204] It has also been explained that "restricted financial, material and personnel resources of some participants" might tend to suggest, non-national registration as "the only suitable solution".[205] It may also be added that, as in the case of registration of the aircraft of SAS in Norway, a state may not be willing to amend its laws incorporating the genuine link principle in order to facilitate national registration of the aircraft of the enterprise therein.[206] In short, states constituting a transnational airline may wish, for one reason or another, to depart from national registration of aircraft in favour of a system of non-national registration as did the 12 states of Air Afrique. We have also in the horizon the prospects for a Europe's Air Union. There is a tendency also in South and Central America for regional

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[204] Ibid.

[205] Imam, supra note 83, pp. 71-72.

[206] The genuine link principle exists in certain national legislation (e.g. that of Canada, USA, UK, France, and West Germany). Lc/SC/CHA WD No 20 (2/4/56): Extract from National Legislations Concerning Registration of Aircraft, contains an analysis of Legislation of States in which foreign-owned aircraft may be registered.

cooperation.[207] In Latin America there is namely the project of the "Latin American Air Fleet" which, as the representative of Columbia in the Council of I.C.A.O. has decribed, would "pool the resources of the various countries in a similar manner to Air Afrique".[208] He, also, explained that the Third Regional Civil Aviation Conference held in Bogota in 1962 had recommended that the Conference Coordinator ask the International Civil Aviation Organization's Legal Committee " to study the development of a statute for an international operating organization or agency such, as was envisaged in Article 77 of the Convention on International Civil Aviation".[209] Wassenberg thus asserts that though a worldwide integration of air transport as contemplated in the Australian-New Zealand proposal to the Chicago Conference, does not yet belong to the realm of reality, "there has of late been a movement towards regional integration".[210] Transnational airlines resulting from

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[207] Wassenberg, supra note 81, p. 166 (including Footnote 4) and p. 175 respectively. Air union is planned to be established by Air France, Lufthansa, Alitalia, KLM and Sabina. (Footnote (4) above).

[208] ICAO Doc., supra note 43 (para. 6).

[209] Ibid.

[210] Wassenberg, supra note 207 p. 79. The advent of supersonic aircraft may further contribute to this movement. See ICAO Doc., supra note 208.

such integration may tend also, like Air Afrique, towards registering their aircraft on other than a national basis. This would certainly contribute to the practical importance of non-national registration of aircraft.

Furthermore, with respect to matters in the field of air law such as the negotiation of bilateral agreements, the provisions therein relating to the designation of the appropriate airline, the substantial ownership requirement and their annexes, no effect thereupon would occur newly from the resort to non-national registration of aircraft by transnational airlines. As we have seen in the case of EAA and Air Afrique, for example, the very nature of the trans-national airlines had already caused the expected deviation from the ordinary concepts of bilateral air transport agreements.

On the other hand, the fact that the Chicago Convention does not define the term 'international operating agencies', as mentioned therein, may result in a controversy as to whether any of the existing or future transnational airlines may be regarded as coming within the application of the last sentence of its Article 77. All that we can infer from the Convention

is that an "international operating agency" is a transnational arrangement between 'two or more contracting states' with respect, apparently, to the operation of international air services, since the regulation of such services, as distinct from domestic services, was the sole concern of the Convention.[211] If the view referred to earlier that the terms "international operating agencies" and "joint air transport organizations" are used interchangeably in the Convention, is acceptable, then it may be added that a state could also, in accordance with Article 79, participate in "international operating agencies" through partly state-owned or even privately owned companies designated by its government.

The above inference, however, may not stand as a satisfactory definition of the term "international operating agencies" used in the last sentence of Article 77 because it may apply to any of the forms of transnational cooperation envisaged in the Article as a whole. For the same reason it was found inadvisable to conclude, solely on grounds of that insufficient data, that Air Afrique or any of the existing

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[211] ICAO Doc. 8707, infra note 284 (para. 25).

transnational airlines is an "international operating agency" for the purposes of the last sentence of Article 77. The survey made with respect to their nature in this part, however, indicates that they may represent one or the other of the forms of transnational cooperation envisaged in the total framework of Article 77 of the Chicago Convention.

However, it appears that the need for the insertion of the last sentence of Article 77 was not inspired by the nature, as such, of "international operating agencies", but was rather prompted, as submitted in Part I of this study, by the fact that such a transnational arrangement is "most" likely to register its aircraft on other than a national basis, perhaps to emphasize its international character. An attitude of this nature on the part of a transnational airline would pose the question as to the manner in which the provisions of this Convention relating to "nationality of Aircraft" apply to aircraft not nationally registered.

This is certainly not an easy question for the Chicago Convention, being drafted, as noted earlier, on the assumption of national registration, attaches the rights and obligations thereunder solely to the

state of registry. Hence, it would be essential in the event of allowing non-national registration of aircraft, by say, "international operating agencies", to prescribe rules to ensure the application of the provisions of the Convention relating to nationality of aircraft to aircraft so registered; otherwise, for example, non-national registration may be used by the states members of the agency as a means to avoid their obligations under the Chicago Convention.

Nothing under the circumstances, it is submitted, is worth more the attention of the Council of the International Civil Aviation.

In fact, the Council of the International Civil Aviation Organization was asked three times to study, apply or interpret the concerned last sentence of Article 77 of the Chicago Convention. The first time was by the International Civil Aviation Organization Assembly, the second by the Arab League and the third was that by the Union Africaine et Malagache de Coopération Economique and the United Arab Republic. Interpretation of the last sentence of Article 77 proved to involve a number of issues. In the immediately following survey we intend to consider the events which took place upon these requests, insofar

as they help to throw a light on the issues involved and the recent Council's Resolution on the problem

PART III

EFFORTS TO FIND A SOLUTION TO THE PROBLEM

(1) Request from the International Civil Aviation Organization's Assembly and the Study by the Air Transport Committee.

Some discussions on the international ownership and operation of trunk air services resulted in a Resolution (A1-37) at the First Session of the International Civil Aviation Organization's Assembly in 1947, and another Resolution (A2-13) at the Second Session in 1948.[212]

In the latter Resolution the International Civil Aviation Organization's Assembly requested the Council "to formulate and circulate to contracting states its views on the legal, economic, and

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[212] Incidentally, Article 55(d) of the Chicago Convention permits the Council of ICAO to "study any matters affecting the organization and operation of international air transport including international ownership and operation of international air services on trunk routes, and submit to the Assembly plans in relation therto".

administrative problems involved in determining the manner in which the provisions of the Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies" and to do that promptly and in accordance with its normal procedures. Pursuant to this Resolution, the Council of the International Civil Aviation Organization referred the matter to the Air Transport Committee, which carried on its study at leisure since there appeared to be no agencies at that time which required the intervention of a determination of the Council under Article 77. However, on November 15, 1956, the Air Transport Committee, after considerable discussion, reported to the Council[213] and recommended that the matter be referred to the Legal Committee for certain advice.

At the commencement of its deliberations the Air Transport Committee was advised by the Chief of the Legal Bureau of the International Civil Aviation Organization's Secretariat that the last sentence of Article 77 could be only construed as referring to the provisions of Chapter III of the Chicago Convention

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[213]ICAO DOC. C-WP/2284 (15.11.56).

entitled "Nationality of Aircraft".[214] This view was supported by some members within the Air Transport Committee, while others rightly opposed it, apparently on the ground that there are other provisions of the Convention, e.g., Article 12, whose application depends on the nationality of aircraft,[215] in other words, they could be considered as "provisions of this Convention relating to nationality of aircraft".[216]

It will be appreciated that this question is of immense importance. The scope of the Council's determination as to the manner in which the "provisions of this Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies" depends on whether this phrase between quotation marks is given a narrow interpretation or a wide one. The effect of a narrow interpretation --

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[214] Professor Richardson also maintains this view. Jack E. Richardson, supra note 33, pp. 222-223.

[215] In fact, as indicated in Part I, there are many provisions of the Chicago Convention conferring rights and privileges on aircraft having the nationality of a contracting state while others impose obligations and functions on the state of nationality of the aircraft with respect to that aircraft. There is no doubt that such provisions relate to nationality of aircraft.

[216] Emphasis supplied. ICAO DOC., supra note 213, p. 3 (para. 2).

that the above phrase refers to Chapter III only -- would be such that the Council would be enabled, in reaching its determination, to conclude that without amending the Convention only normal national registration is permissible for the aircraft belonging to international operating agencies under Article 77. On the other hand, under a wider interpretation it would be assumed that the Convention actually gives power to the Council to determine the manner in which the relevant provisions of the Convention apply to the aircraft belonging to international operating agencies, in case such aircraft are registered on other than a national basis.[217]

Both interpretations and their effects were subjected to a lengthy discussion in the Report of the Air Transport Committee. With respect to the possibilities under the broader interpretation -- that the provisions relating to the nationality of aircraft are not limited to Chapter III -- the Air Transport Committee arrived at certain conclusions. We intend below to describe these conclusions together with tendering any necessary comments:

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[217]Ibid., p. 6 (Para. 8).

> (i) That an international operating agency cannot itself be charged with the responsibilities of a Contracting State under the Convention in reference to its operations, and could not, therefore, become the registration authority for its own aircraft.

Though it is true that an international operating agency cannot function as a state, it is possible to render its constituent members by some device jointly and severally liable for any obligations under the Chicago Convention. This possibility seems to have been ignored by the Air Transport Committee.

> (ii) That for similar reasons the International Air Transport Association could not be charged with the registration of aircraft.

> (iii) That neither ICAO nor any other existing organization could appropriately be charged with the responsibilities falling on Contracting States as States of registry.

With respect to the question of registration, it may be noted here that nothing in the Convention bars such an arrangement where the aircraft of an international operating agency is registered with the International Civil Aviation Organization. On the contrary, this, together with some other guarantees, may assure third parties that the states constituting the international operating agency intend genuinely to discharge their obligations under the Convention with respect to the aircraft of the agency.

> (iv) That, even were it found possible, no effective purpose would be served by two or more Contracting States that have set up an international operating agency, establishing a joint registration authority and arranging for aircraft to bear the joint nationality of the participating states.

We cannot help feeling, however, that in reaching such a conclusion the Air Transport Committee was influenced by the fact that at the time it reported there were only two transnational airlines in the world and they were registering their aircraft nationally. These airlines were Tasman Empire Airways incorporated in New Zealand and operating New Zealand registered aircraft[218] and SAS, which was discussed in Part II of this study. There was, therefore, no real need for a determination under the last sentence of Article 77 allowing registration of aircraft on other than a national basis.

> (v) That, while there was divided opinion on the legal interpretation of Article 77 in relation to Chapter III and other relevant provisions of the Convention, the conclusion that no practical purpose would be served by any kind of international registration . . . made it unnecessary to secure an authoritative interpretation of the Convention on this point.

This paragraph is of course self explanatory.

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[218] A. I. Imam, supra note 83, pp. 32-33.

(vi) That if a policy of permissive international registration were to be adopted by the Organization, no pronounced practical difficulties would arise in the implementation, in relation to internationally registered aircraft, of those provisions of the Convention which confer privileges on the aircraft of other Contracting States or ensure equality of treatment of the aircraft of all Contracting States or which impose obligations directly on the aircraft of other Contracting States.

(vii) That the practical difficulty of compliance with those Articles of the Convention which impose an obligation on the State of registry of aircraft operated internationally, if aircraft were internationally registered, would be such that those obligations would have to be undertaken by one or more of the Contracting States constituting the international operating agency and through the medium of their own national legal administration and technical machinery.

As will be seen, this practical difficulty was solved later by the Resolution passed by the Council of the International Civil Aviation Organization in 1967.

(viii) That the last sentence of Article 77 of the Convention appeared to contemplate the possibility of an international operating agency involving many if not all States, and there appears no practical prospect of such an organization coming into existence in the foreseeable future. The only international operating agencies so far instituted comprise no more than three states, and it appears probable that any developments in this direction will be of the same nature. In spite of the fact that the majority of national laws restrict registration of aircraft to those owned by nationals of the state, the only practical solution seen by the Committee for the registration of aircraft owned by such an international operating agency is national registration of the aircraft under the

> laws of one or other of the participating states. No objection in principle should be raised by the states participating in such a joint international operation to modifying their laws of registration to the extent required for this purpose.

Such a solution as suggested by the Committee may not, as explained in Part II, appeal to all the states wishing to form a transnational airline. Thus, in the case of Air Afrique, for example, the states members of the airline, for one reason or the other, were inclined to register their aircraft non-nationally rather than nationally. The case being so, it is submitted that the only relevant questions would be whether registration of aircraft other than on a national basis is permissible under Article 77 of the Chicago Convention and if so how to bring the aircraft so registered within the application of the rules of that Convention containing rights and obligations relating to aircraft.

> (ix) That for the reasons given no practical purpose would be served by pursuing at this time the investigation of the alternative possibility of international registration of aircraft.

Indeed, since there was no practical need for registration on other than a national basis at the time the Committee reported it would be difficult to blame the Committee for any failure to face up to the

problem.

> (x) Finally, that such economic problems as may be caused by international ownership and operation do not arise from the application of the Convention in relation to the nationality of aircraft.

The Council of the International Civil Aviation Organization considered the Report of the Air Transport Committee and took no action other than referring the study, in accordance with the Committee's recommendations, to the Legal Committee of the Organization for certain advice.[219] Again, since there appeared to be no urgent need for a study in the Legal Committee, the subject was shelved in the inactive part of the work programme of that Committee.[220]

(1) Request from the League of Arab States and the Study by the Panel of Experts (1960).

The subject of registration of aircraft on other than a national basis was not, however, to remain so long in the shelves of the Legal Committee, for in

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[219] ICAO DOC., Supra Note 213: ICAO DOC. 7763-C/896, Action of the Council, 29th Session, 24.

[220] ICAO DOC. 7921-LC/143-1, Legal Committee, 11th Session, Vol. 1, Minutes (ix), 145.

December 1959[221] and January 1960,[222] it was brought again to life when the Council of the International Civil Aviation Organization received the first request that it make its determination on a specific project. Thus the Council received information from the Arab League, which contemplated the establishment of a Pan-Arab Airline.[223] The Arab League requested the International Civil Aviation Organization to put into operation the last sentence of Article 77, which provides that the Council of the international organization shall determine the manner in which the provisions of the Chicago Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies, and inquired about

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[221] ICAO DOC., C-WP/3091 (24.2.60), Appendix 71.

[222] Ibid., Appendix 3.

[223] 13 Arab States were originally expected to be founders of the Line. See the preamble of the Agreement for the Establishment of the International Arab Airways Corporation. For the nature of the airline see the memorandum presented by the representative of the U.A.R. in this concern -- ICAO DOC. LC/SC Article 77/ Working Draft No. 10 (9.1.67). It is noteworthy here that Imam concludes from some discussions of Cairo and Beirut Conferences that "unless it acquires the nationality of a state and becomes subject solely to its municipal law" the Pan Arab Airline "may well evolve as a true international Company". A. I. Imam, Supra note 83, p. 131.

"the extent of obligations of the Arab States participating in the said enterprise towards states into whose territory the aircraft of the intended line would operate". The League also requested implicitly that the Council determine the "international nationality marks" that the aircraft would bear.[224]

It was envisaged that the membership of the proposed airline would be open to all Arab countries, whether or not they were members of the Arab League or the International Civil Aviation Organization.[225] The aircraft of the Pan-Arab Airline would be registered either with the airline's head office or with the Arab League.[226]

In pursuance of the issues raised by the Arab League, the International Civil Aviation Organization's Council decided that the detailed study of the problems that would have to be considered in making a determination and giving the advice requested by the Arab League should be entrusted to a Panel of

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[224]ICAO DOC. 8124-C/928.

[225]At that time (1960) Saudi Arabia was not a party to the Chicago Convention, but has become such, since having deposited its instrument of adherence on February 19, 1962.

[226]Thus another group of states clearly wished to register their aircraft on other than a national basis.

Experts. Hence, a Panel of Experts was appointed by the Council and it met in Montreal from June 23-30, 1960; on June 30 it reported to the Council.[227]

The terms of reference of the Panel were the following:

> (i) To advise the Council on the interpretation and application of the last sentence of Article 77 of the Chicago Convention indicating, and suggesting solutions for, the problems involved.
>
> (ii) To prepare a draft "determination" by the Council pursuant to the last sentence of Article 77 of the Convention.
>
> (iii) To advise as to the extent of obligations of the states participating in an international operating agency towards other states into whose territory the aircraft of that agency will operate.
>
> (iv) To make any other observations or recommendations the Panel might consider appropriate.[228]

From the evidence available it seems that the Panel tried to dig deep into the matter, reading more than twenty kinds of documents with varying material. This is further indicated by the discussions of the Panel on the question, as is shown by its Report. However, the outcome of these efforts did not prove

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[227] ICAO DOC. C-WP/3186, p. 1.

[228] ICAO DOC., supra note 174, p. 1.

to be equally satisfactory, for the Panel's Report contained nothing new or useful. This appears to be the reason why the Council, upon receiving the Report, failed to make a determination as required by Article 77 of the Convention. As will be emphasized later, the Panel did not follow a liberal approach in dealing with the matter -- just the approach that can be reconciled with the implications of Article 77 -- that the question of nationality and registration of the aircraft belonging to international operating agencies required a flexible application of the principles of the Chicago Convention. It is therefore no wonder that the Panel could see no solution to the problem at issue.

Regarding the results of the study made by the Panel, first of all the Panel, following an observation made by it that the Chicago Convention does not explain the meaning of an "international operating agency" as mentioned therein, defined such agency as one composed of only contracting states of the Chicago Convention[229] and which "has an international character and is not constituted under the

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[229]Ibid., p. 2 (para. 7).

national law of any particular state".[230]

It is agreed with the Panel that the members constituting an international operating agency under Article 77 of the Chicago Convention must all be parties to the Chicago Convention, otherwise it would not be easy to see how to render them bound by the obligations thereunder.[231]

Again, the Panel rightly concluded that an international operating agency, contrary to a suggestion[232] based on the legislative history of Article 77, need not be constituted only by contiguous

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[230]According to the Panel this must hold true or else the agency would not be distinguishable from any airline company constituted under such law, and its aircraft could, and normally would, be registered thereunder. Ibid.

[231]In this connection it may be mentioned that the representative of Spain in the ICAO Council opposed this view when the Council was discussing the Panel's Report, on the ground that Article 79 of the Convention implicitly recognizes the possibility of the participation of non-contracting states in joint operating organizations, since the adjective "contracting" usually found in the Convention before the word "state" was omitted in the opening statement of that Article. Also it may be useful for the purposes of comparison to record here that an opinion was expressed in the Report of the Air Transport Committee that while participation of contracting states with non-contracting states in an international operating agency does not appear to have been contemplated under Article 77 of the Chicago Convention, there is no specific provision in the Convention against such an arrangement, so long as aircraft are registered in a contracting state.

[232]The suggestion was made by The United States member of the Panel of Experts. See ICAO DOC. PE-77/WD No. 9, p. 6 (Para. 4).

states for operating air services between their territories. Obviously, the practice nowadays supports this conclusion. The composition of Air Afrique stands as a vivid example in this concern.

With regard to the above conclusions of the Panel, the Council in its reply to the Arab League only confirmed the first one whose effect would be that an international operating agency, constituted partly by contracting states and partly by non-contracting states, would fall outside Article 77 of the Chicago Convention.

Respecting the meaning of the phrase "provisions of this Convention relating to nationality of aircraft", the Panel was rightly of the opinion, as explained earlier,[233] that this phrase should be interpreted as referring to all articles of the Convention which either refer expressly to "nationality of aircraft" or imply it by the use of such expressions as "aircraft of a contracting state" or "the state in which an aircraft is registered".[234]

Thus, the duty of the Council under Article 77 is to determine the manner in which all such

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[233] See for example footnote No. 215.

[234] ICAO DOC. LC/SC. Article 77/Report (24.7.65), p. 3 (para. 8).

provisions apply to the aircraft of an international operating agency.

In the Report of the Air Transport Committee of 1956 a view expressed by the International Civil Aviation Organization's Legal Bureau with regard to the legal status and the scope of the determination to be made by the Council under the last sentence of Article 77 was recorded. This view, which is apparently a cautious one, was specifically that there is not sufficient justification to consider that such a determination is legally binding on contracting states, as are the provisions of the Convention itself.[235] In 1960 the Legal Bureau of the International Civil Aviation Organization was able to justify an adverse view based inter alia on the ground that the phrase "the Council shall determine" found in that last sentence has a grammatical meaning of the phrase "the Council shall decide" and if the Council's function under Article 77 were merely to "recommend", the drafters could have easily so provided. Again, if we interpret the word "determine" as "recommend", then each contracting state would be rendered able to determine the very issue whose determination the

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[235]ICAO DOC., Supra Note 213, p. 11 (Footnote).

Convention vests in the Council of the Organization alone. The legal view also stressed that the determination under Article 77 is to be binding upon all contracting states to the Chicago Convention. According to the Legal Bureau, the draftsman could have chosen to achieve this result by following the procedure of amending the Convention as available in Article 94, but elected instead to provide for the special procedure embodied in Article 77. Had he chosen the procedure in Article 94, the last sentence of Article 77 would not have been necessary. The Legal Bureau further maintained that the Council's determination under Article 77 will be binding on contracting states, as in the case where it has the power under Article 12 of the Convention to make rules binding on these states with respect to the rules of the air over the high seas.[236]

The Panel of 1960 followed the same reasoning and interpreted the word "determine" mentioned in the last sentence of Article 77 as but denoting "decide".[237] It was also of the view that any decision made by the

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[236]ICAO DOC., PE-77/WD No. 2, pp. 4-5 (para. 5).

[237]ICAO DOC., Supra Note 234, p. 3 (para. 9.1).

Council under Article 77 within the scope of the authority given to it by the same will be legally binding on all contracting states.

Regarding the scope of the Council's determination, the Panel explained that, in deciding on this, regard must be had to the principle of the interpretation of treaties, generally accepted in international law, according to which, if the meaning of a provision in a treaty is ambiguous, that interpretation is to be preferred which is the least onerous for the contracting parties.[238]

However, the Panel seems to have misapplied this principle of interpretation when it concluded, as will be discussed later, that the only lawful manner in which an aircraft operated by an international operating agency may be registered, is by registration in a contracting state. According to the Panel, to hold otherwise, with respect to joint registration, would amount to an interpretation of Article 77 to the effect that the Council can, by a determination, bind states to accept that aircraft without nationality may be operated under the Convention, with the result

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[238]ICAO DOC., Supra Note 288, p. 4. (para. 9.1).

that this interpretation would cast an onerous obligation on the contracting states that are non-members of the international operating agency, which it is not necessary to impose while other less onerous interpretations are possible.

I disagree with this interpretation. The concept of nationality of aircraft, as explained in Part I, is not an end in itself but is rather a means to achieve certain ends. As was once remarked, "in adopting the principle of nationality for an inanimate thing it must, however, be remembered that nationality is not inherent in an aircraft, but a qualification to help solve certain legal problems of international aviation".[239] As indicated in Part I, the concept of nationality under the Chicago Convention is essential mainly for the application of rules of that Convention, the rights and in particular the obligations which attach to the State of registry. The case being so, then should there be adequate guarantees to ensure the compliance by the aircraft of the agency with the obligations under the Convention, similar to those adopted later by the Council of the International Civil

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[239] John Nemeth, "The Nationality of Aircraft", p. 79. Thesis of McGill University, Montreal (1953).

Aviation Organization in 1967, there would be no onerous obligation cast on states not members of the agency by allowing registration of aircraft on other than a national basis.

Again, the rule of restrictive interpretation is no more than a rule of construction to be considered with the other important rules of interpretation. Starke holds that the canons of interpretation may be applied cumulatively by using several rules rather than a single one.[240] Indeed, since the purpose of interpretation is to ascertain the intentions of the drafters of the Chicago Convention, and not to suppress it, then every rule that could aid the achievement of such a purpose should be invoked. In fact, the principle of restrictive interpretation seems to hinder rather than aid interpretation and, as was rightly advocated by Lauterpacht, it should hence be avoided.[241] Also, according to him, this principle is not a general

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[240] J. G. Starke, An Introduction to International Law, 5th ed. (London, 1963), p. 359.

[241] H. Lauterpacht, "Restrictive Interpretation and the Principle of Effectiveness in the Interpretation of Treaties," 26 B.Y.I.L. (1949), pp. 48-85, p. 84.

principle of jurisprudence, nor has it received any substantial support from international tribunals on construing treaties. Lauterpacht further explains that, on the other hand, the principle of effectiveness, which arrives at the intention of the parties by employing a liberal interpretation with a view to give effect to that intention, is a general principle of law and has gained support in the decisions of both municipal and international tribunals. Thus in Nielsen v. Johnson[242] the Supreme Court of the United States held that "when a treaty provision fairly admits of two constructions, one restricting, the other enlarging rights which may be claimed under it, the more liberal interpretation is to be preferred". According to this case, the practice of international tribunals has been the avoidance of the principle of restrictive interpretation unless and until all other principles entirely fail to give a result.

In the case of Article 77, it is our opinion that this provision is clear enough not to call for any application of the principle of restrictive interpretation. The words of the concerned last sentence are mandatory: "the Council shall determine", and it

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[242](1929) 279 U.S. 41, pp. 51-2.

is clear that these words impose an obligation upon the Council to make the required determination. The primary rule of interpretation of treaties is that of grammatical construction according to which the Tribunal seeks the plain meaning of the words and phrases, unless, of course, such construction will result in a clear absurdity or marked inconsistency with the other provisions of the treaty, which is not true in the present case.[243]

It is also clear that the drafters of Article 77 of the Chicago Convention were envisaging something other than national registration in connection with the difficulty of applying the provisions of the Convention relating to nationality to aircraft of international operating agencies, or else there would have been no need at all for the insertion of the last sentence of that article, since national registration does not cause such a difficulty. In the famous North Atlantic Fisheries Arbitration,[244] the Tribunal declared that "the words in a document would not be considered as being without any meaning if there is not specific

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[243]J. G. Starke, Supra Note 240.

[244]Hague Court Reports (1st Ser. 1916) 141, p. 186.

evidence to that purpose".[245]

Also, with respect to the Panel's view, it will be noted that though the Panel concluded that a decision made by the Council under Article 77 will be binding on contracting states if it is made within the scope of the authority given to the Council thereunder, this conclusion was deprived of most of its effect when the Panel also considered that the only permissible registration under Article 77 is registration on a national basis. Thus, according to the Panel, a decision by the Council can only be made within this limit.

Regarding the details of the Panel's views on legality and feasibility of registration of aircraft on other than a national basis - firstly, the Panel concluded that an international operating agency and its property will possess an international character and would not normally be subject to the sovereignty and

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[245] In this respect, Professor Richardson supports an argument made by Professor Cooper that if the Council passes a determination in line with Article 18 of the Tokyo Convention, this would retain the effectiveness of the last sentence of Article 77. Richardson, supra note 33, p. 216. It is interesting to note, however, that Article 18 itself contemplated non-national registration of aircraft.

laws of any particular state including laws relating to registration of aircraft.[246]

However, when commenting on the position of SAS (the Scandinavian Airlines System) where the aircraft of the Consortium are registered in one or another of the states constituting the Consortium, the Panel suggested that if an international operating agency had its aircraft registered in its component states, as is in the case of SAS, no problem would arise under the Chicago Convention![247]

Though such a solution would be possible, it was clear to the Panel, however, that some states, forming transnational airlines, were not inclined to follow it. Instead, they preferred a system of non-national registration of aircraft. The question was therefore whether a system of registration of aircraft on other than a national basis could be permissible under the last sentence of Article 77, and thus it would have been more appropriate if the Panel confined its study to this question. As mentioned earlier, that

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[246]ICAO DOC., Supra Note 228, p. 4 (para. 10).

[247]Ibid., (para. 11).

last sentence clearly envisages such registration of aircraft or else no difficulty would have been conceived with regard to the application of the provisions of the Chicago Convention relating to nationality to aircraft of international operating agencies.

For all the above reasons, we fail to agree with the conclusion reached by the majority of the Panel that "the only lawful manner in which an aircraft operated by an international operating agency may be registered is by registration in a contracting state", with the result that a determination by the Council under Article 77 would not normally be required. The majority of the panel rejected international registration, either with the international operating agency itself or with an international organization authorized by its constituent instrument to register aircraft, because in their view, such registration "would have the effect of substituting the obligations and undertakings of an international operating agency or an international registering authority for those of a sovereign contracting state", insofar as the obligations which the Convention attaches to the state of registry of an aircraft are

concerned.[248] The position being so, the Panel ignored giving its opinion on some of the questions which were subjects of discussion before it. For instance it did not take a decision as to the question whether it would be practicable for the international registering body to carry out the various obligations discharged normally by the state of registration, not only under the Chicago Convention but also under the various Annexes thereto and under the multifarious national rules and regulations relating to the operation of aircraft. Again, it omitted to give its opinion on the legality of registration with an international body having regard to the principles of general international law, particularly in relation to the legal obligations, if any, of the registering state in respect of criminal offences taking place on board the aircraft and in relation to civil law problems arising out of acts and events on board, and the provisions of international agreements other than the Chicago Convention related to international civil aviation.

The majority of the Panel even rejected joint registration of aircraft on the ground that "the aircraft in question would have no nationality". In

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[248] ICAO DOC., Supra Note 228, p. 4 (para. 12).

this connection it may be useful to point out that it was suggested to the Panel that the states forming the international operating agency arrange that the aircraft jointly owned by them and to be operated by the agency will be entered on a register maintained and established jointly by them and that one of these states will extend the application of its aeronautical laws applying to its national aircraft, to the aircraft of the agency. In rejecting this suggestion, the Panel thought that the fundamental principle that an aircraft must have a nationality applies whether or not such an aircraft is operated by an international operating agency and hence the power of the Council under the last sentence of Article 77 does not exceed determining the manner in which the provisions of the Convention relating to the nationality of aircraft[249] apply to an international operating agency. The power of the Council does not extend to authorizing operation under the Convention of an aircraft without

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[249]Emphasis may be laid here on the fact that the Convention in Article 77 does not speak of nationality provisions as such but of provisions of the Convention relating to nationality.

nationality.[250]

In the above regard, it is submitted that the last sentence of Article 77 implies that the case of an international operating agency is a special one. This seems to be the reason why the authors of the Chicago Convention authorized the Council to deal with it specifically. Since the aircraft of the agency must be registered in accordance with the spirit of the Chicago Convention and since registration on a national basis would not create a problem of the kind

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[250] Incidentally, there were some instances in which the United Nations owned and operated aircraft without nationality or registration in any state and only with the United Nations markings, e.g., an aircraft which rendered services to its Commission in Korea in 1954, though due to the emergency situation at that time, this incident was not considered as a precedent by the Legal Office of the United Nations. See ICAO DOC. PE-77/WD No. 3, Addendum (30.5.60), p. 1. Again in 1960-63 the United Nations operated certain aircraft in the crisis of the Congo, which aircraft carried distinctive United Nations identification marks and were not registered in any state: Information from the Director of the Legal Division of the United Nations, ICAO DOC. LC/SC Article/77/WD No. 2 (24.2.65), p. 1. However, apart from the question whether these aircraft are military aircraft supplied to U.N. or civil aircraft chartered by them, the United Nations, of course, can neither be considered as a party to the Chicago Convention nor as an international operating agency whose function is to operate air services.

contemplated in the last sentence of Article 77, then something like joint or international registration must have been contemplated by those authors. Thus Professor Mankiewicz has rightly pointed out that "registration of aircraft of an international operating agency on a 'non-national' register has been recognized as a desirable alternative to national registration by the framers of the Chicago Convention and that the last sentence of Article 77 was included for that specific purpose".[251]

The case being thus, the above conclusions arrived at by the Panel of Experts do not really seem to match the extensive efforts it exerted in scrutinizing the problem.

It follows from the view maintained by the Panel that the only lawful manner in which an aircraft operated by an international operating agency may be registered is by registration in a contracting state, that there would be no problems arising in connection with the application of the provisions of the Convention relating to nationality of aircraft to the aircraft of such agency and that no determination of

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[251] R. H. Mankiewicz, "Aircraft Operated by International Operating Agencies," 31 J.A.L.C. (1965), p. 307.

the Council would have to be made. Hence, the Panel found it unnecessary to prepare a draft "determination" by the Council, as required by the second item of its terms of reference.[252]

In pursuance of its opinion that the aircraft of an international operating agency could only be registered nationally, the Panel, in respect of the third item on its terms of reference dealing with the extent of the obligations of states forming the international operating agency, etc., held the view that only the contracting state in which the aircraft of the agency is registered will have obligations, being not different from those of that state in regard to aircraft operated by its nationals.

As regards the last item of the Panel's terms of reference, requiring it to make any other observations or recommendations that it might deem appropriate, the Panel omitted to make any such observations or recommendations.

The fact alone that it follows from the conclusion reached by the Panel that the aircraft of an international operating agency can only be registered nationally, that a "determination" to be

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[252]ICAO DOC., Supra Note 228, p. 7 (para. 1).

made by the Council is rendered unnecessary, stands as evidence of the lack of harmony between the deep study made by the Panel and the conclusions it reached. The Convention specifically obliges the Council to make a determination upon the present question and thus such a conclusion appears to contravene the express letter of the Convention and constitutes but an inconsistency with it.

Hence, when the Council considered the Report of the Panel at its 41st Session (1960) it was unable to endorse the majority views of the Panel and it merely transmitted these views to the Arab League with the comment only that it (i.e. the Council) found it useful to do so.[253]

With respect to the unanimous conclusions of the Panel, the Council, in its reply to the Arab League, also drafted these conclusions as follows, while stressing that they were only its present views:

> a. - a determination made by the Council pursuant to Article 77 of the Chicago Convention will be binding on all Contracting States if the determination is made within the scope of the authority given to the Council by that Article. (Paragraph 9 of the Report).[254]

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[253] Council's letter to the Arab League: Letter No. EC, 2/9.1 dated 15.12.60.

[254] i.e., The Panel's Report.

b. - the expression "provisions of this Convention relating to nationality of aircraft" means not only Articles 17 to 21 but also all other articles of the Convention which either expressly refer to nationality of aircraft or imply it by the use of such expressions as "aircraft of a contracting state" or "the State in which an aircraft is registered". (Paragraph 8 of the Report).

c. - an "international operating agency", if Article 77 of the Chicago Convention is to apply to it, must be an agency constituted only by States parties to the Convention. (Paragraph 7 of the Report).

d. - if the aircraft of an "international operating agency" were registered in a Contracting State, there would, in all probability, be no problems arising with respect to application of the Provisions of the Convention relating to nationality of aircraft. (Paragraph 14 of the Report).

e. - as regards the extent of obligations of states participating in any "international operating agency" towards other states into whose territory the aircraft of an agency will operate, only the Contracting State, referred to in (d) above, in which the aircraft of the agency is registered, will have obligations under the Chicago Convention and these will be no different from the obligations of that State with respect to aircraft operated by its national airline. It is to be understood in this connection that the obligations referred to are only those arising under the Chicago Convention, and not, for example, any under bilateral agreements which might be made by the States composing the agency with other States into whose territory the aircraft of the agency will operate. (Paragraph 15 of the Report).

The League of Arab States was also told that the precedent of the Scandinavian Airlines System (SAS)

would satisfy it!! and the nationality marks would be those of the contracting state in which the aircraft of the agency are registered. If the League of Arab States desired that the aircraft should, in addition, carry an insignia determined by the League, the aircraft could carry such insignia in addition to the registration and nationality marks of the state in which they are registered.

It is significant to note that the Council omitted to express clear views on two highly important points in the Panel's Report. It did not clarify the position as regards the point raised by the Panel that it is a fundamental principle of the Chicago Convention that aircraft must have a nationality whether or not they are operated by an international operating agency. Similarly it did not clearly deal with the other point raised by the Panel that it would not be lawful for the aircraft of an international operating agency to be registered either with the agency itself or with an international organization, for that would mean substituting the obligations and undertakings of such an agency or such an organization in place of those which, under the Convention, rest on a sovereign contracting state in respect of the aircraft registered

with it.

Instead, the Letter containing the reply of the Council was drafted in such a way as to avoid committing the Council on these issues,[255] and in order to achieve that end, the Council appeared to invoke, mainly, its conclusion that an international operating agency, to which Article 77 of the Chicago Convention applies, must be composed only of contracting states to the Convention, the Pan-Arab Airline not being so at the time. This seems to be an attempt to get around a delicate problem rather than solve it.

However, the Council also referred to the Legal Committee of the International Civil Aviation Organization the question of "Problems of Nationality and Registration of Aircraft Operated by International Operating Agencies".[256]

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[255] "The report of the Panel and the letter approved by the Council were drafted so as to avoid the necessity of determining the case of the proposed Pan-Arab Airline." Underlining supplied. G. F. FitzGerald, supra note 10, p. 198.

[256] ICAO DOC., Supra Note 234, p. 2 (para. 3).

(3) Requests from the Union Africaine et Malgache and the United Arab Republic and Recommendations of the Legal Sub-Committee of ICAO.

In 1962 the Legal Commission of the Fourteenth Session of the International Civil Aviation Organization's Assembly recommended that the subject of the problems of nationality and registration of aircraft operated by international operating agencies be placed in the active part of the work programme of the Legal Committee,[257] and in its Report submitted to the Assembly, stated that it desired it to be recorded that if the Council received a request concerning the legal aspects of that subject, it should transmit the request to the Chairman of the Legal Committee, who should appoint a sub-committee to study the matter and report thereon to the Legal Committee.

On the basis of the above, the Union Africaine et Malgache de Coopération Economique, acting on behalf of Air Afrique, made its request of 1964 to the International Civil Aviation Organization to have a study made of the problems relating to nationality and registration of aircraft of international operating

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[257] ICAO DOC. 8279, A 14 - LE/11, Assembly 14th Session, Report and Minutes of the Legal Commission, 7.

agencies.[258]

Again, in the same year 1964, the representative of the Government of the United Arab Republic on the Council of the International Civil Aviation Organization made the same request,[259] apparently to revive the issue raised earlier by the Arab League. The Council did as was requested and asked the Chairman of the Legal Committee to appoint a sub-committee to study and report on the matter, which he did. It was obvious that the problem created by the establishment of trans-national airlines intending to register their aircraft non-nationally should be settled with particular reference to the question as to on whom shall rest the responsibility that the aircraft in question comply with the provisions of the Convention. Thus the appointed sub-committee, which held two sessions, concluded from the beginning of its work that its task was to give advice to the Council, through the Legal Committee, as to the manner in which, in pursuance of the last sentence of Article 77 of the Chicago Convention, the provisions of that Convention relating to nationality of aircraft should apply to

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[258]ICAO DOCS. C-WP/4115; and 8470-C/955, Action of the Council, 53rd Session, 19.

[259]Ibid.

the aircraft of international operating agencies.

Before examining the outcome of the discussions of the Sub-Committee, it may be worthwhile to refer to an event which preceded these discussions and which may be considered to have influenced them.

In 1963, the Tokyo Conference on Air Law included in the Convention on Offences and Certain other Acts Committed on Board Aircraft a provision concerning aircraft not registered in any one state and operated by joint air transport operating organizations or international operating agencies. The relevant provision of this Convention, which is Article 18, reads as follows:

> If contracting states establish joint air transport operating organizations or international operating agencies, <u>which operate aircraft not registered in any one state</u>, these states shall, according to the circumstances of the case, designate the state among them which, for the purposes of this Convention, shall be considered as the state of registration and shall give notice thereof to the International Civil Aviation Organization which shall communicate the notice to all states parties to this Convention.[260]

This was an acknowledgement on the part of the Tokyo Convention that there could be civil aircraft

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[260]Underlining supplied.

registered on other than a national basis.[261] It is also to be noted that a similar provision was included in a draft Convention on Aerial Collisions drawn up by the International Civil Aviation Organization's Legal Committee in 1964.[262]

Thus when the Sub-Committee met in July 1965, it did so amid a new climate of opinion where a move had previously been made toward the recognition of registration on other than a national basis. Perhaps inspired by this climate, a Report of that Sub-Committee published in January 1967[263] this time looked at the question in a manner quite different from that in which the Air Transport Committee and Panel of Experts viewed it. This Report contemplated that civil aircraft operated by international operating agencies may be registered other than on a national basis. It also contemplated that if these aircraft are registered on other than a national basis, they would not have nationality. The following are the leading questions discussed in the Sub-Committee:

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[261] See also G. F. FitzGerald, supra note 10, p. 199.

[262] ICAO DOC. 8582-LC/153-1, Legal Committee, 15th Session, Montreal, September 1-19, 1964, Vol. 1 Minutes (XXVII) - (XXXIII).

[263] ICAO DOC. LC/SC Art. 77/Report (7.2.67).

(i) Agency of Mixed Composition:

In its first session, the Sub-Committee, in an approach unlike that of the Panel, took as a working hypothesis the constitution of an international operating agency by states parties to the Chicago Convention, leaving open for later consideration the problem of an agency composed of a combination of both contracting and non-contracting states.[264] In its second session (1967), the Sub-Committee reached the conclusion that a contracting state not a member of the international operating agency could refuse a non-member of the Chicago Convention which is a member of the agency the benefits and privileges conferred by that Convention only on an aircraft of a contracting state, with the result that such a non-member of the Convention cannot benefit from a determination made by the Council under Article 77. The ground for this conclusion was that any such benefit would be in derogation of the well-known legal principle that a state not a party to a treaty could have no claim to benefit from its provisions.

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[264] ICAO DOC., Supra Note 234, p. 3 (Para. 5.3).

(ii) The Provisions of the Chicago Convention relating to Nationality of Aircraft:

Like the Panel of 1960, the Sub-Committee unanimously interpreted these provisions as including not only Articles 17 to 21 of the Convention, which appear in Chapter III thereof entitled "Nationality of Aircraft", but generally all Articles of the Convention which either expressly refer to nationality of aircraft or imply it.

(iii) Effect of the Determination:

The Sub-Committee also unanimously reaffirmed the conclusion reached by the Panel of 1960 that a determination made by the Council pursuant to Article 77 of the Chicago Convention will be binding on all contracting states if it is made within the scope of the authority given to the Council by that Article. It is noted here that the Sub-Committee, unlike the Panel, retained the force of this conclusion when at the same time it held, as shown earlier, that the registration of aircraft on other than a national basis is permissible under Article 77 of the Convention.

(iv) Scope of the Determination:

In 1965 a majority of the Sub-Committee reached the conclusion that, without prior amendment to the Convention, the provisions thereof do not constitute an obstacle to the principle of "joint international registration" and that Article 77 imposes upon the Council the duty and hence empowers it to interpret the provisions of the Convention so as to effect such registration, mainly because otherwise the last sentence of Article 77 would be deprived of any meaning. The minority view in the Sub-Committee was that the Convention was based on the principle of national registration and thus "joint international registration" cannot be permitted under the Convention unless it is amended.[265] However, this minority later joined the rest of the Sub-Committee in its opinion.

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[265] A group in the Air Law Committee of the International Law Association in a Report presented to the Helsinki Conference of 1966 shared this view. See: International Law Association - Helsinki Conference (1966) - Air Law Committee - Report on Nationality and Registration of Aircraft with Special Reference to Article 77 of the 1944 Chicago Convention on International Civil Aviation, 41 pp.; and International Law Association - Helsinki Conference (1966) - Air Law, Draft Minutes of Meeting held on August 16, 1966.

The Sub-Committee was convinced of the importance of promoting international co-operation in air transport, as envisaged in Articles 77, 78 and 79 of the Convention and that it is important in this connection that the aircraft of an international operating agency should be jointly or internationally registered, since that "would afford a practical means of attaining the objective of such international co-operation".[266] It was felt that the studies of Article 77 made previously by the Air Transport Committee and the Panel of Experts "failed to do justice to either the importance of international co-operation or the importance of joint or international registration of aircraft". The Report describes these studies as based, inter alia, on the wrong hypothesis: "that, even were it found possible, no effective purpose would be served by two or more contracting states that have set up an international operating agency, establishing a joint registration authority and

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[266] ICAO DOC., Supra Note 263, pp. 13-16 (Appendix B). Assuming that this conclusion of the Sub-Committee contemplates only non-national registration for aircraft of an international operating agency, such conclusion would be ignoring the fact that at least two transnational airlines, Air Afrique and EAA have been operating aircraft registered on national registers for a considerable time without their non-national status being questioned.

arranging for aircraft to bear the joint nationality of the participating states". In this respect, the Sub-Committee also denounced the other relevant hypothesis of the Panel of Experts that a "determination" would not be required if the aircraft of an international operating agency were registered nationally. As was rightly concluded by the Sub-Committee, such a hypothesis "would serve only to evade, not solve, the problem of the application of the last sentence of Article 77".[267]

According to the conclusions of the Sub-Committee, an international operating agency is not constituted under national law but under a treaty between states.

> Its properties, including its aircraft, being owned by more than one state, the entire concern, including the aircraft, would have an international, as distinct from a national character. If such aircraft were registered in one particular state and were to have one particular nationality under Article 17 of the Chicago Convention, then that would be inconsistent with their international character.[268]

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[267] It would also ignore the existence or proposed creation of transnational airlines wishing to register their aircraft on other than a national basis.

[268] As submitted earlier in Part II, the difficulty contemplated by the last sentence of Article 77 with respect to the application of the provisions of the Chicago Convention relating to nationality of aircraft, pertains to the case where the aircraft of a transnational airline are to be registered on other than a national basis rather than to the nature of the transnational airline itself.

The Sub-Committee proceeded in its conclusions to point out that the Tokyo Convention of 1963 provided for the case of aircraft, operated by international operating agencies, which are "not registered in any one state" and that since the provisions of the Chicago Convention relating to nationality of aircraft would not apply literally to such aircraft then Article 77 is intended to enable the Council to determine the manner in which these provisions will apply to such an exceptional case.[269] Thus the above reasoning shows that it would not only be consistent with, but also would be within the scope of, the last sentence of Article 77 that the aircraft of an international operating agency could be registered other than on a national basis. According to its Report, the Sub-Committee, during its 1965 session, examined in detail each and every one of the provisions of the Convention which expressly or by implication refer to nationality of aircraft. For instance, the Sub-Committee

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[269]This may answer the arguments of Professor Richardson in respect of what he described as an omission of the Legal Committee to consider the history of the concept of nationality of aircraft which emphasises the fact that aircraft must have nationality and be registered in a state. Jack E. Richardson, supra note 33, pp. 216-220.

examined Article 17 of the Convention providing that "aircraft have the nationality of the state in which they are registered" and found that it is "entirely consistent with this provision to say that the Convention does not require that aircraft must be registered in a state". If they are not registered in a state then "they will not correspondingly have the nationality of a state". Though registration in more than one state at the same time was prohibited by Article 18, a joint registration of aircraft will not involve violation of that Article, since it will be one single registration by two or more states. Similarly, "international registration" of an aircraft will not entail more than one registration. The Sub-Committee further emphasized that the object of Article 18 is only to prevent multiple registration, which is definitely not the same thing as joint registration. The thorough examination of the Articles of the Convention showed the Sub-Committee that none of them would conflict with joint or "international registration" and hence there would be no need for amending the Convention.

During the deliberations of the Sub-Committee in its first session (1965), the representative of the

United Kingdom (Mr. Salmon) expressed the view that neither an international operating agency nor the international registering authority established by the states composing the agency should have the privileges and immunities of a state or international organization under the Chicago Convention. Again, with reference to the question of "joint international registration", he argued that it was unlikely that the authors of the Chicago Convention had intended that the Council "by a bare majority of 14 states, should have the power to bind the 96 other contracting states to accept such important alterations to the provisions of the Convention".[270] He also suggested that if the Council made a determination permitting "international registration", a difficult situation might arise should some of the contracting parties to the Chicago Convention refuse to abide by the Council's decision. According to him, if this happened, the whole matter would become contentious, and practical measures of co-operation might be further delayed, and it was possible, therefore, that even if the Council took the view that it had the legal power, it might be reluctant to exercise it.[271]

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[270] Underlining supplied.

[271] ICAO DOC., Supra Note 263, p. 6.

In reply to him, the majority of the Sub-Committee explained that the last sentence of Article 77 clearly and specifically required the Council to make a "determination", and that such a determination would be binding on contracting states. In the opinion of the majority it was inadmissible to say that the Council could not do what Article 77 required it to do. Reference was made here to the equal power of the Council under Article 12 of the Convention to make rules of the air to apply over the high seas which would be binding, without exception, on all contracting states of the Chicago Convention.[272]

Regarding the question of the required majority, the Representative of the Congo (Brazzaville) rightly observed that, while the Chicago Convention specified a

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[272]Professor Richardson also argues that a determination by the Council allowing non-national registration would "not only render inapplicable a carefully prescribed system of national registration but will substitute for all the provisions of the Convention specifying the rights and obligations attaching to a state of registration by force of the Convention itself a code of rights and obligations determined by a decision of the Council and resting only upon the decision. This is to say that the obligations attaching to aircraft operated by an international operating agency are of a different order from those applicable to aircraft operated by a single contracting state. The failure to observe them involves no breach of treaty." Jack E. Richardson, supra note 33, p. 221. [Underlining supplied].

special majority in certain cases, e.g. for the amendment of the Convention or adoption of an Annex thereto, no special majority is specified for a determination by the Council under Article 77 of the Chicago Convention, and hence only a simple majority, in accordance with Article 52 of the same, is required. He added that many of the other functions of the Council were at least of equal importance to that of making a "determination", yet the decisions relating to them did not require a special majority.

According to the majority view, the duty of the Council under Article 77 was to render applicable to aircraft of international operating agencies,[273] by any suitable adaptations, the provisions of the convention relating to nationality of aircraft. Should the Council go beyond this scope of authority, it would be acting ultra vires its functions.

Since the Chicago Convention had itself permitted the formation of international operating agencies to perform functions which would otherwise be performed by their constituent states, then, in

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[273] It may be more appropriate, as submitted earlier, if reference here was made to "aircraft of international operating agencies" to be registered on other than a national basis.

the case that these agencies register their aircraft non-nationally, it would be fair and reasonable to say that the agencies would still enjoy under the Chicago Convention the same privileges and immunities allowed to their member states, i.e., they would be put in the shoes of those states. However, for the same reason of equality, it cannot be claimed that such agencies could, under the Convention, possess rights and privileges more than those enjoyed under it by nationally registered aircraft and thus no "determination" by the Council could have the effect of giving the aircraft of these agencies such a special advantage.

In 1965 it was proposed in the Sub-Committee by the representatives of the Congo (Brazzaville) and Senegal (supported by several delegations) that the Sub-Committee include in its Report the suggestion that the "determination" by the Council should have sufficient effect for the "international registration" in question to be recognized by the contracting parties of the Chicago Convention which are not constituent members of the international operating agency and for the aircraft so registered to have the benefit of rights and privileges granted by the

Convention to aircraft nationally registered. However, while three members of the Sub-Committee opposed this proposal and two abstained from voting,[274] all the members of the Sub-Committee considered that in the eventuality where the decision of the Council included the above proposal, this decision should state that the states constituting the international operating agency shall be jointly and severally bound to assume the obligations which attach to a state of registry under the Convention. There was agreement also that it should include, in such a case, a provision that the operation of the aircraft concerned shall not give rise to any discrimination against aircraft registered in other contracting states. Indeed, such provisions would allay any fears on the part of those states opposing the adoption of the concept of registration of aircraft of international operating agencies on other than a national basis.[275]

When the Sub-Committee held its second session in 1967, it arrived at its consensus the effect of which would be that the last sentence of Article 77 of the Chicago Convention is applicable to cases of joint or

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[274]ICAO DOC., Supra Note 263, p. 5 (para. 14).

[275]See infra note 284.

"international registration", provided only that certain conditions are satisfied.[276]

By joint registration was meant a system under which the states constituting the international operating agency would establish a single non-national register for the registration of aircraft which the agency intended to operate on behalf of the participating states, without there being established, for the purposes of such registration, an international organization with a legal personality.

The scheme of joint registration examined by the Sub-Committee was as follows:

> a. - The states concerned will establish one joint register for registration of aircraft of the operating agency.
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> b. - The joint register may consist of several parts; each part will be maintained by one or another of these states.
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> c. - An aircraft will be registered only once, namely, in that part of the joint register which is maintained by a given state.[277]
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> d. - All aircraft registered in any of the parts of the joint register shall have one common marking, in lieu of a nationality mark.[278]

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[276] ICAO DOC., Supra note 263, p. 2 (para. 4.1).

[277] This coincides with the aim of Article 18 of the Chicago Convention.

[278] The use of a common mark, of course, serves the purposes of identification as is the case where an aircraft is bearing its nationality mark under Article 20 of the Chicago Convention.

> e. - The functions of a State of registration under the Chicago Convention will be performed by the States mentioned in (c) above. Such action will, however, be done on behalf of all the States jointly.
>
> f. - The responsibilities of a State of registration with respect to the various provisions of the Chicago Convention will be the joint and several responsibility of all the States concerned. Any complaint by other Contracting States will be accepted by any of the States mentioned.[279]

Other possible plans for joint registration were mentioned during the discussions of the Sub-Committee, among which was one contemplating that while a joint register would be established by the states concerned, each aircraft of the agency would be simultaneously registered in each of the component states. This scheme was rightly dismissed, for it would be clearly incompatible with the provisions of Article 18 of the Chicago Convention.[280]

On the other hand, the Sub-Committee viewed international registration as denoting cases where the aircraft of an international operating agency would be registered with an internationally constituted body

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[279] This para., together with para. (e) above, are clearly intended to ensure the application of the provisions of the Chicago Convention in the case that an aircraft is jointly registered.

[280] ICAO DOC., supra note 263, pp. 2-3 (paras. 7, 7.1).

with a legal personality. Such a body would be distinct and separate from the agency which would be operating the air services and could be established, for the stated purpose, by the states constituting the international operating agency. Mention was made here of the International Civil Aviation Organization or a body established by the states on the initiative of that Organization. With regard to the case that the International Civil Aviation Organization itself might be the body with which the aircraft would be registered, it was noted that the Chicago Convention does not contain any provision which hampers such a solution, nor is there any specific provision in the Convention stating that the function of registration of aircraft would be performed by the International Civil Aviation Organization. For this latter reason it was thought that at least the approval of the Assembly should be obtained before the International Civil Aviation Organization undertakes to register aircraft.[281]

Now that the terminology used in the consensus reached by the Sub-Committee has been explained, we can dwell on a description of this consensus.

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[281] ICAO DOC., Supra note 263 (paras. 8, 12).

First of all, it was agreed that the Council will not be obliged to recognize every kind of registration of aircraft on a non-national basis. According to the consensus, each individual case of international or joint registration will need to be considered on its own merits in order that the Council will be able to recognize a specific plan involving such registration. In considering any such case, the Council should be guided by certain basic criteria and would not recognize either of those two types of registration unless these criteria are satisfied.[282]

The criteria were as follows:

> a. - The States constituting the international operating agency shall be jointly and severally bound to assume the obligations which, under the Convention, attach to a State of registry.
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> b. - The States constituting the international operating agency shall identify for each aircraft, as between the states constituting the agency, an appropriate state which shall be primarily responsible for receiving and replying to representations made by other Contracting States of the Convention. This identification shall be without prejudice to the joint and several responsibility assumed by each of the participating states in the agency, the duties assumed by the state so identified being exercised on its own behalf and on behalf of all the other participating States.

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[282] ICAO DOC., Supra note 263, p. 5 (para. 12).

> c. - In lieu of (b) above, the states constituting the international operating agency may devise such other system (for example, registration with a public international organization, with legal personality, established for this purpose by the States constituting the international operating agency) as shall satisfy the Council that the other Contracting States of the Convention have equivalent guarantees and that the provisions of the Convention are complied with.
>
> d. - The States constituting the international operating agency shall ensure that their laws, regulations and procedures relating to air navigation meet in a uniform manner the obligations under the Convention and the Annexes thereto.[283]
>
> e. - The operation of the aircraft concerned shall not give rise to any discrimination against aircraft registered in other Contracting States with respect to the provisions of the Convention.[284]

The consensus of the Sub-Legal Committee indeed constitutes a dramatic shift in the attitude

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[283]Though the Sub-Committee concluded that national registration would be inconsistent with the international character of aircraft, it was prepared here to submit the aircraft of an international operating agency to the requirements of national safety laws of particular member states. However, "an international body corporate" may be sometimes subjected to municipal laws. See for example A.I. Imam, supra note 83, p. 165.

[284]ICAO DOC., Supra note 263, p. 6 (para. 16). With regard to para. (e) it is noted that one of the reasons for the initial opposition to the concept of "joint or international registration of aircraft" of international operating agencies was that some states believed that such registration would have the effect

towards registration of aircraft on a non-national basis, the second of its kind after the Tokyo Conference on Air Law of 1963. It will be recalled here that the Air Transport Committee, which first discussed the issue in 1956, thought "that no practical purpose would be served by any kind of international registration", thus taking that issue as a hypothetical problem. Rather similarly, the Panel of Experts in 1960 considered that it was "a fundamental principle of the Chicago Convention that aircraft must have a nationality whether or not they are operated by international operating agencies" and that allowing international registration would mean substituting the obligations of the international registering authority in place of those which under the Chicago Convention rest on a contracting state respecting the aircraft registered with it. While that was the position of the Air Transport committee, and the Panel of Experts, it totally changed with the Sub-Committee, as seen earlier. Thus the Sub-Committee, realizing the practical importance of registration on other than a

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of making the geographical area of the states constituting the agency a cabotage one. See ICAO DOC. 8707-11, C/974-11 (31.1.68) (Para. 27). Thus para. (e) demonstrates the care on the part of the Sub-Committee that this would not be so. In fact it appears that the main purpose of the criteria was to ensure the application of the provisions of the Chicago Convention to aircraft non-nationally registered.

national basis in some cases, and that such registration does not conflict with the provisions of the Chicago Convention, has broad-mindedly dealt with the matter by recognizing the possibility of such registration with respect to the aircraft of the international operating agencies under Article 77 of the Chicago Convention.

When the Legal Committee of the International Civil Aviation Organization met in September 1967 at Paris, it had before it the Report of the Sub-Committee containing its above-mentioned consensus. The Legal Committee unanimously approved the substances of that Report.[285]

Then the Legal Committee made a Report and in October 1967, the International Civil Aviation Organization Secretariat distributed the Committee's Report to the members of the Council of the Organization and suggested that the Council accept its conclusions and pass a resolution in terms envisaged in the Report.[286] In the following part of this study, we intend to review the determination passed by the Council of the Organization on the issue of

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[285]ICAO DOC. 8704-LC/155.

[286]ICAO DOC. C-WP/4680.

registration of the aircraft of international operating agencies on other than a national basis, which issue was subjected, perhaps, to one of the most lively and exhaustive discussions of our time.

PART IV

THE DECISION OF THE COUNCIL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION ON THE PROBLEM:

(i) The Contents of the Decision

At length, on December 14, 1967, the Council of the International Civil Aviation Organization unanimously (with 26 states' representatives present) adopted a Resolution concerning problems of nationality and registration of aircraft operated by international operating agencies.[287] These representatives agreed that without any amendment to the Chicago Convention, the provisions of the Convention can be made applicable by a determination of the Council, under Article 77, to

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[287] ICAO DOC. 8722-C/976 (20.2.68). This took place in the 62nd session of the Council. See ICAO DOC. 8743-C.978 p. 25. The states represented at the session were: India, Australia, Belgium, Canada, United States, Argentina, France, Kenya, Japan, Brazil, United Kingdom, Colombia, Congo (Brazzaville), Costa Rica, Lebanon, Mexico, Malagasy Republic, Tunisia, United Arab Republic, Sweden, Kingdom of the Netherlands, Spain, Nigeria, Italy, Federal Republic of Germany, Philippines and the Czechoslavak Socialist Republic. (The same document 8743 p. 1).

aircraft which are not registered on a national basis. The Resolution indicates that aircraft operated by international operating agencies could be registered, non-nationally, in two ways: joint registration and international registration. These two procedures are defined as follows in the Resolution (Appendix 1):

> For the purpose of this Resolution
> - the expression 'joint registration' indicates that system of registration of aircraft according to which the States constituting an international operating agency would establish a register other than the national register for the joint registration of aircraft to be operated by the agency, and
>
> - the expression 'international registration' denotes the cases where the aircraft to be operated by an international operating agency would be registered not on a national basis but with an international organization[288] having legal personality, whether or not such international organization is composed of the same States as have constituted the international operating agency.

The Council declared that a "determination" made by it within the scope of Article 77, which stipulates in the last sentence that the Council shall determine in what manner the provisions of the Convention relating to nationality of aircraft shall apply to aircraft operated by an international operating agency, will be binding on all contracting

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[288] Emphasis supplied. Contrast with the Panel's views on the matter in Part 3 (2) of this study.

states and thus in the case of jointly registered or "internationally" registered aircraft, the rights and obligations under the Convention would be applicable as in the case of nationally registered aircraft of a state party to the Chicago Convention.

In addition the Council established, pursuant to its powers under Article 77, basic criteria for any plan for joint or international registration.

The Council differentiated between joint and international registration declaring that, while it has discretion to arrive at such determination as it deems appropriate, in the case of joint registration there should be little problem in regard to the fulfilment of the basic criteria, and therefore its determination in such a case should be merely formal and could automatically be given. It also noted, inter alia, that cases of international registration might require different approaches.

The basic criteria established by the Council are as follows:

In the Case of Joint Registration:

a. - There will be joint and several liability of the states constituting the agency to assume the obligations which under the Chicago Convention normally

attach to the state of registry.

b. - One state of the agency will be identified for each aircraft and is entrusted with the duty to receive or to answer representations made by other contracting state concerning that aircraft. This, however, does not affect the joint and several responsibility of all the states of the agency concerning that aircraft. That identification is intended only to ease a practical difficulty.

The functions normally carried out by the state of registration, e.g., the issuing of certificates of registration, and the issuing and validation of certificates of airworthiness and of licenses for the operating crew, shall be carried out by the state maintaining the register or the relevant part in relation to a particular aircraft.

c. - The operation of aircraft so registered shall not give rise to any discrimination against other nationally registered aircraft of other contracting states with respect to the provisions of the Chicago Convention, e.g., Articles 7 and 9. Thus, in the case of Article 7, the Cabotage area cannot be established on a geographical basis merely by joint registration. In the case of Article 9, joint

registration will not result in any discrimination between the aircraft of other contracting states and those of the agency with respect to flight over a prohibited area.[289]

d. - The states of the international agency must ensure that their laws, regulations and procedures relating to aircraft and personnel of the agency, when engaged in international air navigation, are uniform for the purposes of obligations arising out of the Chicago Convention and its Annexes. (Appendix 2, Part I).

In the Case of International Registration:

Items (a), (c) and (d) above shall in any event apply. It is also provided in the Resolution that it is understood that additional criteria may be adopted by the Council. (Appendix 2, Part II).

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[289] See also Articles 15 (Airport and Similar Charges), and 27 (Patent Claims), the requirement of the latter Article being that a given state should be not only a party to the Chicago Convention but also a party to the International Convention for the Protection of Industrial Property. It might be that, in a particular case, one or another of the states constituting an international operating agency is not a party to the latter Convention. In such a case, the interests of that state would not be, according to the Resolution, protected by the terms of Article 27 of the Chicago Convention.

The Council further decided that the manner of application of the provisions of the Convention relating to nationality of aircraft shall be that:

(i) In the case of joint registration or international registration, all aircraft of a given international operating agency will have a common mark and not the nationality mark of any particular state, and the provisions of the Convention which refer to nationality marks (Articles 12 and 20 of the Convention) and Annex 7 to the Convention, shall be applied mutatis mutandis.

(ii) Such aircraft shall be deemed, for the purposes of the Convention, to have the nationality of each of the States of the agency, without prejudice to the rights of other contracting states, e.g., regarding Cabotage.

(iii) For the purposes of Articles 25 and 26 of the Chicago Convention, the state maintaining the joint register or its relevant part pertaining to a particular aircraft shall be considered to be the state in which the aircraft is registered.[290]

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[290]Articles 25 and 26 respectively read as follows: - "Each contracting state undertakes to provide such measures of assistance to aircraft in distress in its territory as it may find practicable,

The Council stated, at the end of its Resolution (Appendix 3), that in connection with this Resolution it had before it the following scheme of joint registration, noting, at the same time, that other schemes might also be possible:

(a) The States constituting the international operating agency will establish a joint register for registration of aircraft to be operated by the agency. This will be separate and distinct from any national register which any of those States may maintain in the usual way.

(b) The joint register may be undivided or consist of several parts. In the former case the register will be maintained by one of the States constituting the international operating agency and in the latter case each part will be maintained by one or other of these states.

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and to permit, subject to control by its own authorities, the owners of the aircraft or authorities of the state in which the aircraft is registered to provide such measures of assistance as may be necessitated by the circumstances. Each contracting state, when undertaking search for missing aircraft, will collaborate in coordinated measures which may be recommended from time to time pursuant to this Convention." - "In the event of an accident to an aircraft of a contracting state occurring in the territory of another contracting state, and involving death or serious injury, or indicating serious technical defect in the aircraft or air navigation facilities, the state in which the accident occurs will institute an inquiry into the circumstances of the accident, in accordance, so far as its laws permit, with the procedure which may be recommended by the International Civil Aviation Organization. The state in which the aircraft is registered shall be given the opportunity to appoint observers to be present at the inquiry and the state holding the inquiry shall communicate the report and the findings in the matter to that state".

(c) An aircraft can be registered only once, namely, in the joint register or, in the case where there are different parts, in that part of the joint register which is maintained by a given State.

(d) All aircraft registered in the joint register or in any part thereof shall have one common marking, in lieu of a national mark.

(e) The functions of a State of registration under the Chicago Convention (for example, the issuance of the certificate of registration, certificate of airworthiness or licences of crew) shall be performed by the State which maintains the joint register or by the State which maintains the relevant part of that register. In any case, the exercise of such functions shall be done on behalf of all the States jointly.

(f) Notwithstanding (e) above, the responsibilities of a state of registration with respect to the various provisions of the Chicago Convention shall be the joint and several responsibility of all the States which constitute the international operating agency. Any complaint by other contracting States will be accepted by each or all of the States mentioned".

The Council also declared that this Resolution is applicable only where all the states of the operating agencies are and remain parties to the Chicago Convention and that the Resolution is of no application where an aircraft is registered on a national basis, although operated by an international operating agency.

To bring Annex 7 relating to nationality and registration of aircraft into line with this Resolution,

the Council declared that consideration will soon be given to the question of amending that Annex and that information on this point will be issued as a supplement to the Resolution.

On January 23, 1969, the Council adopted the required Amendment of Annex 7.[291] The resolution of adoption of this Amendment states that such parts of the Amendment as have not been disapproved by more than half of the total number of contracting states on or before "May 23, 1969" would become effective on that date and would become applicable on "September 18, 1969". In a letter to contracting states of the Chicago Convention covering the Amendment,[292] the Secretary General of the International Civil Aviation Organization describes the scope of the Amendment as the introduction in Annex 7 of appropriate provisions to enable the aircraft of international operating agencies to be registered on other than a national basis; the determining principle of these provisions being that the Common Mark Registering Authority of each international operating agency will be assigned a

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[291]The Amendment was adopted by the Council at the second meeting of its sixty-sixth session.

[292]Letter No. AN 3/1-69/31 dated February 5, 1969.

distinctive common mark by the International Civil Aviation Organization, which will be selected from the series of symbols included in the radio call signs allocated to the Organization by the International Telecommunication Union.

Accordingly, definitions of the expressions "Common Mark", "Common Mark Registering Authority", and "International Operating Agency" have been introduced. A "Common Mark" is defined in the Amendment as "A mark assigned by the International Civil Aviation Organization to the Common Mark Registering Authority registering aircraft of an international operating agency on other than a national basis". The Amendment prescribes that all aircraft of an international operating agency registered on other than a national basis will bear the same Common Mark.

The Amendment describes the "Common Mark Registering Authority" as the "authority maintaining the non-national register or, where appropriate, the part thereof, in which aircraft of an international operating agency are registered". According to the Amendment, an "International Operating Agency" is "an agency of the kind contemplated in Article 77 of the Convention". This of course would exclude organizations

like the United Nations and the International Civil Aviation Organization.

It is noted that other changes, respecting the drafting of Annex 7, have been introduced in the Amendment, with the same view of making that Annex applicable to the case of registration of aircraft of international operating agencies on other than a national basis. Indeed, the new Amendment provides the finishing touches for the solution of the problem of registration of such aircraft non-nationally.

(i) Clarification of Some Points

The Resolution adopted by the Council is, as seen, more or less similar to the general scheme developed by the Sub-Committee of the International Civil Aviation Organization with respect to the application of the provisions of the Chicago Convention relating to nationality of aircraft to aircraft non-nationally registered. However, it is felt that some points relating to the Council's Resolution call for further clarification.

The Resolution, as already stated, lays down, inter alia, a procedure for joint registration together with defining such registration. However, it omits to

make clear whether the aircraft to be registered under this procedure would be registered in the name of the states participating in the international operating agency or rather in the name of the agency itself. It will be noted here that an opinion was expressed in the Council's discussions of the draft Resolution that "joint registration" means registration concurrently by all states establishing the agency. On the other hand, Professor Mankiewicz, when referring in a recent article to that opinion, submitted that "joint" refers to the "register" which is kept jointly by the states constituting the international operating agency and that "it is for these states to decide who should be shown as owner in the Registry, as they also will specify what facts and other rights are to be registered".[293] It is felt, however, that the question depends on the nature of the cooperative arrangement. Should such an arrangement be a trans-national airline having a separate legal entity and a sole proprietory interest in its assets, as would most probably be the case, then the ideal course to take is

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[293]R. H. Mankiewicz, "Interpretation and Implementation of Article 77 of the Chicago Convention - Nationality and Registration of Aircraft Operated by International Agencies," 34 J.A.L.C. (1968).

to register the aircraft in its name.

Another point which lacks clarity is whether the Council's determination under Article 77 is appealable. In this connection, the Director of the Legal Bureau of the International Civil Aviation Organization offered the Council an opinion that this question had been

> gone into by various bodies that had studied the subject and their conclusion had always been that a determination was a determination, not a suggestion or recommendation, and, as the etymology of the word indicated, conclusive. This did not mean, however, that there could be no appeal from it. Any action taken by the Council under the Chicago Convention could be appealed. If a contracting state was dissatisfied with a Council determination, it would presumably have recourse to Article 84 of the Covention with a right of eventual appeal to the International Court of Justice.[294]

Regarding the question of whether the word "determination" used in Article 77 has a "once and for all" connotation, i.e., whether the Council by adopting its Resolution would be exhausting the authority given to it under that Article, and the Resolution would therefore be as permanent and definite as if it were part of the Convention, the Director of the Legal Bureau advised the Council in the negative. He pointed

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[294]ICAO DOC. 8707-6, C/974-6.

out that "in a constitutional instrument like the Chicago Convention, the largest measure of power should be assumed to have been conferred upon the body created by that instrument" and hence Article 77 should be interpreted not merely as giving the Council the power to make a determination but also the power to cancel, modify or completely revise its decision. He further equated this position with that under Article 12 of the Convention, which provides that over the high seas, the rules in force should be those established under the Convention. These rules are to be found in Annex 2, and adopted by the Council in the usual manner and are applicable over the high seas without the possibility of deviation recognized in Article 38 of the Convention for national territory. Thus as far as the high seas are concerned, it is as if Annex 2 were part of the Convention binding on all contracting states; and yet, that Annex is susceptible to amendment by the Council under Article 54(m) of the Chicago Convention. The Director of the Legal Bureau further stated that the practice in the International Civil Aviation Organization supports his view.[295]

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[295]ICAO DOC. 8707-9, 974-9.

He also explained that in case the states concerned refuse to comply with an amendment subsequently adopted by the Council,

> their aircraft might be refused permission to enter the territory of another contracting state because of their non-compliance with the Council's decision. This would be a dispute under the terms of Article 84, and the appeal provisions of that Article would apply. If, however, a dispute situation did not arise but the states constituting the agency still considered the Council's decision prejudicial, all they could do would be to bring their difficulty before the Council under Article 54 (n) and they would have to abide by whatever conclusion the Council reached.[296]

It appears that the same will apply where any of the component states of the international operating agency cease to satisfy the criteria established by the Council. It may be noteworthy here that during the discussion of the Resolution in the Council, the Representative of Australia suggested that a provision could be included in the Resolution to the effect that a determination by the Council would hold good only as long as the international operating agency complies with the conditions laid thereunder. The Director of the Legal Bureau replied that apart from the fact that

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[296]Ibid. Article 54(n) provides that the Council shall "consider any matter relating to the Convention which any contracting state refers to it".

this will be inferred from a certain phrase in the Resolution,[297] the "continuity of compliance was inherent in this kind of legislation, and the Convention did not give the Council a policeman's role".[298]

On the other hand, if any of the component states of the international operating agency "failed to carry out the obligations accepted in their plan for joint or international registration, the action taken would be that specified in the Convention for ensuring fulfilment of the responsibilities of a state of registry".[299]

A third clarification, which is felt necessary, attaches to the statement of the Council in the Resolution that while it has discretion to arrive at such determination as it deems fit, in the case of joint registration, there should be little problem in regard to the basic criteria and therefore

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[297]This phrase, which is included in the part of the Resolution starting with the word "Holding", reads as follows: "in respect of which the basic criteria which have been established by the Council are fulfilled". See ICAO DOC. 8722, Supra Note 287.

[298]ICAO DOC., Supra Note 295.

[299]ICAO DOC., Supra Note 294.

its determination in such a case should merely be formal and could automatically be given. In this statement, it will be recalled that the Council also noted that cases of international registration might require different approaches.

The origin of this statement made by the Council is found in the discussions which took place in the Legal Committee. During these discussions, some members of the Committee objected to the idea that the Council would examine each plan of joint or international registration in the light of the suggested criteria, with a viewto see whether such a plan conforms with it or not and gives its decision accordingly. Though these members were aware of the possibility that an examination of the plan by the Council might be implicitly warranted by other provisions of the Convention, e.g., Article 54(j), which, inter alia, requires the Council to report to contracting states any failure to carry out its determinations, they still could not agree that the Council, after making its decision under Article 77, can on a later phase follow up its execution. They rightly claim that such an examination may not be pertinent under Article 77, which merely requires the Council to make a general

determination, apparently in a single phase and not two phases.

However, in view of the conflicting views of the Legal Committee on the above issue, that Committee resorted to the following compromise solution:

> (i) adoption by the Council of general, basic criteria to be applied to cases of joint of international registration of aircraft.
> . . .
> (2) application of the above-mentioned general, basic criteria to a particular plan for joint or international registration which might be brought before the Council, it being understood that in the case of joint registration . . . there would be no problem in regard to the fulfilment of the conditions specified . . . and therefore such determination by the Council in such or similar cases will merely be formal and should automatically be given. Other cases of joint registration and all cases of international registration may well require different approaches.[300]

It is obvious that the Council of the International Civil Aviation Organization adopted the same compromise in its recent Resolution.

As regards the condition laid by the Council that in the case of joint or international registration the states constituting the international operating agency must undertake to be jointly and severally liable for the agency's aircraft, this condition is certainly

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[300] ICAO DOC., Supra Note 285 (Paras. 11, 12).

fair and in fact indispensible. In return for the convenience of joint or international registration, by which the states constituting the international operating agency are enabled to enjoy the benefit of having their aircraft so registered,[301] these states must be prepared not to allow this registration to be used as a device for escaping the obligations which, under the Convention, attach to the state of registry. Such avoidance of obligations can only be safeguarded against if the states constituting the agency are made jointly and severally liable for these obligations arising from the Chicago Convention.[302]

As mentioned earlier, item (b) of the criteria established by the Council for joint registration of aircraft requires that one state of the agency will be identified "for each aircraft" and is entrusted with the duty to receive or to answer representations made by other contracting states concerning that aircraft. It is noted, however, that the resolution does not prescribe how these other states would know about that

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[301] As explained in Part I of this study, registration is one of the most important factors to be found in the Chicago Convention. This appears obvious if Articles 20, 21 and 29 thereof are examined.

[302] Examples of the obligations referred to can be found as emphasized in Part I, in Articles 11 and 12 of the Convention.

identification. Time and effort could be wasted should representations be addressed to the wrong state and consequently be rerouted or repeated. However, item (b) above should be read together with para. (f) of Appendix 3 to the Resolution which stipulates that any complaint by other contracting states will be accepted by each or all of the states constituting the agency.

Similarly as referred to earlier, item (d) in the criteria set by the Council for joint registration provides that the states constituting the international operating agency shall ensure that their laws, regulations and procedures as they relate to aircraft and personnel of the agency "when engaged in international air navigation"[303] shall meet in a uniform manner the obligations under the Chicago Convention and the Annexes thereto. This provision originates in the recognition in the Sub-Committee that uniform standards of aeronautical laws and regulations should govern the operation of aircraft by an international operating agency. It was felt by the

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[303]This phrase seems to be redundant in view of the fact that the Chicago Convention and its annexes are concerned solely with international air navigation. However, the Director of the Legal Bureau of ICAO suggested to the Council of the Organization that the phrase might be useful to make that fact obvious to the "unwary reader". See ICAO DOC. 8707, supra note 284, para. 31.

Sub-Committee that it is necessary to ensure that the states comprising the agency adopt in a uniform manner the Annexes to the Convention, particularly those involving nationality and registration of aircraft. Thus where "differences" to the Annexes are to be notified in accordance with Article 38 of the Convention to the International Civil Aviation Organization, the same "difference" should preferably be notified for all such states, otherwise the joint and several liability of these states would not be uniform with respect to the aircraft of an agency which is registered on a non-national basis.

However, some writers doubt whether this could be a practical solution. "For example, one state, member of the agency being more technologically advanced than the other member states, might have higher standards in its own aeronautical legislation than those applicable in the other states. In this event, it might be anticipated that the state designated . . . as having primary responsibility would be the one with the highest standards."[304]

In the second part of the criteria laid by the Council for the registration of aircraft of an

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[304]G. F. FitzGerald, supra note 10, p. 212.

international operating agency, the Council, as will certainly be recollected, after stating that Paragraphs (a), (c) and (d) thereof shall in any event apply to the case of international registration, proceeds to add that it is "understood that additional criteria may be adopted by the Council". This last phrase may pose a question as to its purposes, since nothing prevents the Council in future from amending the present criteria and it could do so without any need to provide for such a possibility beforehand. However, the explanation for the insertion of this phrase in the Resolution is that the Council intended to emphasize the fact that, while the Resolution covers "joint registration" completely, it only deals partially with "international registration" and therefore additional conditions may be required and established by the Council when a scheme of international registration is brought before it.[305]

Again, with respect to the manner of application of the provisions of the Convention relating to nationality of aircraft, it will be noted that the Council decided that in case of joint or

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[305]ICAO DOC. 8707, supra note 284, para. 34.

international registration all aircraft of a given international operating agency shall have a common mark, and not the nationality mark of any particular state, and that the provisions of the Convention referring to nationality marks (i.e. Articles 12 and 20), together with Annex 7 thereto shall be applied mutatis mutandis. It is noteworthy that a question was raised by the representative of Italy in the discussions of the Council as to whether it was necessary to stipulate that all aircraft of an international operating agency must have a common mark and not the nationality mark of a particular state, when, as prescribed in Appendix 3 of the Resolution, other schemes of joint registration might also be possible. He noted that perhaps among these other schemes there would be one in which the aircraft of the operating agency might bear the common mark and the nationality mark of one of the states constituting the agency.[306]

In defence of the compulsory use of a common mark and the prohibition of the use of a nationality mark, the representative of Australia rightly argued that the use of a common mark was a fundamental feature of the system of joint registration

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[306]ICAO DOC. 8707-10, C/974-10 (Para. 17).

developed by the Legal Committee and that it "would be very dangerous to make it optional. If the Council did so, it might as well send the whole subject back to the Committee."

The representative of Australia was supported by other representatives. Thus the representative of Lebanon stated that the provision in question was in fact "the cornerstone of the system of joint registration developed by the Legal Committee" and the "symbol of the assumption by the states constituting the operating agency of the responsibilities of the state of registry under Chapter III of the Convention".

The representative of France also agreed with the representative of Australia that the common mark was a fundamental feature of the system of joint registration and added that, though it is only a sign, the common mark was

> a symbol of the international character of the agency. It is common knowledge that those who were not very enthusiastic about the whole exercise on Article 77 had expressed the fear that the solidarity of a group constituting an international operating agency would be more apparent than real. There could be no room for doubt, therefore, that this was joint registration and the aircraft of an international operating agency should bear one mark, a common mark.

Again, rather artistically, the representative of the Congo (Brazzaville) expressed the view that the

common mark was much more than a sign painted on the aircraft, that it was the symbol of the joint and several responsibility of the states establishing the international operating agency, and that if the Council made the use of the common mark optional, it would be "bringing down the edifice so painstakingly built by the Legal Committee".[307]

Thus the principle of the compulsory use of the common mark to the exclusion of a nationality mark was retained in the Resolution.

The Resolution stipulates that the aircraft of an international operating agency registered under it shall be deemed, for the purposes of the Convention, to have the nationality of each of the states of the agency. Some writers feel that such a provision is but a bowing in the direction of tradition in its reference to the concept of nationality and that it seems that, while nationally registered aircraft can have only one nationality, an aircraft registered on other than a national basis "can enjoy the advantages of a multiple constructive nationality although it in fact has no nationality at all".[308] However, it is

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[307] Ibid., (para. 21).

[308] G. F. FitzGerald, Supra Note 10, p. 213.

our opinion that the above provision does not imply the application of the traditional concept of nationality in respect of the aircraft of an international operating agency registered on other than a national basis. Article 17 of the Chicago Convention stipulates that aircraft will have the nationality of the State in which they are registered. Hence when they are not registered in a State, as is the case of aircraft registered under the Resolution, they would not have nationality. Furthermore reference to the concept of nationality in the above provision of the Resolution is only made to facilitate the application of some provisions of the Convention. Thus the Resolution clearly emphasizes that the aircraft concerned will "be deemed" to have the nationality of the component states of the agency and merely "for the purposes of the Convention".

In item 3 of the rules laid by the Council to govern the manner of application of the provisions of the Convention relating to nationality of aircraft, it is prescribed, as described earlier, that for the purpose of Articles 25 and 26 of the Chicago Convention, the state which maintains the joint register or its relevant part pertaining to a particular aircraft shall

be considered to be the state in which the aircraft is registered. During the discussions of the Council the representative of the United Kingdom inquired as to whether it would be necessary for the Council, in a case of international registration, to make another determination for the purpose of the application of the two Articles and stated that, if the case is so, it might be necessary to add a provision to this effect to the Resolution. In answer to that query, the Director of the Legal Bureau of the International Civil Aviation Organization explained that

> if an aircraft were registered with an international organization like ICAO, for example, that organization might either perform the functions of the state of registry under Articles 25 and 26 itself or designate a particular state to do so on its behalf, but in neither case would there be any question of international operating agency. An international operating agency was a body with legal personality whose function was to operate air services. An international organization could have executive type aircraft for its own use but it would not be a body operating international air services. There would probably be very few cases of international registration. It could take place if the states constituting an international operating agency decided to register their aircraft with the central office of the agency instead of a joint or national register. Then Annex 2, paragraph II, would apply, but not clause (3) of the determination.[309]

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[309] ICAO DOC., Supra Note 307 (Para. 52).

He was, of course, referring by Clause (3) to the above-mentioned provision that relates to the application of Articles 25 and 26 to the case of joint registration.

Again, the declaration made by the Council that its Resolution is applicable only where all the States of the agency are and will remain parties to the Chicago Convention has put an end to the controversy as to whether an international operating agency should, for the purposes of Article 77 of the Chicago Convention, be composed solely of such parties. Another advantage that could accrue from this declaration is that it may secure that Convention more adherents.

Lastly, the other declaration made by the Council that its Resolution is binding on contracting states of the Chicago Convention can be said to have finally settled the question as to the legal effect of such determination, in conformity with the findings of the Panel of Experts and the majority decision of the Sub-Committee. It will be noted in this regard that that question had not been specifically agreed upon in the Legal Committee.

PART V

EVALUATION

The provisions of the Chicago Convention, the main treaty regulating international air transport, are based on the assumption that an aircraft will have nationality and be registered in a contracting state, this registration being one of the cardinal principles of the Convention. Thus the Convention attaches the rights and obligations under it to the state of registry and, for the purposes of the application of these rights and obligations, it requires every aircraft engaged in international air navigation to bear its appropriate nationality and registration marks. In fact, the regulation of certain problems of international air navigation seems to be the reason for the adoption of the concept of nationality of aircraft by the Convention.

On the other hand, the Convention, on allowing in Article 77 thereof the establishment, inter alia,

of "international operating agencies", subjects these agencies to all the provisions of the Convention and stipulates in the last sentence of that article that the Council of the International Civil Aviation Organization would decide the manner in which the "provisions of this Convention relating to nationality of aircraft" shall apply to the aircraft belonging to these agencies.

The question of applying these provisions to the aircraft of international operating agencies has proved to be not an easy one as it may look, and it took the Organization several years to solve it, even upon being stirred effectively by groups of states which have showed an interest, for one reason or the other, to depart, with respect to their transnational aircraft, from national registration of aircraft, and seek registration on other than a national basis.

The question of interpreting the last sentence of Article 77 was subjected in the International Civil Aviation Organization, at different times and in various committees, to interesting discussions where many issues and objections were raised, regarding the question whether that last sentence contemplates non-national registration of aircraft. For example, it was

conceived that the answer to this question depended partly on the meaning of the phrase "provisions of this Convention relating to nationality of aircraft" mentioned in that sentence. Should this phrase be referring only to Chapter III of the Convention, which appears to emphasize the importance of nationality and registration of aircraft in a "state", then it would follow that without amending the Convention only normal national registration is permissible for the aircraft of international operating agencies under the last sentence of Article 77 of the Convention. On the other hand, if that phrase goes beyond Chapter III to cover all the provisions of the Convention whose application depends on the nationality of aircraft e.g. Article 12, it would be easy to conclude that that last sentence contemplates non-national registration of aircraft. This is because this last sentence no doubt contemplated a difficulty with respect to the application of certain provisions of the convention and the application of the latter provisions, which contain rights and obligations, causes no such a difficulty in case of national registration of aircraft, since they attach these rights and obligations to the state of registry. For this same latter reason, it

would be difficult to see how these provisions would apply to aircraft non-nationally registered as probably in the case of "international operating agencies".

Two committees in the International Civil Aviation Organization, the Panel of Experts of 1960 and the Legal Sub-Committee, interpreted the provisions of the Convention referred to in the last sentence of Article 77 as including not only Chapter III of the Convention but generally all articles thereof which either expressly refer to nationality of aircraft or imply it, since these are provisions of the Convention whose application depends on the nationality of aircraft.

Another example of the issues raised in the Organization is the question whether it is proper for a Council consisting only of a small number out of the total number of contracting states to have the power to bind, by its bare majority, all such contracting states to accept "substantial alterations" to the provisions of the Convention. In this respect, it was explained that the last sentence of Article 77 clearly and specifically required the Council to make a "determination" and that such determination or "decision" would be binding on contracting states just

as in the case where the Council is adopting rules of the air applicable over the high seas under Article 12 of the Convention. In the opinion of the Sub-Committee it was inadmissible to say that the Council could not do what Article 77 required it to do. As long as the Council is acting within the scope of delegation made to it by the last sentence of Article 77, then contracting states must necessarily recognize, with respect to an aircraft registered according to the Council's decision, rights and privileges similar to these expressly assigned to aircraft registered on a national basis by the Chicago Convention.

A third example of the issues which arose in the Organization is the question whether joint registration of aircraft, which was discussed therein as a form of non-national registration, is not inconsistent with the prohibition of dual or multiple registration of aircraft under Article 18 of the Convention and that in order to effect such non-national registration, the Convention must be amended. In this regard, however, it was explained that it is true that registration of aircraft in more than one state at the same time is precluded by Article 18 of the Convention, yet that Article did not prohibit joi

joint registration of aircraft as such, i.e. one single registration by two or more states.

Similarily, it is true that the principle of nationality and registration of aircraft in a state is a cardinal principle of the Chicago Convention. However, the Convention should be read as a whole and its provisions should not be taken separately. Article 77 thereof provides, inter alia, for the establishment of international operating agencies and spells out in its last sentence that the application of the provisions of the Convention relating to nationality of aircraft to these agencies shall be determined by the Council. Should these agencies resort to national registration of aircraft then there would be no difficulty in connection with the application of the provisions of the Convention relating to nationality of aircraft to their aircraft, as explained above. On the other hand, if these agencies intend to register their aircraft non-nationally, then it would be difficult to see how the provisions of the Convention which attached the rights and obligations thereunder to the state of registry would apply to the aircraft of the agency so registered. It is therefore the exceptional possibility of non-national registration

of aircraft that has aroused the fears of the drafters of the Convention with respect to the application of its provisions relating to nationality of aircraft, and accordingly caused them to vest the responsibility of the search for the manner in which such application would be facilitated in the Council of the Organization. If the registration of aircraft on other than a national basis were not contemplated, then the "enabling" last sentence of Article 77 would have been rendered powerless and meaningless. In brief, the interpretation of that last sentence comes to this - since there is a possibility that "international operating agencies" tend to register their aircraft non-nationally and since the provisions of the Chicago Convention, which attach the rights and obligations thereunder to the state of registry, would not in their present form apply to aircraft so registered, then the Convention has intended in the last sentence of Article 77 to enable the Council to decide on a means by which these provisions will be made applicable to that special case.

As a final reply to the issues raised and as an outcome of all the studies made, the Council of the International Civil Aviation Organization, as

stated earlier, unanimously passed its Resolution of 1967 allowing registration of aircraft of international operating agencies on other than a national basis and subsequently amended Annex 7 of the Chicago Convention to this effect.

This Resolution, which has brought an end to a chronic and delicate problem, rather constitutes a dynamic shift in the attitude towards registration of aircraft on other than a national basis, on a highly formal level. It has formally incorporated the views which had prevailed in the Legal Committee of the Organization that registration of aircraft of international operating agencies on other than a national basis is permissible under the last sentence of Article 77 of the Chicago Convention and thus should be allowed. It will be noted that this position is different from that of the other Committees which dealt with the matter within the Organization, namely, the Air Transport Committee and the Panel of Experts.

The adoption of the Resolution is one of the most significant events in the history of the international civil aviation. Until that adoption only one form of registration of aircraft had been practiced i.e. national registration. This registration had

been solely accepted for about sixty years. However, the traditional principle of nationality and registration of aircraft was introduced to serve the practical needs of aviation, and thus any departure therefrom effected by the Council would not defeat such a purpose as long as such departure is accompanied by adequate guarantees to ensure the observance of that purpose. In fact, as mentioned earlier, the search for such guarantees seems to be the task left by the drafters of the last sentence of Article 77 of the Convention to the Council to pursue.

In its Resolution of 1967, the Council, on allowing registration of aircraft on other than a national basis, provided well for these guarantees. It has declared that its determination will bind all contracting states and thus in the case of jointly registered or "internationally" registered aircraft, the rights and obligations under the Convention would be applicable "as in the case of nationally registered aircraft of a contracting state". For that purpose, for example, the states constituting the international operating agency will be jointly and severally liable for the obligations which under the Convention normally attach to the state of registry. Again the

Resolution prescribes that the operation of aircraft so registered shall not give rise to any discrimination against nationally registered aircraft of other contracting states regarding the provisions of the Chicago Convention e.g. Articles 7 (cabotage), 9 (prohibited areas), 15 (airport and similar charges) and 27 (patent claims), thus preserving the spirit of these provisions.

In order to facilitate the identification of aircraft jointly or "internationally" registered, for the purposes of the application of the rules of the Convention, the Resolution requires that all aircraft of a given international operating agency will have a common mark and that for the purposes of the Convention such aircraft shall be deemed to have the nationality of each of the states composing the agency, without prejudice to the rights of other contracting states, e.g. regarding Article 7 mentioned above. In the case of joint registration of aircraft the Resolution requires that one state of the agency will be identified for each aircraft and entrusted with the duty to receive or answer representations made by the other contracting states concerning that aircraft, without this affecting the joint and several

responsibility of all the states of the agency regarding the same. It also prescribes that the functions normally carried out by the state of registration e.g. the issuing of certificates of registration, and the issuing and validation of certificates of airworthiness and of licences for the operating crew, shall be carried out by the state maintaining the register or the relevant part thereof in relation to a particular aircraft. This state will also be considered the state in which the aircraft is registered for the purposes of Articles 25 and 26 of the Chicago Convention, which were quoted earlier in this study. As a further guarantee to ensure the application of the provisions of the Chicago Convention before allowing registration of aircraft on other than a national basis, the Council declared that its Resolution is applicable only where all the states of the agency are and remain parties to the Convention.

Thus with respect to such provisions of the Chicago Convention as Articles 5, 7, 9, 11, 12, 21, 25, 26, 27, 29, 30, 31, 32, 33 and 35, generally described in Part I hereof and which variously contain references to "contracting states", "State of the

registry" and "nationality", the Council has succeeded to ensure that non-national registration of aircraft would not constitute a violation of the spirit of the Convention. In other words the Resolution has served to bring the aircraft of "international operating agencies" to be registered non-nationally together with the states constituting such agencies, within the application of these provisions, and hence no question of amending the Chicago Convention arose. In this sense, the Resolution appears to be in full conformity with the spirit of the Convention.

Accordingly, it may be well said that twenty-three years after Article 77 of the Chicago Convention was drafted and twenty years after that Convention came into force, the Council of the Organization has successfully exercised the powers conferred on it by the last sentence of that Article to determine the manner of application of the provisions of the Convention relating to nationality of aircraft to aircraft "operated" by international operating agencies, thus bridging a gap in the body of the Chicago Convention. The Resolution, moreover, has marked a new era where it has been ascertained that, upon compliance with the requirements it has laid, aircraft

of an "international operating agency" registered non-nationally will enjoy every right to co-exist effectively with aircraft of the same or aircraft of states registered nationally, to the betterment and enhancement of international civil aviation.

However, we feel that we have a few more things to assess with respect to the Resolution. Like the Chicago Convention, the Resolution, and the Amendment of Annex 7 effected in pursuance thereof, refer to the term "international operating agencies" while avoiding to prescribe any concrete definition to that term. The Amendment to Annex 7 merely describes an international operating agency as "an agency of the kind contemplated in Article 77 of the Convention".

In the discussions of the Resolution in the Council of the Organization, the question was asked by Dr. Arias, the Representative of Columbia, as to whether the existing transnational airlines "would be expected to comply with the criteria set out in the Resolution as soon as the Council had adopted it or whether it would apply only to agencies established in future". In reply to him, the Director of the Legal Bureau of the Organization explained that "at

this moment there were no aircraft registered internationally, every aircraft flying had the nationality of some state".[310] Thus it appears that the criteria for the application of the Resolution is whether the aircraft of a transnational airline is intended to be registered non-nationally. Indeed, it is such registration, as suggested earlier, which gives rise to the difficulty of the application of the provisions of the Chicago Convention to transnational aircraft. It seems to be appropriate, therefore, that the Resolution, like the Chicago Convention, does not compel "international operating agencies" to register their aircraft non-nationally. The stipulation in the Resolution that it is binding should not be misunderstood. The Resolution is binding in the sense that when an "international operating agency" intends to register its aircraft non-nationally, it is bound by the criteria described in it. It is also binding in the sense that states not members of the agency should give the aircraft of the agency so registered and which comply with the Resolution, the rights and privileges accorded to nationally registered

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[310] ICAO DOC. 8707, supra note 295, para. 47.

aircraft under the Convention. It is not binding, however, in the sense that states members of the "international operating agencies" are bound to register their aircraft non-nationally. Such agencies, as pointed out by the President of the Council of the Organization, in a meeting of the Council, "would not be affected by the Council's determination unless they wished to register their aircraft jointly or internationally".[311]

The case being so, it appears that there is no persistent need for a definition of the term "international operating agencies", as used in the Resolution. On the contrary, such a definition may limit the application of the Council's Resolution. For instance, if we adopt for that term such a definition as that maintained by Professor Bin Cheng, namely that an international operating agency must, directly or indirectly, have an international legal personality,[312] then this may render transnational airlines not possessing such a personality unable to

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[311] Ibid.

[312] Bin Cheng, supra note 13.

benefit from the Resolution. As explained by the Representative of the Congo (Brazzaville), in the Council of the Organization, "the purpose of the Resolution is not to create international operating agencies, but to enable the application of the provisions of the Convention relating to nationality to these agencies existing now or in future".[313] Thus a provision was introduced in the end of the preamble of the Resolution to the effect that the Resolution "does not apply to the case of an aircraft which, although operated by an international operating agency is registered on a national basis".

Regarding the effect of non-national registration on bilateral air transport agreements, derogation from the ordinary concepts of such agreements had already, as explained in Part II of this study, been effected by the creation of transnational airlines itself, and hence, in such a sense, nothing new will be introduced by non-national registration of aircraft. However, in the discussions of the Resolution in the Council of the International Civil Aviation Organization, the President of that Council agreed with one suggestion that under the new system

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[313] ICAO Doc. 8707 supra note 310, para. 49.

of non-national registration, "bilateral negotiations would still be between two states, not between a state and an international operating agency". This is because, "Article 77 was concerned only with nationality and registration of aircraft operated by international agencies".[314]

A further assessment which is felt necessary, with respect to the Council's Resolution, pertains to its attempt to endow the Council with the capacity of a "licensing authority" in respect of the registration of aircraft belonging to international operating agencies on other than a national basis. It is clear from the Resolution that the Council has not confined itself to making criteria for joint or "international registration" and has not left it to the parties to the Chicago Convention to apply these criteria in the same way they should apply the provisions of the Convention. It has required that the states establishing the international operating agency should lay their plans for "international" or joint registration before it for consideration and decisionwhile it has assured those states that its decision in the case of joint registration "may" be

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[314]Ibid., para. 47.

merely formal. Thus, at least in the case of "international" registration, the Council has assumed the function of a "licensing authority" for such registration. This, it is submitted, seems to be just what the Council cannot do under the letter of the Convention and it may be entirely ultra vires its functions. As was similarly argued by some members of the legal committee and mentioned before, Article 77 merely requires the Council to make a general standing determination which enables an international operating agency to register its aircraft non-nationally and does not empower the Council to see to it that its determination is complied with. The Convention, as explained earlier, has not prescribed the manner in which the provisions of the Convention relating to nationality of aircraft will apply to the aircraft of an international operating agency registered, in the exceptional case, non-nationally and has left that for the decision of the Council; and hence the Council, upon making its decision under Article 77, would be filling a gap in the Convention. Its determination would be part of the Convention and the same rules relating to the observance of the provisions of the Convention would apply to it. It

is submitted that none of these rules require the Council of its own initiative to enforce the execution of the provisions of the Convention.

In his article of 1965,[315] mentioned earlier, Professor Mankiewicz seems to advocate the above attitude of the Council. He argues that

> there may exist various means and ways of registering the aircraft belonging to international operating agencies other than on national register. Moreover, there are various alternatives with respect to the procedures which need to be established to discharge the obligations imposed by the Chicago Convention on the state of Registry and which obviously must be fulfilled by some other legal entity in the case of aircraft not nationally registered. It is, therefore, submitted that the decision to be made by the Council under the said Article 77 cannot be made in abstracto but only with respect to a definite method of non-national registration chosen by the states composing the international operating agency. In other words . . . a request for a 'determination' under Article 77 must be accompanied by a complete and detailed explanation of the ways and means by which the interested parties intend to register the common aircraft and to discharge, or have discharged, the obligations attaching to the state of registry under the Chicago Convention.

However, with due respect to Professor Mankiewicz, we fail to agree with the above argument. The Council could have made a general determination,

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[315] R. H. Mankiewicz, Supra Note 251.

and if contracting states constituting an international operating agency came up with an unthought of method and procedure relating to registration of the agency's aircraft on other than a national basis, which was more appropriate than the Council's decision, then nothing would have prevented the Council from modifying its determination to match such a method or procedure.

Hence it might have been better if the Council's Resolution of 1967 were limited to the making of general criteria for registration on other than a national basis, which criteria would become a part of the Convention and to which the same rules regarding the observance of the provisions thereof apply. Indeed, as the Director of the Legal Bureau of the International Civil Aviation Organization stated, the Convention does not give the Council a policeman's role.

An Issue Versus an Institution:

However, whatever evaluation can be made of the Resolution of 1967, something undisputable emerged from its adoption and asserted itself. The International Civil Aviation Organization has, on passing

that Resolution, proved itself an efficient instrument for solving air law problems and re-affirmed its pledge to the legal procedures as a guidance for its actions. Its decision on the question of registration of aircraft on other than a national basis is a clear manifestation of its adherence to a policy that ardently seeks the establishment of a broad body of international law, broad enough to offer ingenious answers to today's existing problems and flexible enough to adapt to, and encompass, such an enigma as that caused by the last sentence of Article 77. The remarkable settlement of the problem by the Resolution is but one of the zealous endeavours of the International Civil Aviation Organization, and specially its Legal Committee; and the resourcefulness and foresight displayed in arriving at the settlement are the very things that promise answers to the seemingly unsolvable question of hyjacking and the problems akin to it.

Furthermore, the standing up of the Organization to the challenge presented by the present issue and the subtle solution it tendered, with respect to it, are but a true indication of the profound commitment of this Organization to the

objectives specified for it in the Chicago Convention and particularly its duty to "promote generally the development of all aspects of international civil aeronautics".

INTERNATIONAL STANDARDS

AIRCRAFT NATIONALITY AND REGISTRATION MARKS

ANNEX 7

TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION

SECOND EDITION — APRIL 1964

This edition incorporates all amendments adopted by the Council prior to 1 December 1963 and supersedes, on 1 November 1964, the First Edition of Annex 7.

For information regarding the applicability of the Standards, see Foreword.

INTERNATIONAL CIVIL AVIATION ORGANIZATION

TABLE OF CONTENTS

AMENDMENTS

The issue of amendments is announced regularly in the *ICAO Bulletin,* which holders of this publication should consult. The space below is provided to keep a record of such amendments.

RECORD OF AMENDMENTS AND CORRIGENDA

AMENDMENTS				CORRIGENDA			
No.	Date Applicable	Date entered	Entered by	No.	Date Applicable	Date entered	Entered by

FOREWORD

Historical Background

Standards for Aircraft Nationality and Registration Marks were adopted by the Council on 8 February 1949 pursuant to the provisions of Article 37 of the Convention on International Civil Aviation (Chicago 1944) and designated as Annex 7 to the Convention. They became effective on 1 July 1949. The Standards were based on recommendations of the first and second sessions of the Airworthiness Division held respectively in March 1946 and February 1947.

Second Edition.—The present edition contains provisions arising from the recommendations made, at its fifth meeting, by the Airworthiness Committee, an international body of experts authorized by the Council and functioning under the Air Navigation Commission. As a result of these recommendations, their submission to all Contracting States and their review by the Air Navigation Commission, Amendment 1 was adopted on 12 November 1963 and became effective on 1 April 1964.

Applicability

The present (Second) edition of Annex 7 contains Standards, adopted by the International Civil Aviation Organization as the minimum Standards for the display of marks to indicate appropriate nationality and registration which have been determined to comply with Article 20 of the Convention. The Annex thus amended is applicable for all aircraft on 1 November 1964.

Action by Contracting States

Notification of differences: The attention of Contracting States is drawn to the obligation imposed by Article 38 of the Convention, referred to in the Council's Resolution of Adoption of this Annex, by which Contracting States are required to notify the Organization before 1 October 1964 of any difference that will exist on 1 November 1964 between their national regulations and practices and the International Standards contained in this Annex as now amended, and to keep the Organization currently informed of any differences which may subsequently occur, or of the withdrawal of any difference previously notified.

Use of the text of the Annex in national regulations: The Council, on 13 April 1948, adopted a resolution inviting the attention of Contracting States to the desirability of using in their own national regulations, as far as practicable, the precise language of those ICAO Standards that are of a regulatory character and also of indicating departures from the Standards, including any additional national regulations that were important for the safety or regularity of air navigation. Wherever possible, the provisions of this Annex have been deliberately written in such a way as would facilitate incorporation, without major textual changes, into national legislation.

General Information

An Annex is made up of the following component parts, not all of which, however, are necessarily found in every Annex; they have the status indicated:

1.—*Material comprising the Annex proper*

a) Standards and Recommended Practices adopted by the Council under the provisions of the Convention. They are defined as follows:

Standard: Any specification for physical characteristics, configuration, matériel, performance, personnel or procedure, the uniform application of which is recognized as necessary for the safety or regularity of international air navigation and to which Contracting States will conform in accordance with the Convention; in the event of impossibility of compliance, notification to the Council is compulsory under Article 38.

Recommended Practice: Any specification for physical characteristics, configuration, matériel, performance, personnel or procedure, the uniform application of which is recognized as desirable in the interest of safety, regularity or efficiency of international air navigation, and to which Contracting States will endeavour to conform in accordance with the Convention.

b) Appendices comprising material grouped separately for convenience but forming part of the Standards and Recommended Practices adopted by the Council.

c) Definitions of terms used in the Standards and Recommended Practices which are not self-explanatory in that they do not have accepted dictionary meanings. A definition does not have independent status but is an essential part of each Standard and Recommended Practice in which the term is used, since a change in the meaning of the term would affect the specification.

2.—*Material approved by the Council for publication in association with the Standards and Recommended Practices*

a) Forewords comprising historical and explanatory material based on the action of the Council and including an explanation of the obligations of States with regard to the application of the Standards and Recommended Practices ensuing from the Convention and the Resolution of Adoption.

b) Introductions comprising explanatory material introduced at the beginning of parts, chapters or sections of the Annex to assist in the understanding of the application of the text.

c) Notes included in the text, where appropriate, to give factual information or references bearing on the Standards or Recommended Practices in question, but not constituting part of the Standards or Recommended Practices.

d) Attachments comprising material supplementary to the Standards and Recommended Practices, or included as a guide to their application.

The International Standards for Aircraft Nationality and Registration Marks, being an Annex to the Convention, exist and are officially circulated in three languages — English, French and Spanish. Pursuant to Council action on 13 April 1948, each Contracting State is requested to select one of those texts for the purpose of national implementation and for other purposes provided for

in the Convention, either through direct use or through translation into its own national language, and to notify the Organization accordingly.

The following practice has been adhered to in order to indicate at a glance the status of each statement: *Standards* have been printed in light face roman; *Notes* have been printed in light face italics, the status being indicated by the prefix *Note*. There are no *Recommended Practices* in Annex 7.

Throughout this document, measurements are given in the ICAO Table of Units System followed when necessary by corresponding measurements in the foot-pound system.

Any reference to a portion of this document which is identified by a number includes all subdivisions of such portion.

INTERNATIONAL STANDARDS

1. — Definitions

When the following terms are used in the Standards for Aircraft Nationality and Registration Marks, they have the following meanings:

Aeroplane. A power-driven heavier-than-air aircraft, deriving its lift in flight chiefly from aerodynamic reactions on surfaces which remain fixed under given conditions of flight.

Aircraft. Any machine that can derive support in the atmosphere from the reactions of the air. (*See* Classification of Aircraft in *Table I*, page 7.)

Airship. A power-driven lighter-than-air aircraft.

Balloon. A non-power-driven lighter-than-air aircraft.

Fireproof material. A material capable of withstanding heat as well as or better than steel when the dimensions in both cases are appropriate for the specific purpose.

Glider. A non-power-driven heavier-than-air aircraft, deriving its lift in flight chiefly from aerodynamic reactions on surfaces which remain fixed under given conditions of flight.

Gyroplane. A heavier-than-air aircraft supported in flight by the reactions of the air on one or more rotors which rotate freely on substantially vertical axes.

Heavier-than-air aircraft. Any aircraft deriving its lift in flight chiefly from aerodynamic forces.

Helicopter. A heavier-than-air aircraft supported in flight by the reactions of the air on one or more power-driven rotors on substantially vertical axes.

Lighter-than-air aircraft. Any aircraft supported chiefly by its buoyancy in the air.

Ornithopter. A heavier-than-air aircraft supported in flight chiefly by the reactions of the air on planes to which a flapping motion is imparted.

Rotorcraft. A power-driven heavier-than-air aircraft supported in flight by the reactions of the air on one or more rotors.

State of Registry. The State on whose register the aircraft is entered.

2. — Nationality and Registration Marks to be Used

2.1 The nationality and registration marks appearing on the aircraft shall consist of a group of characters.

2.2 The nationality mark shall procede the registration mark. When the first character of the registration mark is a letter it shall be preceded by a hyphen.

2.3 The nationality mark shall be selected from the series of nationality symbols included in the radio call signs assigned to the State of Registry by the International Telecommunications Regulations. The nationality marks selected shall be notified to ICAO.

2.4 The registration mark shall be letters, numbers, or a combination of letters and numbers, and shall be that assigned by the State of Registry.

2.5 When letters are used for the registration mark, combinations shall not be used which might be confused with the five-letter combinations used in the International Code of Signals, Part II, the three-letter combinations beginning with Q used in the Q Code, and with the distress signal SOS, or other similar urgent signals, for example XXX, PAN and TTT.

Note.—For reference to these codes see the currently effective International Telecommunications Regulations.

3. — Location of Nationality and Registration Marks

3.1.—General

The nationality and registration marks shall be painted on the aircraft or shall be affixed by any other means ensuring a similar degree of permanence. The marks shall be kept clean and visible at all times.

3.2.—Lighter-than-air Aircraft

3.2.1 *Airships.* The marks on an airship shall appear either on the hull, or on the stabilizer surfaces. Where the marks appear on the hull, they shall be located lengthwise on each side of the hull and also on its upper surface on the line of symmetry. Where the marks appear on the stabilizer surfaces, they shall appear on the horizontal and on the vertical stabilizers; the marks on the horizontal stabilizer shall be located on the right half of the upper surface and on the left half of the lower surface, with the tops of the letters and numbers toward the leading edge; the marks on the vertical stabilizer shall be located on each side of the bottom half stabilizer, with the letters and numbers placed horizontally.

3.2.2 *Spherical balloons.* The marks on a spherical balloon shall appear in two places diametrically opposite. They shall be located near the maximum horizontal circumference of the balloon.

3.2.3 *Non-spherical balloons.* The marks on a non-spherical balloon shall appear on each side. They shall be located near the maximum cross-section of the balloon immediately above either the rigging band or the points of attachment of the basket suspension cables.

3.2.4 *All lighter-than-air aircraft.* The side marks on all lighter-than-air aircraft shall be visible both from the sides and from the ground.

3.3.—Heavier-than-air Aircraft

3.3.1 *Wings.* On heavier-than-air aircraft the marks shall appear once on the lower surface of the wing structure. They shall be located on the left half of the lower surface of the wing structure unless they extend across the whole of the lower surface of the wing structure. So far as is possible the marks shall be located equidistant from the leading and trailing edges of the wings. The tops of the letters and numbers shall be toward the leading edge of the wing.

3.3.2 *Fuselage (or equivalent structure) and vertical surfaces.* On heavier-than-air aircraft the marks shall appear either on each side of the fuselage (or equivalent structure) between the wings and the tail surface, or on the upper halves of the vertical tail surfaces. When located on a single vertical tail surface they shall appear on both sides. When located on multivertical tail surfaces they shall appear on the outboard sides of the outer surfaces.

3.3.3 *Special cases.* If a heavier-than-air aircraft does not possess parts corresponding to those mentioned in 3.3.1 and 3.3.2, the marks shall appear in a manner such that the aircraft can be identified readily.

4. — Measurements of Nationality and Registration Marks

The letters and numbers in each separate group of marks shall be of equal height.

4.1.—Lighter-than-air Aircraft

The height of the marks on lighter-than-air aircraft shall be at least 50 centimetres (20 inches).

4.2.—Heavier-than-air Aircraft

4.2.1 *Wings.* The height of the marks on the wings of heavier-than-air aircraft shall be at least 50 centimetres (20 inches).

4.2.2 *Fuselage (or equivalent structure) and vertical tail surfaces.* The height of the marks on the fuselage (or equivalent structure) and on the vertical tail surfaces of heavier-than-air aircraft shall be at least 30 centimetres (12 inches).

4.2.3 *Special cases.* If a heavier-than-air aircraft does not possess parts corresponding to those mentioned in 4.2.1 and 4.2.2, the measurements of the marks shall be such that the aircraft can be identified readily.

5. — Type of Characters for Nationality and Registration Marks

5.1 The letters shall be capital letters in Roman characters without ornamentation. Numbers shall be Arabic numbers without ornamentation.

5.2 The width of each character (except the letter I and the number 1), and the length of hyphens shall be two-thirds of the height of a character.

5.3 The characters and hyphens shall be formed by solid lines and shall be of a colour contrasting clearly with the background. The thickness of the lines shall be one-sixth of the height of a character.

5.4 Each character shall be separated from that which it immediately precedes or follows, by a space of not less than one-quarter of a character width. A hyphen shall be regarded as a character for this purpose.

6. — Register of Nationality and Registration Marks

Each Contracting State shall maintain a current register showing for each aircraft registered by that State, the information recorded in the certificate of registration (*see* Section 7).

7. — Certificate of Registration

7.1 The certificate of registration, in wording and arrangement, shall be a replica of the following form.

Note.—The size of the form is at the discretion of the State of Registry.

7.2 The certificate of registration shall be carried in the aircraft at all times.

8. — Identification Plate

An aircraft shall carry an identification plate inscribed with at least its Nationality and Registration Marks. The plate shall be made of fireproof metal or other fireproof material of suitable physical properties, and shall be secured to the aircraft in a prominent position near the main entrance.

STATE
MINISTRY
DEPARTMENT OR SERVICE

CERTIFICATE OF REGISTRATION

1. Nationality and Registration Marks	2. Manufacturer and Manufacturer's Designation of Aircraft	3. Aircraft Serial No.
.....	.....	.....
.....	.....	.....

4. Name of owner.....

5. Address of owner.....

6. It is hereby certified that the above described aircraft has been duly entered on the register of.....in accordance with the Convention on International Civil Aviation dated 7 December 1944 and with the †.....

(Signature).....

Date of issue.....

†—Insert reference to national regulations

*For use by the State of Registry

Table I. — CLASSIFICATION OF AIRCRAFT

- AIRCRAFT
  - Lighter-than-air aircraft
    - Non-power-driven: balloon
      - Free balloon
        - Spherical free balloon
        - Non-spherical free balloon
      - Captive balloon
        - Spherical captive balloon
        - Non-spherical captive balloon (1)
    - Power-driven
      - Airship
        - Rigid airship
        - Semi-rigid airship
        - Non-rigid airship
  - Heavier-than-air aircraft
    - Non-power-driven
      - Glider
        - Land glider
        - Sea glider (2)
      - Kite (4)
    - Power-driven
      - Aeroplane
        - Landplane (3)
        - Seaplane (2)
        - Amphibian (2)
      - Rotorcraft
        - Gyroplane
          - Land gyroplane (3)
          - Sea gyroplane (2)
          - Amphibian gyroplane (2)
        - Helicopter
          - Land helicopter (3)
          - Sea helicopter (2)
          - Amphibian helicopter (2)
      - Ornithopter
        - Land ornithopter (3)
        - Sea ornithopter (2)
        - Amphibian ornithopter (2)

(1) Generally designated "kite-balloon."
(2) "Float" or "boat" may be added as appropriate.
(3) Includes aircraft equipped with ski-type landing gear (substitute "ski" for "land").
(4) For the purpose of completeness only.

END

ANNEXES TO THE CONVENTION AND PROCEDURES FOR AIR NAVIGATION SERVICES

ANNEXES TO THE CONVENTION

Annex 1 — Personnel Licensing (5th edition)..... $1.00

Annex 2 — Rules of the Air (4th edition)..... $0.75

Annex 3 — Meteorology (5th edition) $0.75

Annex 4 — Aeronautical Charts (5th edition)..... $1.25

Annex 5 — Units of Measurement to be used in Air-Ground Communications (3rd edition)..... $0.50

Annex 6 — Operation of Aircraft — International Commercial Air Transport (5th edition)..... $0.75

Annex 7 — Aircraft Nationality and Registration Marks (2nd edition)... $0.50

Annex 8 — Airworthiness of Aircraft (5th edition)..... $1.00

Annex 9 — Facilitation (5th edition). $0.75

Annex 10 — Aeronautical Telecommunications (7th edition)..... $4.00

Annex 11 — Air Traffic Services (4th edition)..... $1.25

Annex 12 — Search and Rescue (4th edition)..... $0.50

Annex 13 — Aircraft Accident Inquiry (1st edition)..... $0.50

Annex 14 — Aerodromes (3rd edition) $2.00

Annex 15 — Aeronautical Information Services (2nd edition)..... $1.00

FIELD MANUALS

No. 1 — Communication Procedures (Doc 4478-COM/501/6) $1.50

No. 2 — Manual of Teletypewriter Operating Practices (Doc 7946-AN/868/3) $2.00

PROCEDURES FOR AIR NAVIGATION SERVICES

Radiotelephony Procedures (Doc 7181-COM/546/6)..... $2.00

Aircraft Operations (Doc 8168-OPS/611)..... $2.25

Rules of the Air and Air Traffic Services (Doc 4444-RAC/501/7).... $3.00

Meteorology (Doc 7605-MET/526/3). $2.50

Communication Codes and Abbreviations (Doc 6100-COM/504/4)..... $3.75

PROCEDURE FOR OBTAINING AMENDMENTS: *The purchase price includes the supply of amendments, on specific request, for the life of the particular edition purchased. Amendments,* supplements and corrigenda will be sent free of charge, *on specific request,* to holders who order them when they are announced in the ICAO Bulletin.

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PRICE: U. S. $0.50
(or equivalent in other currencies)

SUPPLEMENT NO. 1 TO ANNEX 7, SECOND EDITION

AIRCRAFT NATIONALITY AND REGISTRATION MARKS

AMENDMENT No. 3 - 1 OCTOBER 1967

List of Aircraft Nationality Marks
notified to ICAO up to 1 October 1967

Replace Supplement No. 1 to Annex 7 - Second Edition by the attached amended Supplement.

This Supplement supersedes the Supplement dated 1 June 1964 and Amendments 1 & 2 to the Supplement.

SUPPLEMENT NO. 1

TO

ANNEX 7 - SECOND EDITION

AIRCRAFT NATIONALITY AND REGISTRATION MARKS

List of Aircraft Nationality Marks
notified to ICAO up to 1 October 1967

Published by authority of the Council

June 1964

INTERNATIONAL CIVIL AVIATION ORGANIZATION

RECORD OF AMENDMENTS

No.	Date	Entered by	No.	Date	Entered by
1	15/1/65	ICAO			
2	15/7/66	ICAO			
3	1/10/67	ICAO			

SUPPLEMENT No. 1 TO ANNEX 7

AIRCRAFT NATIONALITY AND REGISTRATION MARKS

List of Aircraft Nationality Marks notified to ICAO up to 1 October 1967

Afghanistan	YA
Algeria	7T
Argentina	LV,LQ
Australia	VH
Austria	OE
Belgium	OO
Bolivia	CP
Brazil	PP,PT
Bulgaria	LZ
Burma	XY,XZ
Burundi	9U
Cambodia	XU
Cameroon	TJ
Canada	CF
Central African Republic	TL
Ceylon	4R
Chad	TT
Chile	CC
China	B
Colombia	HK
Congo (Brazzaville)	TN
Congo, Democratic Republic of	9Q
Costa Rica	TI
Cuba	CU[2]
Cyprus	5B
Czechoslovakia	OK
Dahomey	TY
Denmark	OY
Dominican Republic	HI
Ecuador	HC
El Salvador	YS
Ethiopia	ET
Finland	OH
France	F
Gabon	TR
Germany, Federal Republic of	D
Ghana	9G
Greece	SX
Guatemala	TG
Guinea	3X
Guyana	8R
Haiti	HH
Honduras	HR
Hungary	HA
Iceland	TF
India	VT
Indonesia	PK
West Irian	PK
Iran	EP
Iraq	YI
Ireland	EI,EJ
Israel	4X
Italy	I
Ivory Coast	TU
Jamaica	6Y
Japan	JA
Jordan	JY
Kenya	5Y
Korea, Republic of	HL
Kuwait	9K
Laos	XW
Lebanon	OD
Lesotho	7P
Liberia	EL
Libya	5A
Liechtenstein	HB plus national emblem[1, 3]
Luxembourg	LX
Malagasy Republic	5R
Malawi	7QY
Malaysia	9M
Mali	TZ
Malta	9H
Mauritania	5T
Mexico	XA,XB,XC
Morocco	CN
Nepal	9N
Netherlands, Kingdom of the	PH
Netherlands Antilles	PJ
Surinam	PZ
New Zealand	ZK,ZL,ZM
Nicaragua	AN[1]
Niger	5U
Nigeria	5N
Norway	LN
Pakistan	AP
Panama	HP
Paraguay	ZP
Peru	OB

Philippines	PI[1]
Poland	SP
Portugal	CS,CR
Romania	YR
Rwanda	9XR
Saudi Arabia	HZ
Senegal	6V,6W
Sierra Leone	9L
Singapore	9V
Somalia	6OS
South Africa	ZS,ZT,ZU
Spain	EC
Sudan	ST
Sweden	SE
Switzerland	HB plus national emblem[1, 3]
Syria	YK
Tanzania, United Republic of	5H
Thailand	HS
Togo	5V
Trinidad & Tobago	9Y
Tunisia	TS
Turkey	TC
Uganda	5X
United Arab Republic	SU
United Kingdom	G
Colonies and Protectorates	VP,VQ,VR
United States	N
Upper Volta	XT
Uruguay	CX
Venezuela	YV
Viet-Nam, Republic of	XV
Western Samoa	5W
Yemen	4W
Yugoslavia	YU
Zambia	9J

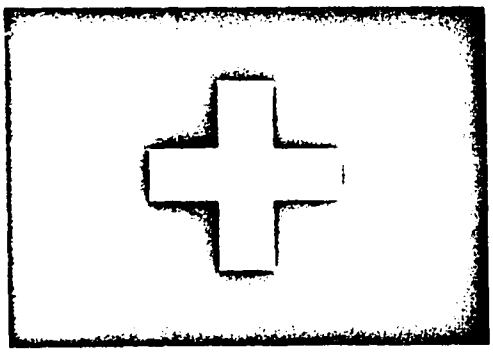
[1]This mark differs from the provision in 2.3 of this Annex.
[2]This mark is not yet officially confirmed.
[3]For national emblems of Liechtenstein and Switzerland, see below.

The nationality marks appearing on the aircraft consist of a group of characters and the national emblem.

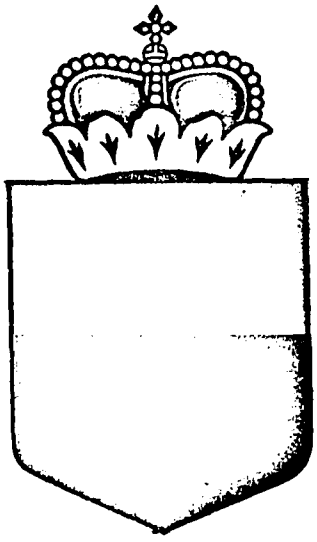
The "group of characters of the nationality marks" appears in lieu of the nationality marks on the wings and either on the fuselage or on the upper halves of the vertical tail surfaces. In addition,

- in applying 3.2.2, the national emblem which forms part of the nationality marks is attached to the basket suspension cables.

- in applying 3.3.2, the national emblem which forms part of the nationality marks appears on both sides of the vertical tail surfaces or on the outboard sides of the outer tail surfaces.



NATIONAL EMBLEM OF SWITZERLAND



NATIONAL EMBLEM OF LIECHTENSTEIN

- END -

1/7/67

AMENDMENT NO. 1

SUPPLEMENT NO. 2 (DIFFERENCES) TO ANNEX 7, SECOND EDITION

AIRCRAFT NATIONALITY AND REGISTRATION MARKS

Replace the Supplement to Annex 7, Second Edition, by the attached Supplement.

This amendment supersedes the Supplement dated 1/9/65.

SUPPLEMENT NO. 2 (DIFFERENCES) TO ANNEX 7 - Second Edition

AIRCRAFT NATIONALITY AND REGISTRATION MARKS

Differences between the national regulations and practices of States and the corresponding International Standards and Recommendations contained in Annex 7, as notified to ICAO in accordance with Article 38 of the Convention on International Civil Aviation and the Council's resolution of 21 November 1950.

Published by authority of the Council

September 1965

INTERNATIONAL CIVIL AVIATION ORGANIZATION

RECORD OF AMENDMENTS TO SUPPLEMENT

No.	Date	Entered by	No.	Date	Entered by
1	1/7/67				

AMENDMENTS TO ANNEX 7 ADOPTED BY THE COUNCIL SUBSEQUENT TO SECOND EDITION ISSUED NOVEMBER 1964

No.	Date of adoption	Date applicable	No.	Date of adoption	Date applicable

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MALAWI																							
MALAYSIA • MALAISIE • MALASIA																							
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NEW ZEALAND • NOUVELLE-ZELANDE • NUEVA ZELANDIA	3/2/64																						
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SAUDI ARABIA • ARABIE SAOUDITE • ARABIA SAUDITA																							
SENEGAL	5/2/64	X											X										
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SOUTH AFRICA • AFRIQUE DU SUD • SUDAFRICA	2/7/64																						
SPAIN • ESPAGNE • ESPAÑA	15/4/64																						
SUDAN • SOUDAN																							
SWEDEN • SUEDE • SUECIA	3/4/64																						
SWITZERLAND • SUISSE • SUIZA	31/3/64																						
SYRIA • SYRIE • SIRIA	20/11/66																						
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THAILAND • THAILANDE • TAILANDIA																							
TOGO																							
TRINIDAD & TOBAGO • TRINITE et TOBAGO • TRINIDAD Y TABAGO	12/3/65	X											X				X	X					
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UNITED ARAB REP. • REP. ARABE UNIE • REP. ARABE UNIDA	14/4/66																						
UNITED KINGDOM • ROYAUME-UNI • REINO UNIDO	9/3/64																						
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LEGEND

- ▭ No information received.
- ⊠ Differences or comments concerning implementation - Details in following pages.
- ▨ No differences exist.

LÉGENDE

- ▭ Aucun renseignement n'a été reçu.
- ⊠ Différences ou observations sur la mise en application - Voir le détail aux pages suivantes.
- ▨ Il n'existe pas de différences

Supplement No. 2 (Differences) to Annex 7 (Second Edition)
Supplément nº 2 (Différences) à l'Annexe 7 (deuxième édition)
Suplemento Núm. 2 (Diferencias) del Anexo 7 (Segunda edición)

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ALGERIA • ALGERIE • ARGELIA																								
ARGENTINA • ARGENTINE	5/4/65	X												X										
AUSTRALIA • AUSTRALIE	11/8/65	X												X			X		X					
AUSTRIA • AUTRICHE																								
BARBADOS • BARBADE																								
BELGIUM • BELGIQUE • BELGICA	5/5/64																							
BOLIVIA • BOLIVIE	29/12/64	X												X	X				X					
BRAZIL • BRESIL • BRASIL	5/11/64																							
BURMA • BIRMANIE • BIRMANIA	11/5/64																							
CAMBODIA • CAMBODGE • CAMBOYA																								
CAMEROON • CAMEROUN • CAMERUN	29/7/64	X												X					X					
CANADA	12/11/64	X																	X					
CENTRAL AFRICAN REP. • REP. CENTRAFRICAINE • REP. CENTROAFRICANA																								
CEYLON • CEYLAN • CEILAN																								
CHAD • TCHAD	14/5/64	X																	X					
CHILE • CHILI																								
CHINA • CHINE																								
COLOMBIA • COLOMBIE	24/5/66																							
CONGO (Brazzaville)																								
CONGO (Dem. Rep. Rép. dém. Rep. Dem.)	18/7/66																							
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CUBA																								
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CZECHOSLOVAKIA • TCHECOSLOVAQUIE • CHECOSLOVAQUIA																								
DAHOMEY																								
DENMARK • DANEMARK • DINAMARCA	3/3/64																							
DOMINICAN REP. • REP. DOMINICAINE • REP. DOMINICANA																								
ECUADOR • EQUATEUR	25/10/66																							
EL SALVADOR																								
ETHIOPIA • ETHIOPIE • ETIOPIA	23/1/64	X												X										
FINLAND • FINLANDE • FINLANDIA																								
FRANCE • FRANCIA	12/11/64																							
GABON	5/6/67	X											X	X					X					
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GREECE • GRECE • GRECIA	27/3/64																							
GUATEMALA	24/4/64																							
GUINEA • GUINEE	27/10/66																							
GUYANA • GUYANE																								
HAITI	13/3/64																							
HONDURAS																								
ICELAND • ISLANDE • ISLANDIA																								
INDIA • INDE	17/10/64																							
INDONESIA • INDONESIE																								
IRAN																								
IRAQ • IRAK	27/4/66																							
IRELAND • IRLANDE • IRLANDA	13/8/64	X																	X					
ISRAEL	10/7/64																							
ITALY • ITALIE • ITALIA	2/5/64																							
IVORY COAST • COTE-D'IVOIRE • COSTA DE MARFIL	11/2/64																							
JAMAICA • JAMAIQUE	5/8/64	X												X					X					
JAPAN • JAPON	28/9/64																							
JORDAN • JORDANIE • JORDANIA																								
KENYA • KENIA	27/7/65																							
KOREA • COREE • COREA																								
KUWAIT • KOWEIT	16/3/64																							
LAOS	24/4/64	X																	X					
LEBANON • LIBAN • LIBANO																								
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2.2										X			X		X									
2.3										X	X				X									
2.4										X														
2.5										X					X									
3.1										X					X									
3.2.1															X									
3.2.2										X	X													
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7.1																								
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CONTINUED OVERLEAF · SUITE AU VERSO · CONTINÚA AL DORSO

PART I

CONTRACTING STATES WHICH HAVE NOTIFIED ICAO THAT NO DIFFERENCES WILL EXIST BETWEEN THEIR NATIONAL REGULATIONS AND PRACTICES AND THE INTERNATIONAL STANDARDS AND RECOMMENDATIONS OF ANNEX 7 - SECOND EDITION

Belgium
Brazil
Burma
Colombia
Congo, Democratic Republic of
Cyprus
Denmark
Ecuador
France
Ghana
Greece
Guatemala
Guinea
Haiti
India
Iraq
Israel
Italy
Ivory Coast
Japan
Kenya
Kuwait
Liberia
Luxembourg
Mexico
Nepal
New Zealand
Niger
Norway
Pakistan
Paraguay
Philippines
Poland
Portugal
Somalia
South Africa
Spain
Sweden
Switzerland
Syria
Tanzania
Turkey
United Arab Republic
United Kingdom
Upper Volta
Venezuela
Yugoslavia

PART II

CONTRACTING STATES FROM WHICH NO INFORMATION HAS BEEN RECEIVED

Afghanistan
Algeria
Austria
Barbados
Cambodia
Central African Republic
Ceylon
Chile
China
Congo (Brazzaville)
Costa Rica
Cuba
Czechoslovakia
Dahomey
Dominican Republic
El Salvador
Finland
Guyana
Honduras
Iceland
Indonesia
Iran
Jordan
Korea
Lebanon
Libya
Malagasy Republic
Malawi
Malaysia
Mali
Malta
Mauritania
Morocco
Nicaragua
Nigeria
Panama
Peru
Romania
Rwanda
Saudi Arabia
Sierra Leone
Singapore
Sudan
Thailand
Togo
Uganda
Uruguay
Viet-Nam
Yemen
Zambia

PART III

CONTRACTING STATES WHICH HAVE NOTIFIED ICAO OF DIFFERENCES WHICH EXIST BETWEEN THEIR NATIONAL REGULATIONS AND PRACTICES AND THE INTERNATIONAL STANDARDS AND RECOMMENDATIONS OF ANNEX 7 - SECOND EDITION OR HAVE COMMENTED ON IMPLEMENTATION

SUMMARY OF DIFFERENCES AND COMMENTS

ARGENTINA	
Chapter 3	
3. 3. 1	The marks shall also appear once on the right upper surface of the wing structure.
AUSTRALIA	
Chapter 3	
3. 3. 1	The marks shall also appear once on the right upper surface of the wing structure.
Chapter 4	
4. 1	Height of marks to be at least 30 inches.
4. 2. 2	Height of marks shall be as large as practicable but shall not interfere with the visible outlines of the fuselage (or equivalent structure) and a margin of at least two inches to be left along each edge of any vertical tail surface.
BOLIVIA	
Chapter 3	
3. 3. 1	The marks shall also be located on the upper surface of the right wing.
3. 3. 2	No provision for markings on fuselage.
Chapter 4	
4. 2. 2	Not applicable in view of differences on paragraph 3. 3. 2.
CAMEROON	
Chapter 3	
3. 3. 1	The marks shall also appear once on the right upper surface of the wing structure.
Chapter 4	
4. 2. 2	Height of the letters shall be as great as practicable and shall not be less than 15 cm nor more than four-fifths of the average height of the fuselage. The marks on the vertical tail surfaces shall be such as to leave at least a margin of five cm along each edge of any vertical tail surface.

CANADA	
Chapter 4	
4.2.2	Measurement of marks on the fuselage or on the vertical tail surfaces of heavier-than-air aircraft shall be as large as practicable but the marks are not required to be more than six inches in height. Aircraft flown only for experiment shall display the letter 'X' following the nationality and registration marks preceded by a hyphen.
CHAD	
Chapter 4	
4.2.2	The height of the marks on the vertical tail surface shall, whenever possible, be 30 cm, but shall not be less than 15 cm.
ETHIOPIA	
Chapter 3	
3.3.1	The marks shall also appear once on the right upper surface of the wing structure.
GABON	
Chapter 3	
3.2.4	On lighter-than-air aircraft the marks shall be placed so that they are visible both from ground and air.
3.3.1	On heavier-than-air aircraft the marks shall also appear once on the right upper wing surface.
Chapter 4	
4.2.2	The height of the letters shall be as great as practicable and shall not be less than 15 cm nor more than the four-fifths of the average height of the fuselage. The marks on the vertical tail surfaces of heavier-than-air aircraft shall be such as to leave at least a margin of 5 cm along the edges of the vertical surfaces.
GERMANY (Fed. Rep. of)	
Chapter 3	
3.3.1	Wing marks on the lower surface of the wing structure are prescribed only for aircraft with a maximum total weight up to 5.7 t. For heavier aircraft these marks are not required.
Chapter 4	
4.2.2	For aircraft with a maximum total weight up to 5.7 t, the height of the marks on both sides of the fuselage is required to be 15 cm only.

IRELAND	
Chapter 4	
4.2.2	The marks on the fuselage shall not interfere with the visible outlines of the fuselage. The marks on the vertical surfaces shall be such as to leave at least a margin of 5 cm along each edge of any vertical tail surface. Within these stipulations the marks shall be as large as practicable except that this clause shall not be interpreted as requiring the use of marks exceeding 15 cm in height.
JAMAICA	
Chapter 3	
3.3.1	The marks shall also appear once on the right upper surface of the wing structure.
Chapter 4	
4.2.2	The marks on the fuselage shall not interfere with the visible outlines of the fuselage. The marks on the vertical tail surfaces shall be such as to leave a margin of at least two inches along each side of the vertical tail surface. The letters constituting each group of marks shall be of equal height. The height of the marks shall be at least six inches.
LAOS	
Chapter 4	
4.2.2	The size of the markings on the fuselage and tail shall be 25 cm.
NETHERLANDS, Kingdom of the	
Chapter 5	
5.2 5.3 5.4	The height of the hyphen shall be one-seventh of the height of the nationality and registration marks of the aircraft. The type and separation of letters, numbers and hyphens of the marks shall be in accordance with the drawings (Fig. 1b) in Decree No. LI/11430 of Article 6, para. 1 of the Netherlands Aviation Act. The letters and numbers shall be placed next to each other in a straight line. If necessary, the registration mark may be placed below the nationality mark. The letter IJ shall be written as Y.
SENEGAL	
Chapter 3	
3.3.1	The marks shall also appear once on the right upper surface of the wing structure.

TRINIDAD & TOBAGO	
Chapter 3	
3.3.1	The marks are also required on upper surface of wing structure.
Chapter 4	
4.2.1 4.2.2	The size of the marks is required to be at least 6 inches.
TUNISIA	
Chapter 3	
3.3.1	The marks are also required on the upper wing surface.
UNITED STATES	
Chapter 3	
3.3.1	The marks on the wing surfaces are not required.
Chapter 4	
4.2.1	The marks on the wing surfaces are not required.

- END -

COVER SHEET TO AMENDMENT 2

INTERNATIONAL STANDARDS

AIRCRAFT NATIONALITY AND REGISTRATION MARKS

ANNEX 7

TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION

INTERNATIONAL CIVIL AVIATION ORGANIZATION

Check-List of Amendments

to Annex 7

	Effective Date	Date of Applicability
Second Edition (incorporating Amendment 1).	1/4/64	1/11/64
Amendment 2 (adopted by the Council on 8 November 1967). Replacement pages 3, 4 and 5.	8/3/68	22/8/68

AMENDMENT 2

to the

International Standards

AIRCRAFT NATIONALITY AND REGISTRATION MARKS

(Annex 7 to the Convention
on International Civil Aviation)

1. Insert the following replacement pages in Annex 7 (Second Edition) to incorporate Amendment 2 which becomes applicable on 22 August 1968:

   i) Page 3, 4 - Foreword

   ii) Page 5 - International Standards

2. Record entry of Amendment on page 2.

8/3/68

FOREWORD

Historical Background

Standards for Aircraft Nationality and Registration Marks were adopted by the Council on 8 February 1949 pursuant to the provisions of Article 37 of the Convention on International Civil Aviation (Chicago 1944) and designated as Annex 7 to the Convention. They became effective on 1 July 1949. The Standards were based on recommendations of the first and second sessions of the Airworthiness Division held respectively in March 1946 and February 1947.

Second Edition.—The present edition contains provisions arising from the recommendations made, at its fifth meeting, by the Airworthiness Committee, an international body of experts authorized by the Council and functioning under the Air Navigation Commission. As a result of these recommendations, their submission to all Contracting States and their review by the Air Navigation Commission, Amendment 1 was adopted on 12 November 1963 and became effective on 1 April 1964.

The Council, on 8 November 1967, adopted Amendment 2, which consisted solely of redefining "Aircraft". The Amendment, which became effective on 8 March 1968, implemented a decision that all air cushion type vehicles, such as hovercraft and ground effect machines, should not be classified as aircraft.

Applicability

The present (Second) edition of Annex 7 contains Standards, adopted by the International Civil Aviation Organization as the minimum Standards for the display of marks to indicate appropriate nationality and registration which have been determined to comply with Article 20 of the Convention. The Annex thus amended is applicable for all aircraft on 22 August 1968.

Action by Contracting States

Notification of differences: The attention of Contracting States is drawn to the obligation imposed by Article 38 of the Convention, referred to in the Council's Resolution of Adoption of this Annex, by which Contracting States are required to notify the Organization before 22 July 1968 of any difference that will exist on 22 August 1968 between their national regulations and practices and the International Standards contained in this Annex as now amended, and to keep the Organization currently informed of any differences which may subsequently occur, or of the withdrawal of any difference previously notified.

Use of the text of the Annex in national regulations: The Council, on 13 April 1948, adopted a resolution inviting the attention of Contracting States to the desirability of using in their own national regulations, as far as practicable, the precise language of those ICAO Standards that are of a regulatory character and also of indicating departures from the Standards, including any additional national regulations that were important for the safety or regularity of air navigation. Wherever possible, the provisions of this Annex have been deliberately written in such a way as would facilitate incorporation, without major textual changes, into national legislation.

General Information

An Annex is made up of the following component parts, not all of which, however, are necessarily found in every Annex; they have the status indicated:

1.—*Material comprising the Annex proper*

a) Standards and Recommended Practices adopted by the Council under the provisions of the Convention. They are defined as follows:

Standard: Any specification for physical characteristics, configuration, matériel, performance, personnel or procedure, the uniform application of which is recognized as necessary for the safety or regularity of international air navigation and to which Contracting States will conform in accordance with the Convention; in the event of impossibility of compliance, notification to the Council is compulsory under Article 38.

Recommended Practice: Any specification for physical characteristics, configuration, matériel, performance, personnel or procedure, the uniform application of which is recognized as desirable in the interest of safety, regularity or efficiency of international air navigation, and to which Contracting States will endeavour to conform in accordance with the Convention.

b) Appendices comprising material grouped separately for convenience but forming part of the Standards and Recommended Practices adopted by the Council.

c) Definitions of terms used in the Standards and Recommended Practices which are not self-explanatory in that they do not have accepted dictionary meanings. A definition does not have independent status but is an essential part of each Standard and Recommended Practice in which the term is used, since a change in the meaning of the term would affect the specification.

2.—*Material approved by the Council for publication in association with the Standards and Recommended Practices*

a) Forewords comprising historical and explanatory material based on the action of the Council and including an explanation of the obligations of States with regard to the application of the Standards and Recommended Practices ensuing from the Convention and the Resolution of Adoption.

b) Introductions comprising explanatory material introduced at the beginning of parts, chapters or sections of the Annex to assist in the understanding of the application of the text.

c) Notes included in the text, where appropriate, to give factual information or references bearing on the Standards or Recommended Practices in question, but not constituting part of the Standards or Recommended Practices.

d) Attachments comprising material supplementary to the Standards and Recommended Practices, or included as a guide to their application.

The International Standards for Aircraft Nationality and Registration Marks, being an Annex to the Convention, exist and are officially circulated in three languages — English, French and Spanish. Pursuant to Council action on 13 April 1948, each Contracting State is requested to select one of those texts for the purpose of national implementation and for other purposes provided for in the Convention, either through direct use or through translation into its own national language, and to notify the Organization accordingly.

The following practice has been adhered to in order to indicate at a glance the status of each statement: *Standards* have been printed in light face roman; *Notes* have been printed in light face italics, the status being indicated by the prefix *Note*. There are no *Recommended Practices* in Annex 7.

Throughout this document, measurements are given in the ICAO Table of Units System followed when necessary by corresponding measurements in the foot-pound system.

Any reference to a portion of this document which is identified by a number includes all subdivisions of such portion.

INTERNATIONAL STANDARDS

1. — Definitions

When the following terms are used in the Standards for Aircraft Nationality and Registration Marks, they have the following meanings:

Aeroplane. A power-driven heavier-than-air aircraft, deriving its lift in flight chiefly from aerodynamic reactions on surfaces which remain fixed under given conditions of flight.

Aircraft. Any machine that can derive support in the atmosphere from the reactions of the air other than the reactions of the air against the earth's surface. (*See* Classification of Aircraft in *Table I*, page 7.)

Airship. A power-driven lighter-than-air aircraft.

Balloon. A non-power-driven lighter-than-air aircraft.

Fireproof material. A material capable of withstanding heat as well as or better than steel when the dimensions in both cases are appropriate for the specific purpose.

Glider. A non-power-driven heavier-than-air aircraft, deriving its lift in flight chiefly from aerodynamic reactions on surfaces which remain fixed under given conditions of flight.

Gyroplane. A heavier-than-air aircraft supported in flight by the reactions of the air on one or more rotors which rotate freely on substantially vertical axes.

Heavier-than-air aircraft. Any aircraft deriving its lift in flight chiefly from aerodynamic forces.

Helicopter. A heavier-than-air aircraft supported in flight by the reactions of the air on one or more power-driven rotors on substantially vertical axes.

Lighter-than-air aircraft. Any aircraft supported chiefly by its buoyancy in the air.

Ornithopter. A heavier-than-air aircraft supported in flight chiefly by the reactions of the air on planes to which a flapping motion is imparted.

Rotorcraft. A power-driven heavier-than-air aircraft supported in flight by the reactions of the air on one or more rotors.

State of Registry. The State on whose register the aircraft is entered.

2. — Nationality and Registration Marks to be Used

2.1 The nationality and registration marks appearing on the aircraft shall consist of a group of characters.

2.2 The nationality mark shall precede the registration mark. When the first character of the registration mark is a letter it shall be preceded by a hyphen.

2.3 The nationality mark shall be selected from the series of nationality symbols included in the radio call signs assigned to the State of Registry by the International Telecommunications Regulations. The nationality marks selected shall be notified to ICAO.

2.4 The registration mark shall be letters, numbers, or a combination of letters and numbers, and shall be that assigned by the State of Registry.

2.5 When letters are used for the registration mark, combinations shall not be used which might be confused with the five-letter combinations used in the International Code of Signals, Part II, the three-letter combinations beginning with Q used in the Q Code, and with the distress signal SOS, or other similar urgent signals, for example XXX, PAN and TTT.

Note.—For reference to these codes see the currently effective International Telecommunications Regulations.

3. — Location of Nationality and Registration Marks

3.1.—General

The nationality and registration marks shall be painted on the aircraft or shall be affixed by any other means ensuring a similar degree of permanence. The marks shall be kept clean and visible at all times.

3.2.—Lighter-than-air Aircraft

3.2.1 *Airships.* The marks on an airship shall appear either on the hull, or on the stabilizer surfaces. Where the marks appear on the hull, they shall be located lengthwise on each side of the hull and also on its upper surface on the line of symmetry. Where the marks appear on the stabilizer surfaces, they shall appear on the horizontal and on the vertical stabilizers; the marks on the horizontal stabilizer shall be located on the right half of the upper surface and on the left half of the lower surface, with the tops of the letters and numbers toward the leading edge; the marks on the vertical stabilizer shall be located on each side of the bottom half stabilizer, with the letters and numbers placed horizontally.

3.2.2 *Spherical balloons.* The marks on a spherical balloon shall appear in two places diametrically opposite. They shall be located near the maximum horizontal circumference of the balloon.

3.2.3 *Non-spherical balloons.* The marks on a non-spherical balloon shall appear on each side. They shall be located near the maximum cross-section of the balloon immediately above either the rigging band or the points of attachment of the basket suspension cables.

3.2.4 *All lighter-than-air aircraft.* The side marks on all lighter-than-air aircraft shall be visible both from the sides and from the ground.

INTERNATIONAL STANDARDS

1. — Definitions

When the following terms are used in the Standards for Aircraft Nationality and Registration Marks, they have the following meanings:

Aeroplane. A power-driven heavier-than-air aircraft, deriving its lift in flight chiefly from aerodynamic reactions on surfaces which remain fixed under given conditions of flight.

Aircraft. Any machine that can derive support in the atmosphere from the reactions of the air other than the reactions of the air against the earth's surface. (*See* Classification of Aircraft in *Table I*, page 7.)

Airship. A power-driven lighter-than-air aircraft.

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Fireproof material. A material capable of withstanding heat as well as or better than steel when the dimensions in both cases are appropriate for the specific purpose.

Glider. A non-power-driven heavier-than-air aircraft, deriving its lift in flight chiefly from aerodynamic reactions on surfaces which remain fixed under given conditions of flight.

Gyroplane. A heavier-than-air aircraft supported in flight by the reactions of the air on one or more rotors which rotate freely on substantially vertical axes.

Heavier-than-air aircraft. Any aircraft deriving its lift in flight chiefly from aerodynamic forces.

Helicopter. A heavier-than-air aircraft supported in flight by the reactions of the air on one or more power-driven rotors on substantially vertical axes.

Lighter-than-air aircraft. Any aircraft supported chiefly by its buoyancy in the air.

Ornithopter. A heavier-than-air aircraft supported in flight chiefly by the reactions of the air on planes to which a flapping motion is imparted.

Rotorcraft. A power-driven heavier-than-air aircraft supported in flight by the reactions of the air on one or more rotors.

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2.3 The nationality mark shall be selected from the series of nationality symbols included in the radio call signs assigned to the State of Registry by the International Telecommunications Regulations. The nationality marks selected shall be notified to ICAO.

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2.5 When letters are used for the registration mark, combinations shall not be used which might be confused with the five-letter combinations used in the International Code of Signals, Part II, the three-letter combinations beginning with Q used in the Q Code, and with the distress signal SOS, or other similar urgent signals, for example XXX, PAN and TTT.

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3.2.—Lighter-than-air Aircraft

3.2.1 *Airships.* The marks on an airship shall appear either on the hull, or on the stabilizer surfaces. Where the marks appear on the hull, they shall be located lengthwise on each side of the hull and also on its upper surface on the line of symmetry. Where the marks appear on the stabilizer surfaces, they shall appear on the horizontal and on the vertical stabilizers; the marks on the horizontal stabilizer shall be located on the right half of the upper surface and on the left half of the lower surface, with the tops of the letters and numbers toward the leading edge; the marks on the vertical stabilizer shall be located on each side of the bottom half stabilizer, with the letters and numbers placed horizontally.

3.2.2 *Spherical balloons.* The marks on a spherical balloon shall appear in two places diametrically opposite. They shall be located near the maximum horizontal circumference of the balloon.

3.2.3 *Non-spherical balloons.* The marks on a non-spherical balloon shall appear on each side. They shall be located near the maximum cross-section of the balloon immediately above either the rigging band or the points of attachment of the basket suspension cables.

3.2.4 *All lighter-than-air aircraft.* The side marks on all lighter-than-air aircraft shall be visible both from the sides and from the ground.

3.3.—Heavier-than-air Aircraft

3.3.1 *Wings.* On heavier-than-air aircraft the marks shall appear once on the lower surface of the wing structure. They shall be located on the left half of the lower surface of the wing structure unless they extend across the whole of the lower surface of the wing structure. So far as is possible the marks shall be located equidistant from the leading and trailing edges of the wings. The tops of the letters and numbers shall be toward the leading edge of the wing.

3.3.2 *Fuselage (or equivalent structure) and vertical surfaces.* On heavier-than-air aircraft the marks shall appear either on each side of the fuselage (or equivalent structure) between the wings and the tail surface, or on the upper halves of the vertical tail surfaces. When located on a single vertical tail surface they shall appear on both sides. When located on multivertical tail surfaces they shall appear on the outboard sides of the outer surfaces.

3.3.3 *Special cases.* If a heavier-than-air aircraft does not possess parts corresponding to those mentioned in 3.3.1 and 3.3.2, the marks shall appear in a manner such that the aircraft can be identified readily.

4. — Measurements of Nationality and Registration Marks

The letters and numbers in each separate group of marks shall be of equal height.

4.1.—Lighter-than-air Aircraft

The height of the marks on lighter-than-air aircraft shall be at least 50 centimetres (20 inches).

4.2.—Heavier-than-air Aircraft

4.2.1 *Wings.* The height of the marks on the wings of heavier-than-air aircraft shall be at least 50 centimetres (20 inches).

4.2.2 *Fuselage (or equivalent structure) and vertical tail surfaces.* The height of the marks on the fuselage (or equivalent structure) and on the vertical tail surfaces of heavier-than-air aircraft shall be at least 30 centimetres (12 inches).

4.2.3 *Special cases.* If a heavier-than-air aircraft does not possess parts corresponding to those mentioned in 4.2.1 and 4.2.2, the measurements of the marks shall be such that the aircraft can be identified readily.

5. — Type of Characters for Nationality and Registration Marks

5.1 The letters shall be capital letters in Roman characters without ornamentation. Numbers shall be Arabic numbers without ornamentation.

5.2 The width of each character (except the letter I and the number 1), and the length of hyphens shall be two-thirds of the height of a character.

5.3 The characters and hyphens shall be formed by solid lines and shall be of a colour contrasting clearly with the background. The thickness of the lines shall be one-sixth of the height of a character.

5.4 Each character shall be separated from that which it immediately precedes or follows, by a space of not less than one-quarter of a character width. A hyphen shall be regarded as a character for this purpose.

6. — Register of Nationality and Registration Marks

Each Contracting State shall maintain a current register showing for each aircraft registered by that State, the information recorded in the certificate of registration (*see* Section 7).

7. — Certificate of Registration

7.1 The certificate of registration, in wording and arrangement, shall be a replica of the following form.

Note.—The size of the form is at the discretion of the State of Registry.

7.2 The certificate of registration shall be carried in the aircraft at all times.

8. — Identification Plate

An aircraft shall carry an identification plate inscribed with at least its Nationality and Registration Marks. The plate shall be made of fireproof metal or other fireproof material of suitable physical properties, and shall be secured to the aircraft in a prominent position near the main entrance.

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STATE
MINISTRY
DEPARTMENT OR SERVICE

CERTIFICATE OF REGISTRATION

1. Nationality and Registration Marks	2. Manufacturer and Manufacturer's Designation of Aircraft	3. Aircraft Serial No.
.....	.....	.....
.....	.....	.....

4. Name of owner.....

5. Address of owner.....

6. It is hereby certified that the above described aircraft has been duly entered on the register of.....in accordance with the Convention on International Civil Aviation dated 7 December 1944 and with the †.....

(Signature).....

Date of issue.....

†—Insert reference to national regulations

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*For use by the State of Registry

Doc 8722-C/976
20/2/68

NATIONALITY AND REGISTRATION OF AIRCRAFT OPERATED BY INTERNATIONAL OPERATING AGENCIES

NATIONALITÉ ET IMMATRICULATION DES AÉRONEFS EXPLOITÉS PAR DES ORGANISMES INTERNATIONAUX D'EXPLOITATION

NACIONALIDAD Y MATRÍCULA DE AERONAVES EXPLOTADAS POR AGENCIAS INTERNACIONALES DE EXPLOTACIÓN

RESOLUTION ADOPTED BY THE COUNCIL ON NATIONALITY AND REGISTRATION OF AIRCRAFT OPERATED BY INTERNATIONAL OPERATING AGENCIES

RESOLUTION ADOPTEE PAR LE CONSEIL SUR LA NATIONALITE ET L'IMMATRICULATION DES AERONEFS EXPLOITES PAR DES ORGANISMES INTERNATIONAUX D'EXPLOITATION

RESOLUCION ADOPTADA POR EL CONSEJO SOBRE NACIONALIDAD Y MATRICULA DE AERONAVES EXPLOTADAS POR AGENCIAS INTERNACIONALES DE EXPLOTACION

This Resolution was adopted by the Council at the 17th Meeting, Sixty-second Session, 14 December 1967.

La présente résolution a été adoptée par le Conseil le 14 décembre 1967, lors de la 17ème séance de sa soixante-deuxième session.

Esta Resolución fue adoptada por el Consejo en la sesión 17a. del LXII período de sesiones, el 14 de diciembre de 1967.

INTERNATIONAL CIVIL AVIATION ORGANIZATION
ORGANISATION DE L'AVIATION CIVILE INTERNATIONALE
ORGANIZACION DE AVIACION CIVIL INTERNACIONAL

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INDICE

INTRODUCTORY NOTE

The last sentence of Article 77 of the Convention on International Civil Aviation reads: "The Council shall determine in what manner the provisions of this Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies."

Studies on the subject of the problems of nationality and registration of aircraft operated by such agencies began in ICAO as early as 1948 and, thereafter, were, at various times, conducted in different bodies, namely, the Council, the Air Transport Committee and a Panel of Experts appointed by the Council.

In December 1964 the Council referred the subject to the Legal Committee for study and advice. In September 1967 that Committee submitted to the Council a report(1), which also constituted its advice to the Council, in the matter.

On 14 December 1967 the Council, having considered the subject, adopted by the unanimous vote of the 26 Representatives present, a Resolution of which the text appears on the following pages. It also decided that it would apply the procedure set out in the Resolution to any specific plans for joint or international registration presented to it, with appropriate information, by the States concerned.

The text of any decision which the Council may take in application of the Resolution will be issued as a Supplement to this publication(2).

Consideration will soon be given to the question of amending Annex 7 to the Chicago Convention to bring the Annex into accord with the spirit of the above-mentioned resolution of the Council. Information on this point also will be issued as a Supplement to this publication(2).

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(1) Report of Legal Committee, 16th Session, Doc 8704, LC/155, Annex C.

(2) There is a stub at the end of this publication to permit the insertion of such Supplement.

RESOLUTION ADOPTED BY THE COUNCIL ON NATIONALITY AND REGISTRATION OF AIRCRAFT OPERATED BY INTERNATIONAL OPERATING AGENCIES

THE COUNCIL

CONSIDERING the provisions of Article 77 of the Convention on International Civil Aviation, the last sentence of which reads: "The Council shall determine in what manner the provisions of this Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies."

CONSIDERING the Report on this subject of the Legal Committee, Doc 8704-LC/155, 22/9/67, Annex C

CONSIDERING the conclusions of the Legal Committee as expressed in the said Report

AGREEING that, without any amendment to the Convention on International Civil Aviation, the provisions of the Convention can be made applicable, by a determination of the Council under said Article 77, to aircraft which are not registered on a national basis, such as aircraft "jointly registered" or "internationally registered" (which concepts are defined in Appendix 1 hereto) subject, however, to fulfilment of certain basic criteria, which have been established by the Council

HOLDING that a determination by the Council pursuant to, and within the scope of, said Article 77 of the Convention, and made in accordance with the procedures indicated below, will be binding on all Contracting States and that, accordingly, in the case of aircraft which are jointly registered or internationally registered and in respect of which the basic criteria which have been established by the Council are fulfilled, the rights and obligations under the said Convention would be applicable as in the case of nationally registered aircraft of a Contracting State

RESOLVES that the process of determination contemplated in said Article 77 shall include the application of the basic criteria which have been established by the Council to each particular plan for joint or international registration which might be brought before it, with appropriate and definite information relating to and describing such plan, by States constituting the international operating agency concerned

DECIDES, with regard to the establishment of the basic criteria referred to in the three preceding paragraphs, as follows:

a) In cases of joint registration, to adopt the basic criteria specified in Part I of Appendix 2 hereto;

b) In cases of international registration, to be guided by Part II of Appendix 2 hereto.

NOTES, in connection with the foregoing process of determination, that, while the Council has discretion to arrive at such determination as it deems appropriate, in the case of joint registration described in Appendix 3 hereto, there should be little problem in regard to the fulfilment of the basic criteria specified in Part I of Appendix 2 hereto and, therefore, a determination by the Council in such or similar cases should merely be formal and could automatically be given,

NOTES also that other cases of joint registration and all cases of international registration may well require different approaches,

DECIDES that, upon completion of the process of determination as specified above for a particular plan which in the opinion of the Council would satisfy the basic criteria specified in Appendix 2 hereto, the manner of application of the provisions of the Convention relating to nationality of aircraft be as follows:

(1) In the case of joint or international registration, all the aircraft of a given international operating agency shall have a common mark, and not the nationality mark of any particular State, and the provisions of the Convention which refer to nationality marks (Articles 12 and 20 of the Convention) and Annex 7 to the Convention shall be applied mutatis mutandis.

(2) Without prejudice to the rights of other Contracting States as provided for in C of Appendix 2 hereto and in Note 2 therein, each such aircraft shall, for the purposes of the Convention, be deemed to have the nationality of each of the States constituting the international operating agency.

(3) For the application of Articles 25 and 26 of the Convention, the State which maintains the joint register or the relevant part of the joint register pertaining to a particular aircraft shall be considered to be the State in which the aircraft is registered, and

DECLARES that:

(1) This Resolution applies only when all the States constituting the international operating agency are and remain parties to the Chicago Convention.

(2) This Resolution does not apply to the case of an aircraft which, although operated by an international operating agency, is registered on a national basis.

APPENDIX 1

For the purpose of this Resolution

- **the expression "joint registration" indicates that system of registration of aircraft according to which the States constituting an international operating agency would establish a register other than the national register for the joint registration of aircraft to be operated by the agency, and**

- **the expression "international registration" denotes the cases where the aircraft to be operated by an international operating agency would be registered not on a national basis but with an international organization having legal personality, whether or not such international organization is composed of the same States as have constituted the international operating agency.**

APPENDIX 2

BASIC CRITERIA

Part I - In the case of joint registration -

A. The States constituting the international operating agency shall be jointly and severally bound to assume the obligations which, under the Chicago Convention, attach to a State of registry.

B. The States constituting the international operating agency shall identify for each aircraft an appropriate State from among themselves which shall be entrusted with the duty of receiving and replying to representations which might be made by other Contracting States of the Chicago Convention concerning that aircraft. This identification shall be only for practical purposes and without prejudice to the joint and several responsibility of the States participating in the agency, and the duties assumed by the State so identified shall be exercised on its own behalf and on behalf of all the other participating States. (See also Note 1 below)

C. The operation of the aircraft concerned shall not give rise to any discrimination against aircraft registered in other Contracting States with respect to the provisions of the Chicago Convention. (See also Note 2 below)

D. The States constituting the international operating agency shall ensure that their laws, regulations and procedures as they relate to the aircraft and personnel of the international operating agency when engaged in international air navigation shall meet in a uniform manner the obligations under the Chicago Convention and the Annexes thereto.

Part II - In the case of international registration the Council, in arriving at its determination, shall be satisfied that any system of international registration devised by the States constituting the international operating agency gives the other member States of ICAO sufficient guarantees that the provisions of the Chicago Convention are complied with. In this connection the criteria mentioned in A, C and D above shall, in any event, be applicable, it being understood that additional criteria may be adopted by the Council.

Note 1: In connection with B above, in the case of joint registration the functions of a State of registration under the Convention (in particular, the issue of certificates of registration and the issue and validation of certificates of airworthiness and of licences for the operating crew) shall be performed by the State which maintains the joint register or the relevant part of the joint register pertaining to a particular aircraft. In any case, the exercise of such functions shall be done on behalf of all the States jointly.

Note 2: In connection with C above, and with reference to the undermentioned Articles of the Chicago Convention, it is noted as follows:

Article 7 (Cabotage): The mere fact of joint or international registration under Article 77 would not operate to constitute the geographical area of the multinational group as a cabotage area.

Article 9 (Prohibited Areas) and Article 15 (Airport and Similar Charges): The mere fact of joint or international registration under Article 77 will not affect the application of these Articles.

Article 27 (Patent Claims): The requirement of this Article being that a given State should be not only a party to the Chicago Convention but also a party to the International Convention for the Protection of Industrial Property, it might be that, in a particular case, one or other of the States constituting an international operating agency was not a party to the latter Convention. In such case the interests of that State are not protected by the terms of Article 27.

APPENDIX 3

In connection with the present Resolution the Council had before it the following scheme of joint registration, noting, at the same time, that other schemes might also be possible:

(a) The States constituting the international operating agency will establish a joint register for registration of aircraft to be operated by the agency. This will be separate and distinct from any national register which any of those States may maintain in the usual way.

(b) The joint register may be undivided or consist of several parts. In the former case the register will be maintained by one of the States constituting the international operating agency and in the latter case each part will be maintained by one or other of these States.

(c) An aircraft can be registered only once, namely, in the joint register or, in the case where there are different parts, in that part of the joint register which is maintained by a given State.

(d) All aircraft registered in the joint register or in any part thereof shall have one common marking, in lieu of a national mark.

(e) The functions of a State of registration under the Chicago Convention (for example, the issuance of the certificate of registration, certificate of airworthiness or licences of crew) shall be performed by the State which maintains the joint register or by the State which maintains the relevant part of that register. In any case, the exercise of such functions shall be done on behalf of all the States jointly.

(f) Notwithstanding (e) above, the responsibilities of a State of registration with respect to the various provisions of the Chicago Convention shall be the joint and several responsibility of all the States which constitute the international operating agency. Any complaint by other Contracting States will be accepted by each or all of the States mentioned.

- END -

NOTE INTRODUCTIVE

La dernière phrase de l'article 77 de la Convention relative à l'Aviation civile internationale est ainsi libellée: "Le Conseil déterminera de quelle manière les dispositions de la présente Convention concernant la nationalité des aéronefs s'appliqueront aux aéronefs exploités par des agences internationales d'exploitation."

Les études sur la question des problèmes de nationalité et d'immatriculation des aéronefs exploités par ces agences ont été entreprises au sein de l'OACI dès 1948 et poursuivies, à diverses occasions, au sein de différents organes, à savoir le Conseil, le Comité du Transport aérien et un Comité d'experts institué par le Conseil.

En décembre 1964, le Conseil a renvoyé la question au Comité juridique, pour étude et avis. En septembre 1967, le Comité a présenté au Conseil un rapport[1)], qui constituait également avis en la matière à l'intention du Conseil.

Le 14 décembre 1967, le Conseil, ayant examiné la question, a adopté, à l'issue du vote unanime des 26 Représentants présents, une Résolution dont le texte figure dans les pages qui suivent. Il a également décidé qu'il appliquerait la procédure exposée dans la Résolution à tous plans concrets d'immatriculation commune ou internationale dont il serait saisi, avec des renseignements appropriés, par les Etats en cause.

Le texte de toute décision que le Conseil pourrait prendre par application de la Résolution sera diffusé sous forme de Supplément à la présente publication.[2)]

Il sera bientôt procédé à l'étude de la question des amendements susceptibles d'être apportés à l'Annexe 7 à la Convention de Chicago en vue d'harmoniser cette Annexe avec l'esprit de la résolution précitée du Conseil. Des renseignements sur ce point seront également diffusés sous forme de Supplément à la présente publication.[2)]

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1) Rapport du Comité juridique, 16ème session, Doc 8704, LC/155, Annexe C.

2) Un onglet à la fin de la présente publication permet d'insérer ce Supplément.

RESOLUTION ADOPTEE PAR LE CONSEIL SUR LA NATIONALITE ET L'IMMATRICULATION DES AERONEFS EXPLOITES PAR DES ORGANISMES INTERNATIONAUX D'EXPLOITATION

LE CONSEIL

VU les dispositions de l'article 77 de la Convention relative à l'Aviation civile internationale dont la dernière phrase est libellée comme il suit: "Le Conseil déterminera les modalités d'application des dispositions de la présente Convention concernant la nationalité des aéronefs aux aéronefs exploités par des organismes internationaux d'exploitation."

VU le rapport du Comité juridique à ce sujet (Doc 8704-LC/155, 22/9/67, Annexe C),

VU les conclusions du Comité juridique qui sont exprimées dans ledit rapport,

CONVENANT que les dispositions de la Convention relative à l'Aviation civile internationale peuvent, sans que celle-ci soit amendée, être rendues applicables, par détermination du Conseil, en vertu dudit article 77, aux aéronefs qui ne sont pas immatriculés sur une base nationale, tels les aéronefs faisant l'objet d'une "immatriculation commune" ou d'une "immatriculation internationale" (une définition de ces expressions figure en Appendice 1 ci-joint) sous réserve, toutefois, que certains critères fondamentaux, qui ont été établis par le Conseil, soient respectés

ESTIMANT qu'une détermination faite par le Conseil conformément à l'article 77 de la Convention, et dans le champ d'application de cet article, suivant la procédure indiquée ci-après, lierait tous les Etats contractants et que, par conséquent, dans le cas d'aéronefs qui font l'objet d'une immatriculation commune ou d'une immatriculation internationale et qui répondent aux critères fondamentaux qui ont été établis par le Conseil, les droits et obligations visés à la Convention s'appliqueraient comme dans le cas des aéronefs d'un Etat contractant immatriculés sur une base nationale

DECIDE que le processus de détermination visé audit article 77 comprendra l'application des critères fondamentaux, qui ont été établis par le Conseil, à chaque plan d'immatriculation commune ou internationale dont il pourrait être saisi, avec des renseignements appropriés et précis concernant et exposant ce plan, par les Etats constituant l'organisme international d'exploitation en cause

DECIDE, quant à l'établissement des critères fondamentaux mentionnés dans les trois paragraphes précédents:

a) Dans les cas d'immatriculation commune, d'adopter les critères fondamentaux spécifiés dans la Partie I de l'Appendice 2 ci-joint;

b) Dans les cas d'immatriculation internationale, d'être guidé par la Partie II de l'Appendice 2 ci-joint.

NOTE à propos du processus de détermination précité que, encore que le Conseil soit libre d'en arriver à une détermination qu'il jugerait appropriée, dans le cas d'immatriculation commune décrit en Appendice 3 ci-joint, il devrait se poser peu de problèmes quant à l'observation des critères fondamentaux exposés en Appendice 2, Partie I, ci-joint et que, par conséquent, une détermination de la part du Conseil dans ces cas ou dans des cas similaires devrait être une simple formalité et pourrait être automatique,

NOTE également que d'autres cas d'immatriculation commune et tous les cas d'immatriculation internationale pourraient nécessiter des méthodes différentes,

DECIDE que, dès l'achèvement du processus de détermination, spécifié plus haut, d'un plan donné qui, de l'avis du Conseil, répondrait aux critères fondamentaux exposés en Appendice 2 ci-joint, les modalités d'application de la Convention concernant la nationalité des aéronefs seront les suivantes:

1) Dans le cas d'une immatriculation commune ou d'une immatriculation internationale, tous les aéronefs d'un organisme international d'exploitation donné porteront une marque commune, et non la marque de nationalité de quelque Etat que ce soit; les dispositions de la Convention qui ont trait aux marques de nationalité (articles 12 et 20) et celles de l'Annexe 7 à la Convention s'appliqueront mutatis mutandis.

2) Sans préjudice des droits des autres Etats contractants, ainsi qu'il est prévu dans le critère C présenté en Appendice 2 ci-joint et dans la Note 2 jointe à cet Appendice, chacun de ces aéronefs sera réputé avoir, aux fins de la Convention, la nationalité de chacun des Etats constituant l'organisme international d'exploitation.

3) Aux fins d'application des articles 25 et 26 de la Convention, l'Etat qui tient le registre commun ou la partie correspondante dudit registre concernant un aéronef déterminé sera considéré comme étant l'Etat dans lequel l'aéronef est immatriculé, et

DECLARE -

1) Que la présente résolution s'applique uniquement lorsque tous les Etats constituant l'organisme international d'exploitation sont et restent parties à la Convention de Chicago;

2) Que la présente résolution ne s'applique pas au cas où un aéronef, encore qu'il soit exploité par un organisme international d'exploitation, est immatriculé sur une base nationale.

APPENDICE 1

Aux fins de la présente résolution

- l'expression "immatriculation commune" désigne un système d'immatriculation des aéronefs, selon lequel les Etats constituant un organisme international d'exploitation établiraient un registre autre qu'un registre national aux fins d'immatriculation commune des aéronefs qui seraient exploités par ledit organisme, et

- l'expression "immatriculation internationale" désigne les cas où les aéronefs qui seraient exploités par un organisme international d'exploitation seraient immatriculés, non sur une base nationale, mais par une organisation internationale dotée de la personnalité juridique, que ladite organisation internationale soit ou non composée des mêmes Etats que ceux qui constituent l'organisme international d'exploitation.

APPENDICE 2

CRITERES FONDAMENTAUX

Partie I - En cas d'immatriculation commune -

A. Les Etats constituant l'organisme international d'exploitation sont tenus conjointement et solidairement d'assumer les obligations qui incombent, en vertu de la Convention de Chicago, à l'Etat d'immatriculation.

B. Les Etats constituant l'organisme international d'exploitation identifieront parmi eux, pour chaque aéronef, un Etat approprié chargé de recevoir les représentations, qui pourraient être faites par d'autres Etats parties à la Convention de Chicago au sujet de cet aéronef, et de répondre à ces représentations. Il est procédé à cette identification, uniquement à des fins pratiques, sans préjudice de la responsabilité conjointe et solidaire des Etats parties à l'organisme, les obligations assumées par l'Etat ainsi identifié étant exercées en son propre nom et au nom de tous les autres Etats participants (cf. également Note 1 ci-dessous).

C. L'exploitation des aéronefs dont il s'agit ne devra donner lieu à aucune discrimination au préjudice d'aéronefs immatriculés dans d'autres Etats contractants en ce qui concerne les dispositions de la Convention de Chicago (cf. également Note 2 ci-dessous).

D. Les Etats constituant l'organisme international d'exploitation devront veiller à ce que leurs lois, règlements et procédures concernant les aéronefs et le personnel dudit organisme international, lorsqu'ils se livrent à la navigation aérienne internationale, répondent d'une manière uniforme aux obligations visées à la Convention de Chicago et à ses Annexes.

Partie II - En cas d'immatriculation internationale, le Conseil devra, lorsqu'il en arrivera à une détermination, être convaincu de ce que tout système d'immatriculation internationale conçu par les Etats constituant l'organisme international d'exploitation donne aux autres Etats membres de l'OACI des garanties suffisantes quant à l'observation des dispositions de la Convention de Chicago. A ce propos, les critères mentionnés en A, C et D ci-dessus seront applicables de toute façon, étant entendu que le Conseil pourra adopter des critères supplémentaires.

Note 1: Quant à B ci-dessus, dans le cas d'une immatriculation commune, les fonctions qui incombent à l'Etat d'immatriculation en vertu de la Convention (en particulier, la délivrance de certificats d'immatriculation, et la délivrance et la validation de certificats de navigabilité et de licences du personnel de conduite) seront exercées par l'Etat qui tient le registre commun ou la partie correspondante dudit registre concernant un aéronef déterminé. De toute façon, ces fonctions seront exercées conjointement au nom de tous les Etats.

Note 2: Le critère C ci-dessus et les articles ci-après de la Convention de Chicago appellent les observations suivantes:

Article 7 (Cabotage): Le simple fait d'une immatriculation commune ou internationale, en vertu de l'article 77, n'aurait pas pour conséquence de constituer la zone géographique du Groupe multinational en zone de cabotage.

Article 9 (Zones interdites) et Article 15 (Redevances d'aéroports et droits similaires): Le simple fait d'une immatriculation commune ou internationale, en vertu de l'article 77, n'affecte pas l'application de ces articles.

Article 27 (Exemption de saisie pour contrefaçon de brevet): Cet article prescrivant qu'un Etat donné devrait être partie non seulement à la Convention de Chicago, mais aussi à la Convention pour la protection de la propriété industrielle, il se pourrait, dans un cas d'espèce, que l'un ou l'autre des Etats constituant un organisme international d'exploitation ne soit pas partie à cette dernière Convention. En pareil cas, les intérêts de l'Etat dont il s'agit ne sont pas protégés par les dispositions de l'article 27.

APPENDICE 3

En ce qui concerne la présente résolution, le Conseil, qui était saisi du plan d'immatriculation commune ci-après, a noté, par la même occasion, que d'autres plans seraient également possibles:

a) Les Etats constituant l'organisme international d'exploitation établiront un registre commun aux fins d'immatriculation des aéronefs qui seront exploités par ledit organisme. Le registre en question sera séparé et distinct de tout registre national que l'un quelconque de ces Etats peut tenir de la manière usuelle.

b) Le registre commun peut être indivis ou comporter différentes parties. Dans le premier cas, le registre sera tenu par l'un des Etats constituant l'organisme international. Dans le second cas, chaque partie sera tenue par l'un ou l'autre de ces Etats.

c) Un aéronef ne peut être immatriculé qu'une seule fois, à savoir dans le registre commun ou, s'il existe différentes parties, dans la partie du registre commun qui est tenue par un Etat donné.

d) Tous les aéronefs immatriculés dans le registre commun ou dans une partie de celui-ci porteront une marque commune, au lieu d'une marque nationale.

e) Les fonctions qui incombent à l'Etat d'immatriculation en vertu de la Convention de Chicago (par exemple, la délivrance des certificats d'immatriculation, des certificats de navigabilité ou des licences des membres d'équipage) seront exercées par l'Etat qui tient le registre commun ou par l'Etat qui tient la partie correspondante du registre. De toute façon, ces fonctions seront exercées conjointement au nom de tous les Etats.

f) Nonobstant l'alinéa e) ci-dessus, les responsabilités qui incombent à l'Etat d'immatriculation, eu égard aux différentes dispositions de la Convention de Chicago, seront des responsabilités conjointes et solidaires de tous les Etats qui constituent l'organisme international d'exploitation. Toute plainte d'autres Etats contractants sera acceptée par tous et chacun des Etats mentionnés.

- FIN -

INTRODUCCION

La última frase del Artículo 77 del Convenio de Aviación Civil Internacional dice: "El Consejo determinará la forma en que las disposiciones del presente Convenio sobre nacionalidad de aeronaves se aplicarán a las aeronaves explotadas por agencias internacionales de explotación."

Los estudios sobre la cuestión de los problemas de nacionalidad y matrícula de aeronaves explotadas por tales agencias comenzaron en la OACI desde 1948 y, posteriormente, se continuaron, en diversas ocasiones, por diversos organismos, es decir, el Consejo, el Comité de Transporte Aéreo y un Grupo de Expertos designados por el Consejo.

En diciembre de 1964, el Consejo encargó esta materia al Comité Jurídico, a fin de que éste lo estudiase y diese su asesoramiento. En septiembre de 1967, dicho Comité presentó al Consejo un informe(1), el que tenía igualmente carácter de asesoramiento al Consejo sobre esta cuestión.

El 14 de diciembre de 1967, el Consejo, después de haber examinado esta cuestión, adoptó por votación unánime de los 26 Representantes presentes, una Resolución cuyo texto aparece en las siguientes páginas. Decidió igualmente que el procedimiento que se expone en la Resolución se aplicase a cualquier plan concreto de matrícula común o internacional que le fuese sometido, con la información correspondiente, por los Estados interesados.

El texto de cualquier decisión que el Consejo pueda tomar en aplicación de la Resolución se publicará como Suplemento a esta publicación(2).

Pronto se examinará la cuestión de la modificación del Anexo 7 del Convenio de Chicago, a fin de poner dicho Anexo de acuerdo con el espíritu de la Resolución del Convenio anteriormente mencionada. Toda información sobre esta cuestión será publicada igualmente como Suplemento a esta publicación(2).

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(1) Informe del Comité Jurídico, XVI período de sesiones. Doc 8704-LC/155, Anejo C.

(2) Existe una banda perforada al final de esta publicación a fin de permitir la inserción de dicho Suplemento.

RESOLUCION ADOPTADA POR EL CONSEJO SOBRE NACIONALIDAD Y MATRICULA DE AERONAVES EXPLOTADAS POR AGENCIAS INTERNACIONALES DE EXPLOTACION

EL CONSEJO

CONSIDERANDO lo dispuesto en el Artículo 77 del Convenio de Aviación Civil Internacional, cuya última frase dice: "El Consejo determinará la forma en que las disposiciones del presente Convenio sobre nacionalidad de aeronaves se aplicarán a las aeronaves explotadas por agencias internacionales de explotación."

CONSIDERANDO el Informe sobre está materia del Comité jurídico, Doc 8704-LC/155, 22/9/67, Anejo C

CONSIDERANDO las conclusiones del Comité jurídico tal como se exponen en dicho Informe

CONVINIENDO que, sin modificar el Convenio de Aviación Civil Internacional, pueden aplicarse las disposiciones del Convenio, mediante una determinación del Consejo en virtud de dicho Artículo 77, a las aeronaves que no estén matriculadas sobre una base nacional, tales como las aeronaves objeto de "matrícula común" o de "matrícula internacional" (expresiones que se definen en el Apéndice 1 que se acompaña), a reserva, sin embargo, de cumplirse ciertos criterios básicos, que se han establecido por el Consejo

ESTIMANDO que una determinación hecha por el Consejo en virtud del Artículo 77 del Convenio, y dentro del campo de aplicación de dicho artículo, hecha de acuerdo con el procedimiento que se indica a continuación, será obligatoria para todos los Estados contratantes y que, por consiguiente, en el caso de aeronaves matriculadas sobre una base común o internacionalmente y con respecto a las cuales se cumplan los criterios básicos que se han establecido por el Consejo, se aplicarán los derechos y obligaciones en virtud de dicho Convenio como en el caso de aeronaves de un Estado contratante matriculadas con carácter nacional

RESUELVE que el proceso de determinación previsto en dicho Artículo 77 incluya la aplicación de los criterios básicos que se han establecido por el Consejo a cada plan particular de matrícula común o internacional que se le someta, con la información apropiada y definitiva relativa a dicho plan, y descripción del mismo, por los Estados que constituyan la agencia internacional de explotación en cuestión

DECIDE, con respecto al establecimiento de los criterios básicos a que se hace referencia en los tres párrafos precedentes, lo siguiente:

a) En los casos de matrícula común, adoptar los criterios básicos especificados en la Parte I del Apéndice 2 adjunto;

b) En los casos de matrícula internacional, tomar como guía la Parte II del Apéndice 2 adjunto.

TOMA NOTA en relación con el proceso de determinación anteriormente expuesto de que, si bien el Consejo tiene libertad para hacer tal determinación en la forma que considere conveniente, en el caso de matrícula común expuesto en el Apéndice 3 a esta Resolución, no habría gran problema por lo que se refiere al cumplimiento de los criterios básicos previstos en la Parte I del Apéndice 2 de la presente y, por consiguiente, una determinación por el Consejo en éstos u otros casos similares sería simplemente de carácter formalista y podría ser concedida automáticamente,

TOMA NOTA igualmente de que otros casos de matrícula común y todos los casos de matrícula internacional pudieran exigir métodos diferentes,

DECIDE que, al completarse el proceso de determinación anteriormente expuesto por lo que respecta a un plan concreto que, en opinión del Consejo, cumpla con los criterios básicos previstos en el Apéndice 2 a la presente, la forma de aplicación de las disposiciones del Convenio en materia de nacionalidad de aeronaves será la siguiente:

1) En el caso de matrícula común o internacional, todas las aeronaves de determinada agencia internacional de explotación tendrán una marca común, y no la marca de nacionalidad de determinado Estado, y se aplicarán mutatis mutandis las disposiciones del Convenio sobre marcas de nacionalidad (Artículos 12 y 20 del Convenio) y el Anexo 7 del Convenio.

2) Sin perjuicio de los derechos de otros Estados contratantes, tal como se prevé en C del Apéndice 2 a la presente y en la Nota 2 del mismo, se considerará que cada una de tales aeronaves tiene, a los fines del Convenio, la nacionalidad de cada uno de los Estados que constituyan la agencia internacional de explotación.

3) En la aplicación de los Artículos 25 y 26 del Convenio, el Estado que mantenga el registro común o la parte correspondiente del registro común relativo a determinada aeronave se considerará que es el Estado donde está matriculada tal aeronave, y

DECLARA que -

1) La presente Resolución se aplica únicamente cuando todos los Estados que constituyan la agencia internacional de explotación sean y continúen siendo partes en el Convenio de Chicago.

2) La presente Resolución no se aplica al caso de aeronaves que, aunque explotadas por una agencia internacional de explotación, estén matriculadas sobre una base nacional.

APENDICE 1

A los fines de la presente Resolución

- La expresión "matrícula común" indica el sistema de matrícula de aeronaves de acuerdo con el cual los Estados que constituyan la agencia internacional de explotación crean un registro que no sea el registro nacional a fin de llevar a cabo la matrícula común de las aeronaves a explotar por la agencia, y

- La expresión "matrícula internacional" indica los casos en que la aeronave a explotar por la agencia internacional de explotación esté matriculada, no sobre una base nacional, sino en una organización internacional con personalidad jurídica, esté o no compuesta tal organización internacional de los mismos Estados que constituyan la agencia internacional de explotación.

APENDICE 2

CRITERIOS BASICOS

Parte I - En el caso de matrícula común -

A. Los Estados que constituyan la agencia internacional de explotación estarán obligados solidariamente a asumir las obligaciones que, en virtud del Convenio de Chicago, corresponden al Estado de matrícula.

B. Los Estados que constituyan la agencia internacional de explotación designarán, para cada aeronave, el Estado correspondiente de entre ellos que estará encargado de recibir y contestar a las reclamaciones que pudiesen hacerse por otros Estados contratantes del Convenio de Chicago por lo que se refiere a dichas aeronaves. Esta designación será únicamente para fines prácticos, y sin perjuicio de la responsabilidad solidaria de los Estados que participen en la agencia, y las obligaciones asumidas por el Estado así designado se cumplirán tanto por cuenta propia como por cuenta de todos los demás Estados participantes. (Véase también la Nota 1 más adelante)

C. La explotación de las aeronaves en cuestión no podrá dar lugar a ninguna discriminación contra las aeronaves matriculadas en otros Estados contratantes por lo que se refiere a las disposiciones del Convenio de Chicago. (Véase también la Nota 2 más adelante)

D. Los Estados que constituyan la agencia internacional de explotación tomarán medidas al efecto de que sus leyes, reglamentos y procedimientos relativos a las aeronaves y personal de dicha agencia, cuando se dediquen a la navegación aérea internacional, observen de modo uniforme las obligaciones impuestas por el Convenio de Chicago y sus Anexos.

Parte II - En el caso de matrícula internacional, el Consejo, al hacer su determinación, deberá asegurarse que todo sistema de matrícula internacional creado por los Estados que constituyan la agencia internacional de explotación da a los demás Estados miembros de la OACI garantías suficientes al efecto de que se cumplan con las disposiciones del Convenio de Chicago. A este respecto se aplicarán en todo caso los criterios objeto de los incisos A, C y D anteriores, entendiéndose que el Consejo podrá adoptar otros criterios suplementarios.

Nota 1: En relación con B anterior, en el caso de matrícula común, las funciones del Estado de matrícula en virtud del Convenio (particularmente la expedición de certificados de matrícula y la expedición y validación de certificados de matrícula y aeronavegabilidad y de licencias de la tripulación de vuelo) se ejercerán por el Estado que mantenga el registro común o la parte correspondiente del registro común que corresponda a determinada aeronave. En todo caso, el ejercicio de tales funciones se hará en nombre y representación de todos los Estados conjuntamente.

Nota 2: En relación con el inciso C anterior, y por lo que se refiere a los artículos del Convenio de Chicago que se mencionan a continuación, es de notar lo siguiente:

Artículo 7 (Cabotaje): El simple hecho de la matrícula común o internacional en virtud del Artículo 77 no dará como resultado que la zona geográfica del grupo multinacional constituya una zona de cabotaje.

Artículo 9 (Zonas prohibidas) y Artículo 15 (Derechos de aeropuertos y otros similares): El simple hecho de la matrícula común o internacional en virtud del Artículo 77 no afectará la aplicación de estos artículos.

Artículo 27 (Reclamaciones sobre patentes): Como la exigencia de este artículo es que determinado Estado debe ser parte, no solamente del Convenio de Chicago, sino también del Convenio internacional para la protección de la propiedad industrial, pudiera presentarse el caso de que alguno de los Estados que constituyan la agencia internacional de explotación no sea parte en este Convenio. En tal caso, los intereses de tal Estado no están protegidos por el texto del Artículo 27.

APENDICE 3

En relación con la presente Resolución se presentó al Consejo el siguiente esquema de matrícula común, y se tomó nota al mismo tiempo de que también existe la posibilidad de otros esquemas:

a) Los Estados que constituyan la agencia internacional de explotación establecerán un registro común a fin de matricular las aeronaves a explotar por dicha agencia. Este será un registro independiente de cualquier otro registro nacional que cualquiera de estos Estados pueda mantener en la forma ordinaria.

b) El registro común puede ser único o consistir en varias partes. En el primer caso, el registro será llevado por uno de los Estados que constituyan la agencia internacional de explotación y, en el segundo caso, cada parte será llevada por cualquiera de los diversos Estados.

c) Una aeronave solamente podrá ser matriculada una vez, es decir, en el registro común o, en el caso en que existan partes diferentes, en la parte del registro común que se lleve por determinado Estado.

d) Todas las aeronaves matriculadas en el registro común o en cualquier parte del mismo llevarán una marca común, en vez de una marca nacional.

e) Las funciones del Estado de matrícula en virtud del Convenio de Chicago (por ejemplo, la expedición del certificado de matrícula, el certificado de aeronavegabilidad o las licencias a la tripulación) se llevarán a cabo por el Estado que mantenga el registro común o por el Estado que mantenga la parte correspondiente de dicho registro. En todo caso, el ejercicio de tales funciones se llevará a cabo por cuenta de todos los Estados conjuntamente.

f) No obstante el párrafo e) anterior, las obligaciones del Estado de matrícula por lo que se refiere a las diversas disposiciones del Convenio de Chicago constituirán una obligación solidaria de todos los Estados que constituyan la agencia internacional de explotación. Toda queja de otros Estados contratantes será aceptada por cada uno o todos los Estados mencionados.

- FIN -

AMENDMENT NUMBER 3

TO THE

INTERNATIONAL STANDARDS

AIRCRAFT NATIONALITY AND REGISTRATION MARKS

ANNEX 7

TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION

The amendment to Annex 7 contained in this document was adopted by the Council of ICAO on 23 January 1969. Such parts of this amendment as have not been disapproved by more than half of the total number of Contracting States on or before 23 May 1969 will become effective on that date and will become applicable on 18 September 1969, as specified in the Resolution of Adoption.

JANUARY 1969

INTERNATIONAL CIVIL AVIATION ORGANIZATION

TEL.: UNIVERSITY 6-2551

CABLES: ICAO MONTREAL

ORGANISATION DE L'AVIATION
CIVILE INTERNATIONALE

ORGANIZACIÓN DE AVIACIÓN
CIVIL INTERNACIONAL

INTERNATIONAL CIVIL AVIATION ORGANIZATION

INTERNATIONAL AVIATION BUILDING
1080 UNIVERSITY STREET
MONTREAL 3, P.Q., CANADA

COPY - FOR INFORMATION ONLY

WHEN REPLYING, PLEASE QUOTE:
RÉFÉRENCE À RAPPELER DANS LA REPONSE:
INDÍQUESE EN LA RESPUESTA ESTA REFERENCIA: AN 3/1 - 69/31

Subject: Adoption of Amendment 3 to Annex 7
Action Required: a) Notify any disapproval before 23 May 1969; b) Notify differences or compliance before 18 August 1969.

5 Februarv 1969

Sir,

I have the honour to inform you that Amendment 3 to the International Standards - Aircraft Nationality and Registration Marks (Annex 7 to the Convention on International Civil Aviation) - was adopted by the Council at the Second Meeting of its Sixty-sixth Session (23 January 1969). A copy of the Amendment and the Resolution of Adoption are being sent to you under separate cover.

When adopting the Amendment the Council prescribed 23 May 1969 as the date on which it will become effective except for any part concerning which a majority of Contracting States have registered their disapproval before that date. In addition, Council resolved that Amendment 3, to the extent it becomes effective, will be applicable on 18 September 1969.

The scope of the Amendment is to introduce appropriate provisions to enable aircraft of international operating agencies (of the kind contemplated in Article 77 of the Convention) to be registered on other than a national basis. The determining principle of these provisions is that the Common Mark Registering Authority of each international operating agency will be assigned a distinctive common mark by ICAO, this being selected from the series of symbols included in the radio call signs allocated to ICAO by the International Telecommunication Union.

AMENDMENT 3 TO THE INTERNATIONAL STANDARDS

AIRCRAFT NATIONALITY AND REGISTRATION MARKS

RESOLUTION OF ADOPTION

THE COUNCIL

Acting in accordance with the Convention on International Civil Aviation, and particularly with the provisions of Articles 37, 54 and 90 thereof.

1. HEREBY ADOPTS on 23 January 1969 Amendment 3 to the International Standards contained in the document entitled "International Standards - Aircraft Nationality and Registration Marks" which for convenience is designated as Annex 7 to the Convention.

2. PRESCRIBES 23 May 1969 as the date upon which the said Amendment shall become effective, except for any part thereof in respect of which a majority of the Contracting States have registered their disapproval with the Council before that date;

3. RESOLVES that the said Amendment or such parts thereof as have become effective shall become applicable on 18 September 1969.

4. DIRECTS THE SECRETARY GENERAL:

(i) to notify each Contracting State immediately of the above action and, immediately after 23 May 1969 of those parts of the Amendment that have become effective;

(ii) to request each Contracting State:

(a) to notify the Organization (in accordance with the obligation imposed by Article 38 of the Convention) of the differences that will exist on 18 September 1969 between its national regulations or practices and the provisions of the Standards in the Annex as hereby amended, such notification to be made before 18 August 1969 and, thereafter to notify the Organization of any further differences that arise;

(b) to notify the Organization before 18 August 1969 of the date or dates by which it will have complied with the provisions of the Standards in the Annex as hereby amended.

Text of Amendment to the International Standards and Recommended Practices - Aircraft Nationality and Registration Marks (Annex 7 to the Convention on International Civil Aviation)

In order to present a clear and precise view of the final effect of the proposed amendments of Annex 7, the relevant part of the existing text is presented in Column (1) together with the proposed Amendments in Column (2)

Relevant part of existing text of Annex 7 (1)	Proposed Amendments (2)
ANNEX 7	
1.-- Definitions	
• • • • •	
Balloon. A non-power-driven lighter-than-air aircraft.	
X	Common Mark. A mark assigned by the International Civil Aviation Organization to the common mark registering authority registering aircraft of an international operating agency on other than a national basis. Note: All aircraft of an international operating agency which are registered on other than a national basis will bear the same common mark.
X	Common Mark Registering Authority. The authority maintaining the non-national register or, where appropriate, the part thereof, in which aircraft of an international operating agency are registered.
• • • • •	
Helicopter. A heavier-than-air aircraft supported in flight by the reactions of the air on one or more power-driven rotors on substantially vertical axes.	
X	International Operating Agency. An agency of the kind contemplated in Article 77 of the Convention.

Relevant part of existing text of Annex 7 (1)	Proposed Amendments (2)
2. — Nationality and Registration Marks to be Used	**2.--Nationality, Common and Registration Marks to be Used**
2.1 The nationality and registration marks appearing on the aircraft shall consist of a group of characters.	nationality or common mark mark
2.2 The nationality mark shall procede the registration mark. When the first character of the registration mark is a letter it shall be preceded by a hyphen.	nationality or common mark precede
2.3 The nationality mark shall be selected from the series of nationality symbols included in the radio call signs assigned to the State of Registry by the International Telecommunications Regulations. The nationality mark selected shall be notified to ICAO.	allocated Telecommunication Union. The nationality mark the International Civil Aviation Organization
2.4 X	2.4 The common mark shall be selected from the series of symbols included in the radio call signs allocated to the International Civil Aviation Organization by the International Telecommunication Union. Note: Assignment of the common mark to a common mark registering authority will be made by the International Civil Aviation Organization.
2.4 The registration mark shall be letters, numbers, or a combination of letters and numbers, and shall be that assigned by the State of Registry X	2.5 or common mark registering authority.
2.5 When letters are used for the registration mark, combinations shall not be used which might be confused with the five-letter combinations used in the International Code of Signals, Part II, the three-letter combinations beginning with Q used in the Q Code, and with the distress signal SOS, or other similar urgent signals, for example XXX, PAN and TTT.	2.6

Relevant part of existing text of Annex 7 (1)	Proposed Amendments (2)
3. — Location of Nationality and Registration Marks	3.--Location of Nationality, Common and Registration Marks
3.1.—General	
The nationality and registration marks shall be painted on the aircraft or shall be affixed by any other means ensuring a similar degree of permanence. The marks shall be kept clean and visible at all times.	nationality or common mark and registration mark
4. — Measurements of Nationality and Registration Marks	4.--Measurements of Nationality, Common and Registration Marks
5. — Type of Characters for Nationality and Registration Marks	5.--Type of Characters for Nationality, Common and Registration Marks
6. — Register of Nationality and Registration Marks	6.--Register of Nationality, Common and Registration Marks
Each Contracting State shall maintain a current register showing for each aircraft registered by that State, the information recorded in the certificate of registration (see Section 7).	State or common mark registering authority shall State or common mark registering authority, the
7.--Certificate of Registration	
7.1 The certificate of registration, in wording and arrangement, shall be a replica of the following form.	
Note.—The size of the form is at the discretion of the State of Registry X	or common mark registering authority.

Relevant part of existing text of Annex 7 (1)	Proposed Amendments (2)
8. — Identification Plate	
An aircraft shall carry an identification plate inscribed with at least its Nationality and Registration Marks. The plate shall be made of fireproof metal or other fireproof material of suitable physical properties, and shall be secured to the aircraft in a prominent position near the main entrance	nationality or common mark and registration mark.
STATE X MINISTRY DEPARTMENT OR SERVICE **CERTIFICATE OF REGISTRATION**	STATE OR COMMON MARK REGISTERING AUTHORITY
1. Nationality and Registration Marks / 2. Manufacturer and Manufacturer's Designation of Aircraft / 3. Aircraft Serial No.	Nationality or Common Mark Mark
4. Name of owner	
5. Address of owner	
6. It is hereby certified that the above described aircraft has been duly entered on the register of ..... in accordance with the Convention on International Civil Aviation dated 7 December 1944 and with the †	It is hereby certified that the above described aircraft has been duly entered on the ...(name of register) ..... in accordance with the Convention on International Civil Aviation dated 7 December 1944 and with the †.... .....
(Signature) .... Date of issue	
†— Insert reference to national regulations	applicable regulations
*For use by the State of Registry X	Registry or common mark registering authority

- END -

NOTE ON THE NOTIFICATION OF DIFFERENCES FROM ANNEX 7 AND FORM OF NOTIFICATION

(Prepared and issued in accordance with the instructions of the Council)

1. Introduction

1.1 The Assembly and the Council, when reviewing the notifications of differences received in compliance with Article 38 of the Convention, have repeatedly noted that the state of such reporting is not entirely satisfactory.

1.2 With a view to achieving a more comprehensive coverage, this Note is issued to facilitate the determination and reporting of such differences. It states the primary purpose of such reporting and also provides an analysis of the expected effect of Amendment 3 to Annex 7.

1.3 The primary purpose of reporting of differences is to promote safety and efficiency in air navigation by ensuring that governmental and other agencies, including operators, concerned with international civil aviation, are made aware of all national rules and practices in so far as they differ from those prescribed in the ICAO Standards.

1.4 Contracting States are, therefore, requested to give particular attention to the notification before 18 August 1969 of differences with respect to Standards.

1.5 Contracting States are asked to note further that it is necessary to make an explicit statement of intent to comply where such intent exists or, where such is not the intent, of the difference or differences that will exist. This statement should be made with respect to the whole of the Annex, i.e. not only to the amendment but to the Annex including the amendment.

1.6 If previous notifications have been made in respect of this Annex, detailed repetition may be avoided, if appropriate, by stating the current validity of the earlier notification.

2. Notification of Differences from Annex 7, including Amendment 3

In view of the nature of the amendment - to provide an additional basis for the registration of aircraft - it seems unlikely that it would give rise to a need for the notification of differences.

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3. Form of Notification

Reference: (Paragraph number)

Description of differences: (Describe the difference precisely and include any additional information necessary to make its effect clear)

Remarks:

Note: The differences notified will be recorded in a Supplement to the Annex in the terms used by the Contracting State when making the notification.

- END -

BIBLIOGRAPHY

Books and Theses

Cooper, J. C., Explorations in Aerospace Law, ed. I. A. Vlasic (Montreal, 1968).

Davies, R. E. G., A History of the World Airlines (London, 1964).

Higgins, A. P. and Colombos, C. J., The International Law of the Sea (London, New York, Toronto, 1943).

Honig, J. P., The Legal Status of Aircraft (The Hague, 1956).

Imam, A. I., Transnational Cooperation in Air Transport Towards the Establishment of International Airlines - Thesis of the Institute of Air and Space Law, McGill University, Montreal (1966).

Keenan, P. B., Lester, A. and Martin, P., Shawcross and Beaumont on Air Law, Vol. 1, 3rd ed. (London, 1966).

McDougal, Myres S., Lasswell, H. D. and Vlasic, Ivan A., Law and Public Order in Space (New Haven and London, second printing).

McWhinney, E. and Bradley, M., The Freedom of the Air (The Netherlands, 1968).

Nemeth, John, The Nationality of Aircraft - Thesis of McGill University, Montreal (1953).

Starke, J. G., An Introduction to International Law, 5th ed. (London, 1963).

Wassenberg, H. A., Post War International Civil Aviation Policy and the Law of the Air (The Hague, 1962).

Westlake, John, International Law, Part 1 (2nd. ed. 1910).

Wheatcroft, S., Air Transport Policy (London, 1964).

Yearbook of Air and Space Law, 1965.

Articles

Bahr, H., "The Scandinavian Airlines System, Its Origin, Present Organization and Legal Aspects", Arkiv For Luftrett (1961).

Bowen, H. A., "Chicago International Conference", 1945, 13. George Washington, Law Review.

Cheng, Bin, "Nationality of Aircraft Operated by Joint or International Agencies", 32, J.A.L.C. (1966).

FitzGerald, G. F., "Nationality and Registration of Aircraft Operated by International Operating Agencies and Article 77 of the Convention on International Civil Aviation, 1944", Canadian Yearbook of International Law (1967).

_____. "Offences and Certain Other Acts Committed on Board Aircraft: The Tokyo Convention of 1963", 2 Canadian Yearbook of International Law (1964).

"Harvard Research in International Law - Nationality", American Journal of International Law, Vol. 23 (1929 supplement).

Lauterpacht, H., "Restrictive Interpretation and the Principle of Effectiveness in the Interpretation of Treaties", 26 B.Y.I.L. (1949).

Mankiewicz, R. H., "Aircraft Operated by International Operating Agencies", 31 J.A.L.C. (1965).

_____. "Interpretation and Implementation of Article 77 of the Chicago Convention - Nationality Registration of Aircraft Operated by International Agencies", 34 J.A.L.C. (1968).

Nelson, R. A., "Scandinavian Airlines System Cooperation in the Air", 20 J.A.L.C. (1953).

Orloff, "Economic Integration in East Africa: The Treaty for East-African Co-operation", 7 Columbia Journal of Transnational Law (1968).

"The Split up of Central African Airways", ITA Bulletin No. 26 of 24 June 1968, 408/n.

Sundberg, Jacob, "Is SAS a Legal Person?" Arkiv For Luftrett (1964).

Wright, Ward, "Air Afrique Emphasizes Measured Growth", Aviation Week and Space Technology (November 29, 1965).

Legislation, Agreements and Cases

Agreement for the Establishment of the International Arab Airways Corporation (The) - The Pan Arab Airline.

Chicago Convention (The) - Convention on International Civil Aviation signed at Chicago on December 7, 1944.

East African Airways Corporation Act 1963 (The), No. 4 of 1963.

East African Civil Aviation Act 1964 (The), Act No. 22 of 1964.

East African Air Navigation Regulations 1965 (The), Legal Notice No. 46 of 1965.

East African Licensing of Air Service Regulations, 1965 (The), Legal Notice No. 47 of 1965.

East African Airways Corporation Act 1967 (The), Legal Notice No. 4 of 1967.

East African's Community (Immunities and Privileges) Order 1967 (The), Legal Notice No. 7 of 1967.

East African Co-operation (Implementation) Act 1967 (The) - No. 42 of 1967 - of Tanzania.

Habana Convention of 1928 (Pan American Convention signed at Habana, February 20, 1928).

Nielsen V. Johnson (1929) 279 U.S. 41.

North Atlantic Fisheries Arbitration, Hague Court Reports (1st ser. 1916) 141.

Paris Convention of October 13, 1919, relating to the regulation of aerial investigation.

SAS, Consortium Agreement (8.2.51).

S.R. and O. 1945 No. 1427.

S.R. and O. 1947 No. 2863.

Treaty For East African Co-Operation, signed by the Governments of Kenya, Uganda and Tanzania on the 6th June, 1967.

Treaty relating to Air Transport in Africa, Yaounde March 28, 1961 (Translation).

ICAO DOCUMENTS

Doc. 5230, A2-EC/10, April 1948.

C-WP/2284 - (15.11.56).

C-WP/3091 - (24.2.60).

C-WP/3186.

C-WP/4115.

C-WP/4680.

PE-77/WD No. 2.

PE-77/WD No. 3, Addendum (30.5.60).

PE-77/WD No. 9.

PE-77/Report: Report of the Panel of Experts (30.6.60).

LC/SC/CHA WD No. 20 (2.4.56).

LC/SC Article 77/WD No. 2 (24.2.65).

LC/SC Article 77/Report (24.7.65).

LC/SC Article 77/WD No. 10 (9.1.67).

LC/SC Article 77/Report (7.2.67).

7763-C/896, Action of the Council, 29th Session, 24.

7921-LC/143-1 Legal Committee, 11th Session, Vol. 1, Minutes (ix), 145.

8124-C/928.

8279, A 14-LE/11, Assembly 14th Session, Report and Minutes of the Legal Commission, 7.

8446-18 (Closed), C/954-18 (22.2.65).

8470-C/955, Action of the Council, 53rd Session, 19.

8582-LC/153-1, Legal Committee, 15th Session, Montreal, September 1-19, 1964, Vol. 1 Minutes, XXVII-XXXIII.

8704-LC/155.

8707-6,C/974-6.

8707-9,974-9.

8707-10,C/974-10.

8707-11,C/974-11. (31.1.68).

8722-C/976 - (20.2.68).

8743-C/978.

Letter No. EC,2/9.1 dated 15.12.60.

Letter No. AN3/1-69/31 dated 5.2.69.

ICAO - Report on the Scandinavian Airlines System (SAS), Circular 30-AT/5.

ICAO - Registration No. 1730.

ICAO - Registration No. 1812.

ICAO - Registration No. 2051.

Other Material

Air Afrique an 5 (Printed in France, October 30th, 1966).

Constitutional Position of East African Airways (The), Report of the Commission under Chairmanship of Stephen Wheatcroft (1965) - The Wheatcroft Report (Confidential).

Draft Minutes of Meeting held on 16.8.66 - International Law Association - Helsinki Conference (1966) - Air Law.

E.A.A.C. Annual Report and Accounts for year ending 31st December 1966.

East African, Report of the Economic and Fiscal Commission, February 1961, CMd 1279 (Great Brit.).

Future of East Africa High Commission Services (The), Report of the London Discussions, June, 1961 CMd. 1433 (Great Brit.).

Poulton, a Review of Civil Aviation Organization in East Africa (1961) - The Poulton Report.

Proceedings of the International Civil Aviation Conference, Chicago, Illinois, November 1 - December 7, 1944 (Publication No. 2820) 2 vols. (The Department of State, Washington, D.C., 1948).

Report on Nationality and Registration of Aircraft with Special Reference to Article 77 of the 1944 Chicago Convention on International Civil Aviation, 41 pp. - International Law Association - Helsinki Conference (1966) - Air Law Committee.