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This is an analytical study of Iran's bilateral air transport agreements. It traces the development of civil aviation from the beginning of commercial flight in 1924 to the formation of a single state-owned national carrier. In doing so this study also examines Iran's participation in Chicago Convention and its effects on Iranian air transport.

Proceeding further this study reviews the process of treaty-making in Iran. After reviewing the various constitutional requirements for the negotiation and conclusion of treaties, the bilateral air transport agreements of Iran concluded with various countries are examined in depth and detail. The recent trends in Iranian civil aviation policies are reviewed in the light of the advent of jumbo jets and SSTs. The study concludes that to meet the challenges of 70s the air transport industry in Iran should seek collaboration on a regional basis.

Institute of Air and Space Law
McGill University
May, 1970

Mostafa Forootan

AN ANALYTICAL STUDY OF IRAN'S BILATERAL AIR AGREEMENTS

by

Mostafa Forootan

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

Institute of Air and Space Law
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INTRODUCTION

The legal and diplomatic framework within which international air transport has developed is based upon the doctrine of national sovereignty over territorial airspace, and each sovereign state has absolute power to allow or not to allow any foreign aircraft to overfly its territory or make a technical or non-technical stop therein. The First and Second World Wars proved the tremendous potential of the aircraft as a powerful carrier of destruction and the resultant fear of the nations contributed to the universal repudiation of the freedom of the air in both international conferences of Paris 1919, and Chicago 1944. Consequent upon this development special permission has always been required for the establishment and operation of air services in the comity of nations. This permission is normally granted on an equal and reciprocal basis through the medium of bilateral air transport agreements, a network of which supports the very existence of the complex system of international civil aviation.

Bilateralism is, therefore, the established cardinal principle that regulates the establishment and operation of air services between various countries.

In the Chicago Conference, 1944, an attempt was made to reach a multilateral agreement concerning the exchange of commercial rights between the contracting States, but no such agreement was reached mainly because of the different ideologies of the United States of America and the United Kingdom.[1] In fact the compromise suggestion of the Netherlands' delegation, concerning the separation of transit and traffic rights saved the total failure of the Chicago Conference.[2] The Transit Agreement which covers the first two freedoms of the air was accepted by most contracting States, but as a result of the failure to adopt International Air Transport Agreement, the only way of acquiring air routes and traffic rights "depends either on a unilateral grant by a state, or on a bilateral agreement between the state of the airline and the other state."[3]

Article 6 of the Chicago Convention endorsed

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[1] See page 14-15.

[2] Charles M. Sackrey, Jr. "Overcapacity in The United States International Air Transport Industry", Journal of Air Law and Commerce, Vol. 32 (1966), p. 30.

[3] Lissitzyn, "Bilateral Agreements on Air Transport", J.A.L.C., Vol. 30 (1964), p. 248.

the bilateral approach for the exchange of commercial rights and scheduled international air services have developed through a vast network of bilateral agreements. At present there are some 1330 such bilateral agreements in effect amongst 100 States which are registered with ICAO.[4] Subsequent to the Chicago Conference of 1944, repeated attempts have been made at Montreal, Geneva and later on within a restricted geographic area by E.C.A.C. in 1957 and 1959 to find a satisfactory multilateral solution of the problem of commercial rights of scheduled international air transport, but so far all have ended in failure.[5] In 1959 the Economic Commission of ICAO found that the majority of ICAO's members were opposed to the suggestion of holding an international conference on the exchange of commercial rights and therefore, it was clear that in scheduled international air transport, bilateralism will remain the order of the day for some time to come.[6] For the foreseeable future,

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[4]See Aeronautical Agreements and Arrangements, ICAO DOC 8853-LGB/278 (January 1970).

[5]See Wassenbergh, Post-War International Civil Aviation Policy and the Law of The Air, The Hague, second edition (1962), p. 40. See also Sand, Pratt and Lyon, An Historical Survey of the Law of Flight, Montreal (1961), pp. 35-36.

[6]Cheng, The Law of International Air Transport (1962), p. 231. See also 14 ICAO Bulletin (1959), p. 143.

commercial air transport will depend on bilateral agreements which by their nature, require more frequent and, as a result, more intimate discussion between states. Since a bilateral agreement concerns only two states, it is much easier to make amendments and to change its circumstances at any time.

The writer became involved with the subject of this study while following the recent controversial Iranian approach to bilateral air transport agreements in the Iranian Foreign Affairs Ministry, in whose Department of Treaties and Legal Affairs, he was associated in handling certain legal problems arising out of bilateral agreements. The Iranian civil aviation, in line with the general universal trend, is making rapid progress. The national airline Iran Air, a small but aggressive enterprise, has launched itself successfully on a course of swift and profitable expansion. In carrying out its expansionist policies, the national airline is being ably supported and protected by the Iranian government which takes good care to extract maximum advantages for it while negotiating new bilateral agreements or in revising the existing agreements. With the linking of the development of Iranian civil aviation with Iranian bilateral agreements, these

agreements have assumed a new and greater importance. Considering this importance, it seems both interesting and desirable to make an analytical study of the Iranian bilateral agreements; to examine their main provisions and to compare them with the main provisions of other countries' agreements, thus highlighting their comparative advantages as well as disadvantages; to probe into their origin, their development and the various factors that have contributed to such development.

This study begins with an appraisal of the origin and development of civil aviation in Iran; starting from the advent of flying machines in Iran to the formation and growth of the present national airline, Iran Air. The history of civil aviation in Iran is traced through the World Wars. This is followed by a critical look at Iran's participation in Chicago Convention and its effects on the development of civil aviation in Iran after World War II, and finally in the first chapter there is an account of the factors which led to the formation of a single national airline for Iran.

The second chapter explains the process of treaty-making in Iran, highlighting the various constitutional requirements involved in the negotiation,

conclusion and operation of various international treaties and agreements. In the third chapter the Iranian bilateral air agreements are examined in depth and detail. The Iranian policies, past and present, and their new goals are discussed in the light of current developments in international civil aviation and their influence on the Iranian civil aviation industry. The study while taking note of the progress, problems and prospects of Iranian civil aviation, also tries to get across the message of the aviation of the 70s and 80s, that is, that the salvation of the comparatively smaller countries involved in international civil aviation lies not exclusively on the bargaining tables for bilaterals; but in pooling their resources among themselves, preferably on a regional basis.

In making this study the writer was handicapped by the lack of sufficient material on civil aviation in Iran, particularly that relating to the early phases of its development. The writer had, therefore, to be content with and rely on the information available with the McGill Law Library, the ICAO, the McGill Islamic Research Institute Library and on certain pamphlets, in Persian, received from Iran through the Ministry of Foreign Affairs and the Department General of Civil

Aviation.

However, the writer wishes to make it clear that notwithstanding his association with the Department of Treaties and Legal Affairs, Ministry of Foreign Affairs, Government of Iran, the views expressed in this work are exclusively in a personal and private capacity.

CHAPTER ONE

HISTORICAL INTRODUCTION TO THE DEVELOPMENT OF AIR TRANSPORT IN IRAN

I. Beginning of Air Transport Activities in Iran Prior to World War II

Transportation and communications have been an essential condition to human progress and every nation in the world community has deemed it necessary to take a direct part in development of different modes of transportation. The size of a country, its geographical characteristics, affects the amount of investment in transport and communications of that country. The two main factors which give an advantage to air transport as a means of communication over various types of surface transport are its speed and its relative independence of surface conditions. For a vast and mountainous country like Iran, with an area of 1,648,195 square kilometers equal to Germany, France, Italy and Spain combined, it may be the least expensive form of transportation, especially to and from mines or some remote and less populated areas. According to the statistics for 1964,

Iran has only 34,500 kilometers of roads in a highway system and the total length of the railways in the country is 35,568 kms.[7] Aviation, therefore, has to play an increasingly vital role in communications inside and outside of the country.

From the historical point of view, shortly after World War I the use of aircraft for civilian purposes began in Europe, and the first aeroplane on a scheduled flight was flown in July 1919 from Hendon to Le Bourget.[8] Outside Europe and the United States of America about a dozen airline companies were established in various parts of the world during the first five years of the history of air transport, and the "Iunkers Luftverkehr Persian" was among this limited number of airlines commencing operation in 1925.[9]

In fact the inception of the air services in Iran may be traced to an Imperial Order of His Majesty the late Reza Shah, the founder of the present Pahlavi dynasty. Consequent upon the issuance of this order in 1924, the transport of mail and passengers through

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[7] See Development of Inland Transport and Communication in Iran, published by the Ministry of Roads, February 28, 1964. (Institute of Islamic Studies, McGill University).

[8] See Higham, Britain's Imperial Air Routes 1918 to1930 (1960), pp. 19-38.

[9] See Davies, A History of the World's Airlines (1964), p. 71.

regularly established air services was undertaken.[10] In early 1924 a group of German pilots and technicians were invited to Iran and this group flew to Teheran, via Moscow and Baku in order to set up a Persian international air service. The Iunkers Luftverkehr Persian, as the organization was called, began its operation in the autumn of 1925 with a route from Teheran to Enzeli, on the Caspian Sea, using the ubiquitous IUF.13, able to carry four passengers. At Anzeli, a seaplane service connected with Baku, from which Iunkers line organized in Russia flew on to Moscow. A service was later opened from Teheran to Bushire on the Persian Gulf. This company encountered many problems in operation of air services, but the special interest of His Majesty, in the field of aviation in Iran not only removed the problems, but helped the development of operating internal services through the country. Consequently the Iunkers Luftverkehr Persian achieved certain amount of success in the field of transportation of goods, passengers and mail.[11] Further routes were opened eastward to Meshed

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[10] See "HOMA - The IRAN AIR", The Flyer 20 Years of Aviation In Pakistan, Vol. V, No. 3, Special Issue (March 1968), pp. 155-157.

[11] "A History of Commercial Flights in Iran" (An Iranian pamphlet received from Iran National Airlines) Cited from Bulletin No. 76 of Iran National Airlines, p. 5.

and also Baghdad in the latter years, but most services were indefinitely suspended in March 1932.[12] However, in the course of the Second World War, this company's activities finally came to a halt.

Iranian State Airlines: In the late 1937 another Imperial order was issued to establish a postal air service in Iran. The main purpose for establishing this airline was not for the carriage of passengers or freight, but to carry mail throughout the country.[13] This airline was organized by the Ministry of Posts and Telegraphs with the help of His Majesty. Scheduled services began on 15 March 1938 on a route Teheran-Kermanshah-Baghdad.[14] This airline was able to continue its operations by Iranian owned aircraft and Iranian pilots,[15] and later on began to carry passengers and cargo as well. There were also plans to open a route westward to connect with the route of the Turkish airline, Devlet Hava Yollari (D.H.Y.) which had been established in 1933 by the Ministry of Public Works in Turkey. This connection remained unfulfilled until

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[12] Davies, op. cit., Supra note 9.

[13] Op. cit., Supra note 11, p. 55.

[14] Davies, op. cit., Supra note 9, p. 200.

[15] Op. cit., Supra note 11, p. 55.

after the war.[16]

The Iranian State Airlines is among those few airlines which trace their history back to pre-war days. It almost ceased its operations on 6 April, 1946 but resumed flights on a single route from Teheran to Baghdad, via Kermanshah, in July of the same year. A service was also operated to Bushire from August until November of the following year, but this company ceased its activities after the establishment of Iranian Airways.[17]

II. Iran and The Chicago Convention

With the commencement of World War II it was clear that neither the Paris Convention of 1919,[18] nor the Havana Convention of 1928,[19] could safeguard the life

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[16]Davies, op. cit., p. 200.

[17]Ibid., p. 399.

[18]Paris Convention was the first international convention on air navigation concluded in Paris with participation of thirty-eight States and its main principles were: 1) recognition of complete and exclusive sovereignty over the airspace; 2) recognition of innocent passage of aircraft of contracting States; 3) recognition of the right for each party to prohibit overflying its certain areas; 4) recognition of uniform regulations for safety of flight and some other legal and technical problems; 5) creation of an International Commission for Aerial Navigation, known as C.I.N.A.

[19]Havana Convention was modelled on the Paris Convention but applied only among sixteen American States. Article 80 of the Chicago Convention, 1944 resulted the denunciation of these two Conventions.

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and safety of civil aviation, or maintain national sovereignty over territorial airspace. Moreover, these two multi-partite Conventions were considered deficient, especially with regard to the provision for operating scheduled international air services, and therefore, it was necessary to regulate international civil aviation under a new provision with participation of greater number of nations. The United States of America took initiative in convening a conference to prepare a new multilateral convention. After some informal talks between the governments of the United States and the United Kingdom and also some members of the British Commonwealth, on September 11, 1944, the Department of State issued an invitation to all allied and neutral nations to attend an international conference at Chicago.[20]

The main objectives for this invitation were primarily, "The establishment of provisional world routes"; secondly granting "the landing and transit rights necessary for establishing" such routes; thirdly "the establishment of an Interim Council to act as the clearing house and advisory agency" for that transitional period; and fourthly, "Agreement upon the principles to

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[20]See "Invitation of The United States of America To The Conference", Proceedings of The International Civil Aviation Conference. The Department of State, Vol. I (1944), pp. 11-13.

be followed in setting up a permanent international aeronautical body, and a multilateral aviation convention dealing with the field of air transport."[21]

The Conference was inaugurated on November 1, 1944 with participation of fifty-four countries represented by over 400 delegates, of whom 90 were military officers.[22] The Iranian Government was one of the participating States in proceedings of the Conference and its delegation team was composed of four representatives. The Chairman of the delegation was the Iranian Minister to the United States. The other delegates were a high ranking officer from the military forces and two civilian members.[23]

The main proposals represented to the Conference can be generally classified as four. The first one sponsored by the United States of America recommended that a United Nation type of organization with considerable power in technical matters, but only a consultative function in economic and political matters, should be organized. Freedom of the air for civil aircraft should be granted, but no regulation for rates,

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[21] Ibid., p. 12.

[22] Sand, Pratt and Lyon, op. cit., Supra note 5, p. 24.

[23] See Proceedings of the Chicago Conference, op. cit., Supra note 20, p. 115.

routes, frequency or capacity should be established.[24] The second one was proposed by the United Kingdom, completely different from the American proposal, providing that an international air authority should determine and distribute frequencies, capacities and to fix rates and routes between nations.[25] The third proposal made by the Canadian delegation, a compromise between the widely divergent views of U.S.A. and U.K., suggested that an international authority should have limited power to allocate routes, review rates and determine frequencies.[26] The fourth proposal made by Australia and New Zealand provided for international ownership of all air services but this was rejected during the early discussions.

Due to the bitter opposition of leading participating States upon vital matters, more precisely the extent of control to be exercised over international civil aviation, secret negotiations took place among

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[24]For exposition of American proposal see Proceedings, op. cit., pp. 55ff.

[25]For exposition of the U.K. proposal see Proceedings, op. cit., pp. 63ff.

[26]According to the Canadian proposal, such international organization should have the power to issue permits for international air transport operators, as C.A.B. does in the United States. For exposition of Canadian proposal see also Proceedings, op. cit., pp. 67ff.

delegations of the United States, the United Kingdom and Canada. Consequently, a joint draft which was incorporated in the drafts proposed by other states was prepared and submitted to the Conference for signature.

The Final Act of the Conference contains four major agreements. The Convention on International Civil Aviation; the International Air Services Transit Agreement; The International Air Transport Agreement; and the Standard Form of Agreement for Provisional Air Routes. Iran was among the first 32 States to sign the Convention on International Civil Aviation, Interim Agreement and International Air Services Transit Agreement on December 7th, 1944.[27] The parliament of Iran ratified the Chicago Convention and also Transit Agreement on July 21, 1949.[28] Transport Agreement or five freedoms agreement was also accepted by Iran in August 13, 1946,[29] but Iran withdrew when it became clear that a majority of the States refused to accept a free enterprise system in air transport.

It is not intended to make a full discussion of the proceedings of the Chicago Conference, the main

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[27]See Cheng, op. cit., Supra note 6, p. 604.

[28]From the Publications of fifteenth legislation term of Iranian Parliament, 3298, 5055.

[29]See Cheng, op. cit., Supra note 6, p. 604.

purpose being to mention the outcome of the Conference and its effect on the development of civil aviation in Iran. The primary effect on the domestic front, of Iran's participation in the Conference, was the enactment of special laws and regulations with the purpose of regulating civil aviation in the country and secondly the creation of some governmental organs to perform duties and obligations emanating from the commitments made in the international conference at Chicago.

III. Air Transport in Iran After World War II

A. Iranian Airways: The outbreak of World War II had an immediate adverse impact upon the operation of air services inside and outside of the country. Iunkers Luftverkehr Persian ceased operations and the Iranian State Airlines had to reduce its services to some non-scheduled flights to Baghdad, via Kermanshah. Transportation of passengers and mail by air was almost suspended and all air transport facilities were devoted to military uses. Utilization of Iranian railways was completely vested in the Allied Countries for the needs of war.

Although, the progress achieved in Iran prior

to World War II in the field of air transport was not entirely satisfactory, it was, however, essentially an experimental period which made the country familiar with the advantages of air transportation. If the opportunities in the aviation had not been demonstrated before World War II, probably there would not have been any investment in this field after the war. With the end of the war in sight, in December 1944, a private company under the name of "Iranian Airways" was organized in Teheran. This company declared its existence in accordance with the Iranian Commercial Law as a Joint Stock Company. With the establishment of this airline a few officers from the Iranian Air Force were provided to co-operate with this company. The war requirements had resulted in training a good number of technical personnel who, after the war, were available for and participated in civil aviation.[30]

The Iranian Airways commenced limited operations on May 31, 1945. A service was inaugurated in July 1945 to Abadan, with a distance of 665 miles. However, the first regular service was inaugurated a year later on a route linking Teheran to Meshed, a

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[30]"A History of Commercial Flights in Iran", op. cit., Supra note 11, p. 56.

distance of 456 miles.[31] Shortly afterwards scheduled services were expanded to most populated cities of Iran like Isfahan, Shiraz, Tabriz, Zahedan, Hamadan, Kermanshah and Persian Gulf Islands.[32] By the end of 1946, international routes were inaugurated to Baghdad, Beirut and Cairo on a non-scheduled basis. Authorization for non-scheduled flights with operating rights was required from some European countries. By early 1947 this airline had established some regular services from Teheran to Paris via Baghdad, Beirut, Athens and Rome. The flight to Cairo by this time was, however, suspended. In 1951 the international routes were expanded eastward to Karachi and Bombay, but this service was suspended in 1954, due to the highly competitive situation on this route. Operation on the route Teheran, Kerachi, Bombay was not resumed until 1958 when the company had more competitive equipment available. On this route, however, while maintaining the service to Karachi, the operations on sector Karachi-Bombay were once again temporarily suspended.

This company was more successful in establishing new services to other neighbouring countries namely

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[31] World Airline Records "Standard Reference of the Industry", "Iran National Airlines Corp." 6th edition (1965), p. 75.

[32] "A History of Commercial Flights in Iran", op. cit., p. 56.

Afghanistan, Iraq, Syria and Lebanon. In 1955 three important services were inaugurated. The first one linked Teheran with Beirut and Baghdad; the second one linked Teheran to Kandahar and Kabal in Afghanistan; and the third one to Damascus. These services increased the company's route network by nearly 2,000 miles, bringing the unduplicated total to 5,150 miles.[33]

In 1958, the Iranian Airways developed a service mostly for the carriage of cargo with limited passenger accommodations between Iran and West Germany. Operating rights were required for landing at the industrial cities of Zurich and Milan. Tourist passengers were handled largely on a fill-up basis, at least on eastbound flights, on which cargo loads were heaviest. Eastbound traffic chiefly consisted of manufactured goods in great demand in Teheran and other Middle East cities. Westbound loads, such as there were, included higher value handicrafts such as textiles and Persian rugs, and some agricultural products.

The introduction of faster turbo-prop aircraft, and the new and revolutionary jet equipment in the late 1950s put the Iranian Airways in a very tight corner. On the route between Europe and Iran competition between

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[33]See World Airlines Records, op. cit., Supra note 31, p. 76.

at least six airlines, flying almost in parallel was intolerable and all the advantages that Iranian Airways had built up were dissipated. All its competitors, one by one, switched to faster equipment and then ultimately to jets. Due to lack of sufficient experience and mainly due to shortage of investment in the field of civil aviation the company had to suspend most of its services.[34] Introduction of jets was particularly serious because of its high speed and much larger capacity. Consequently, most of the tourist business as well as cargo business was attracted by the other airlines which enjoyed the advantage of the new and superior equipment. The Company found itself in serious financial troubles and its operations were terminated when it was amalgamated in October 1962 with Persian Air Services to form Iran National Airlines Corporation, the country's sole flag carrier now for both the domestic and international markets.

During its operations stretching over nearly 18 years, Iranian Airways received support and technical assistance from some of the well established airlines of the world. For instance, after an agreement reached in December 1945, Trans World Airline acquired

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[34] "A History of Commercial Flights in Iran", op. cit., p. 57.

10% of the Iranian Airways stock and it became shareholder in Iranian Airways on October 26, 1946. Simultaneously a five years management contract was signed, but this was withdrawn in 1949 when the airline was reorganized by the Government. Later on another large contract was made with Trans Ocean Airlines,[35] which was not successful.

In the period of Iranian Airways Activities two other airlines were established in Iran. The first one was Eagle Airlines of Iran which was founded in 1948 to operate local services. In the beginning this airline received technical assistance from B.O.A.C. but later on it became completely influenced by the British airline. In 1949 the Government of Iran took over the Eagle Airlines' activities.[36] The second one was a Russian service which was operating some internal routes and competed with the Iranian Airways, especially on the route between Teheran to Meshed.[37] This Company's activities were also suspended by the Government when it was decided to grant a monopoly of international flights to wholly Iranian owned companies.

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[35] Davies, op. cit., Supra note 9, pp. 402-403.

[36] Ibid.

[37] World Airlines Records, op. cit., p. 75.

B. Persian Air Services: The second major Iranian airline was Persian Air Services which was established in 1954. This company also came into existence in accordance with the Iranian Commercial Law as a Joint Stock Company. In the beginning its activities were limited to the carriage of cargo on internal and external routes, and, especially in regional routes, it directly competed with the Iranian Airways.[38]

P.A.S. started its operation in a route from Teheran to Abadan-Beirut-Brindisi-Basle with technical advice from the British Company, Skyways.[39] The European route was expanded to Geneva with Avro Yorks flown under charter by Trans Mediterranean Airways and shortly after this route was expanded to London and added first a second and then a third weekly frequency.[40] On June 20, 1960 the service was considerably improved in association with SABENA, by substituting DC-7C aircraft on passenger flights direct from Teheran to Geneva, Paris, Brussels and London.[41] Six months later,

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[38]"A History of Commercial Flights in Iran", op. cit., pp. 56-57.

[39]Davies, op. cit., p. 404.

[40]World Airline Records, op. cit., p. 76.

[41]Davies, op. cit., p. 404.

the DC-7 was replaced with a Boeing 707 jet, also leased from Sabena under a temporary arrangement. The freighter services through Beirut were also continued.

However, in spite of all these above mentioned attempts, the civil aviation in Iran found itself in a very gloomy situation when the appearance of jets revolutionised the international civil aviation in the late 1950s and early 1960s. Without the costly new jets, both carriers were financially in a critical shape and their prospects grew bleaker with ever increasing losses. For their sheer survival, they stood badly in need of fiscal assistance from the Government. Even the Government's subsidy provided in the form of the purchase of three Vickers Viscount turbo-prop aircraft and making them available to Iranian operators did not change the situation. Even the Belgian carrier Sabena's financial investment in Persian Air Services could not help in cutting its substantial losses and thus bailing it out of its monetary problems. Consequently, the carrier was obliged to cancel its operations in early 1962.

IV. The Merger of Two Airlines and The Formation of Iran National Airlines Corporation

The performance of Iranian Airways and Persian

Air Services thus did not produce any satisfactory results in the advancement of Iranian civil aviation. In spite of their pioneering role in the field of air transport in Iran, the carriers were limited by their small size, their lack of assets and equipment to efficiently discharge their requirements in a highly competitive international field, where the competition was being aggravated by the introduction of sophisticated and costly jet aircraft. The rapidly advancing aviation industry and the changes that had appeared on the international civil aviation horizon were beginning to put a heavy premium on the Iranian operators and, in spite of the support received from various agencies including the Government, the Iranian carriers were just not capable of meeting the challenges that the ever advancing aviation industry had confronted them with.

A solution to this problem was sought in the terms of a merger between the two carriers and the negotiations were started; but the Iranian Airways was rather reluctant to merge with Persian Air Services, which was on the verge of ceasing its operations. Taking stock of this unpleasant situation, the Government was very anxious to ensure the continuation of Iran's air services for various reasons which need not be mentioned

here. Since the two carriers could not iron out the terms of a satisfactory merger, the Government was obliged to act in its own right and it came forward to take over both ailing carriers and to form a new national carrier to take over their operations.[42]

By the investment of the Government in the new company and the steps taken by Iranian Civil Aviation Authorities, under the Imperial orders, the situation was finally solved as the new company called Iran National Airlines Corporation, and popularly abbreviated as Iran Air, proceeded to take over both Iranian Airways and Persian Air Services. Iran Air's activities were officially inaugurated on February 24th 1962, and it took over the management of Iranian Airways in April, 1963.

Under Article 4 of "the Act of Establishing Iran National Airlines Corporation and Civil Aviation Operation" which was approved by parliament in July 1966, Iranian Airways with its all belongings and possessions, credits and debits, powers and privileges, obligations and all operating rights including domestic or international rights is merged with Iran National Airlines and that airline is recognized as the legal

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[42] World Airline Records, op. cit., p. 75. See also The FLYER, op. cit., Supra note 10, p. 155.

successor of the Iranian Airways. In the beginning the government held just 51% of the line's stock and the former owners of Iranian Airways and other individuals held the balance. Presently, however, under Article 3 of the aforementioned Act, all the line's stock belongs to the government; the stock is registered and not transferable. An additional note to this Article provides that, the Department General of Civil Aviation is responsible to pay back at 6 percent interest the shares of former owners of the Company from the income of Iran National Airlines.

Under Article 5 of "Iran Air's Articles of Association", of May 30th 1968,

> The capital of the company is 1,000 million Iranian rials divided into 1,000 shares of one million rials each,[43] which are registered and non-transferable; and all of which have been subscribed by the Government. Thirty-four percent of the capital has been paid up.

The rest is subscribed to be paid until the year of 1970.[44] Moreover, the Ministers of Finance and of Roads and Communication, and a third minister to be selected by the Council of Ministers, represent the government shares

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[43]Each 70 Rials is equal to one Canadian Dollar.

[44]For the full text of "Iran Air's Articles of Association" see Iran Almanac and Book of Facts, eighth edition (1969), pp. 671-675.

in the company.[45]

As mentioned above, it took Iran National Airlines Corporation two years before it could completely integrate the administrative and commercial affairs of the air transport companies which it succeeded. Realising early in its existence the impact of severe international competition, it took certain positive measures to strengthen its position. For the purpose of accelerating its development and to implement its objectives in meeting the requirements of the country it was considered necessary to raise the capability, particularly on the operational and technical sides, of the airline. One of the first steps was to seek experienced airline management assistance which resulted in the conclusion of a management and technical assistance pact with Pan American Airways in 1963.[46] The second measure involved pooling arrangements with some other airlines which started in 1964 in a pooling agreement with Scandinavian Airlines. Under this agreement Iran Air is to share capacity on the Scandinavian line's flights between Teheran and Copenhagen. At the present time Iran Air has pool arrangements with eight carriers

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[45] Ibid., Article 7.

[46] World Airlines Records, op. cit., p. 76.

and it plans to acquire some pooling or blocked space arrangement with Pan American Airways.[47]

Iran Air started jet operations in July 1965 and its fleet consists of four Boeing 727-100 and two Boeing 707-320 aircraft. It also owns six DC-6 and three DC-3 aircraft which it is planned to be replaced by jet aircraft in the future. The Technical Division has the capability of all DC-6 and DC-3 airframe maintenance including major block overhauls.

According to operating statistics and other reports, Iran Air with the assistance of Pan American advisors moved far ahead of what had been forecast in a plan which was designed for seven years. For instance, it was estimated that during the year 1967 the total number of passengers air-lifted by this carrier would be 367,500, whereas the actual figures during the first eight months had reached 335,000 and the final figure at the end of the same year was 450,000.[48] Therefore, Iran Air is well ahead of its goal of 525,000 passengers in 1971. Gross revenues in the year ended March 20, 1962, were $5 million. In the

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[47]See Harold D. Watkins, "Major Challenges Face Iranian Effort to Build Carrier", Aviation Week & Space Technology (June 26, 1967), pp. 42-53.

[48]See The FLYER, op. cit., Supra note 10, p. 156.

12 months ended March 20, 1964, the first year of Iran Air, revenues had more than doubled to $10.7 million, and in 1966 completed March 20, this figure rose to $22.2 million.

Revenue passenger miles flown grew from 50.0 million in the 1962 period to 77.2 million in the 1964 period and nearly tripled from that time to 211.0 million in the 1967 period. System unduplicated route miles increased from 9,722 on March 20, 1962, to 10,180 as of March 20, 1964, and then reflecting inauguration of new routes to Europe, doubled to 20,178 on March 20, 1967.[49] Iranian aviation authorities are pleased with productive co-operation of Pan American advisors in the development and expansion of Iran National Airlines, and particularly for the personnel training programme conducted in the United States of America.

Iran Air presently operates services to eight European cities including London, Paris, Istanbul, Frankfurt, Hamburg, Geneva, Rome and Moscow on different routes. It is likely that the European routes will be extended to Austria and Belgium in the near future. Moreover, two weekly flights are operated to Kabul and other destinations from Teheran are Karachi, Bombay,

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[49]These statistics are taken from the article written by Watkins, op. cit., Supra note 47.

Baghdad, Doha, Dhahran and Duhai. The airline operates eleven weekly round trip flights between Teheran and Kuwait.[50]

In order to meet the challenge of the 70s, that is, the era of wide body jumbo jets and SSTs the airline has agreed in principle with the national airlines of Turkey and Pakistan to study the formation of a joint international airline to operate on the long haul routes. No details of this arrangement have, however, yet been made available.

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[50]See The FLYER, op. cit., Supra note 10, p. 156.

CHAPTER TWO

THE PROCESS OF TREATY-MAKING IN IRAN

I. Constitutional Requirements

Any sovereign State which wishes to act internationally has to act through some organ such as a king, a President, Council of Ministers or the like. Naturally the question arises whether or not a particular organ of a State, which has entered into a treaty is duly authorized by the law of that State to create an international obligation binding that State. Consequently, every country must have some provisions in its Constitutional Law or Customary Law dealing with the organ or organs possessing power to conclude treaties and defining the mode of exercise of that power.[1] If an organ fails to observe the constitutional requirements of that State in making a treaty, that particular State is not to be held responsible for such treaty.

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[1] See McNair, The Law of Treaties (1961 Edition), pp. 59-64.

Although under the Iranian Constitutional Law of December 30, 1906, the crown exercises the treaty-making power, Article 24 of the Constitution limits its power. Article 24 provides:

> The conclusion of treaties and agreements, the granting of commercial, industrial, agricultural or other concessions (monopolies) whether the concessionaire is a national or a foreigner, must be authorized by the National Consultative Assembly, except for treaties which it would be in the interests of the State and the nation to keep secret.[2]

Consequently all treaties relating inter alia to commercial rights have to be first authorized by the National Consultative Assembly. Bilateral air transport agreements are regarded as treaties or agreements granting commercial rights and have to be approved by parliament and thereafter by the crown in accordance with the Constitution prior to the agreement being ratified.

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[2]Iranian Constitutional Law is the result of a process which had been going on throughout the 19th century in Iran. It was approved by the First National Assembly on December 1906, and consists of fifty-one articles relating to the constitution and duties of the National Consultative Assembly and the Senate. One year later, a supplementary Constitutional Law was passed by the Assembly and ratified on October 1907. It contains 107 articles concerning the rights of the people, the powers of the realm, the rights of members of the assembly, the rights of the throne, the powers of ministers, tribunals of justice, public finance and the army. See Lambton, "Dustur", Encyclopedia of Islam (Second Edition, 1960), pp. 649-657. For the full text of Constitutional Law of December 30, 1906 and Supplementary Constitutional Law of October 8, 1907 see Iran Almanac and Book of Facts (1962), pp. 530-545.

The process of treaty making in Iran begins with the negotiation of a draft treaty or agreement by the appropriate ministry or department. That draft is submitted to the Council of Ministers for consideration. After its consideration and approval, a person or an organ is impowered, through an Imperial Order known as "Farman", to sign the treaty on behalf of the State. A treaty thus signed is placed before the parliament for ratification. Finally, it is submitted for approval of His Majesty the King, on the grant of which the domestic process of treaty-making is completed and the treaty thus processed becomes final and binding when the procedures for ratification provided in the treaty are completed by the parties concerned.[3]

II. Government Regulations of Air Transport in Iran

Although civil aviation in Iran started long before World War II, the development of government regulation in this field was comparatively slow. No significant step in this direction was taken until July 1949 when the first Iranian Civil Aviation Act was promulgated. Under this legislation, the responsibility for the creation and promotion of both internal and

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[3]As explained in writing to the writer by Senior Officers of the Ministry of Foreign Affairs, Iran.

external needs of Iranian civil aviation was entrusted to the Government. In order to develop internal air-routes in a way that all parts of the country may benefit from the advantages of air transport, the government was required to establish airports and further to provide necessary ground equipment to insure the safety of flight and air navigation.[4] Under section (d) of Article 4 of the aforesaid Act, the government is also made responsible to foster air communications with foreign countries on a reciprocal basis for the purpose of developing and strengthening the social and economic relations of Iran with those countries. Moreover, in the field of air transportation the government is further entrusted with the responsibility of aiding the Iranian aviation organizations in establishing the required air services on a non-monopolistic basis.[5]

In Iran, the Ministry of Roads and Communications is responsible for civil aviation matters. The government regulation of air transport and the administration of civil aviation is exercised through two principal agencies known as the Department General of Civil Aviation and the Civil Aviation High Council.

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[4]Sections (a) and (b) of Article 4 of Civil Aviation Act July 1949.

[5]Ibid. Section (c) of Article 4.

The Department of Civil Aviation was established in accordance with the Decree of the Council of Ministers in 1946 as an independent organization under the Ministry of Roads.[6] In 1949 the Civil Aviation Act was passed by the parliament and the Department presently functions according to this Act. The Director General of Civil Aviation is responsible for administering the regulations of air transport through the powers which have been given to him under this Act. At this juncture, it would be appropriate to mention a few pertinent facts about the powers and duties of civil aviation authorities in Iran, that is the Department General of Civil Aviation and the Civil Aviation High Council.

III. Department General of Civil Aviation

The fulfillment of the government's responsibilities under Article 4 of the Civil Aviation Act of 1949 vis à vis civil aviation matters is effected through the establishment of an independent administrative organization, that is, the Department General of Civil Aviation. This Department is directly charged with the responsibility of formulating international aviation policy in Iran. It is headed by a Director General, who has the rank of

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[6]See TA 6/1.33, ICAO Annual Reports.

an Under-Secretary of State and is responsible to the Minister of Roads. He is usually appointed for a period of three years by an Imperial Farman on a submission by the Council of Ministers and on the expiry of his first term he may be re-appointed for another such term in the same manner.[7] Besides its other duties, related to the negotiations of bilateral air transport agreements which will be discussed later, the Department is responsible for formulating aviation regulations in order to prevent harmful competition between air carriers and safeguarding public interest.[8] According to the last paragraph of Article 17 of the Civil Aviation Act, before acquiring an appropriate certificate from the Civil Aviation High Council, any kind of commercial flight must have obtained necessary permission from the Department General of Civil Aviation. Article 3 of Regulations for Foreign Civil Aircraft Flight in Iran, which is based on Article 17 of the Civil Aviation Act, provides that a foreign civil aircraft, registered in a signatory state to the Chicago Convention that intends to fly over or land in the Iranian territory on a regular transit service flight, shall obtain the

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[7] Op. cit., Supra note 4, Article 5, Civil Aviation Act.

[8] Ibid. Section (b) of Article 5.

authorization from the Department at least fifteen days prior to the beginning of operation.[9]

In cases where there is no bilateral or multilateral agreement on civil aviation between Iran and a foreign State requesting the establishment of scheduled commercial air services between Iran and its territory, the Department General may issue a temporary authorization to set up scheduled commercial air services between Iran and that country for a period not exceeding six months.[10] Section 'B' of Article 15 of the Civil Aviation Act further provides that the Department General shall undertake "the supervision of civil aviation activities according to aviation regulations which are to be formulated for the purpose of preventing danger, avoiding harmful competition between operators." In addition, another function assigned to the Department of Civil Aviation relates to the encouragement of the industries connected with civil aviation and scientific or technical studies and research into matters relating to civil aviation.[11] In the field of international

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[9]Article 3 of Regulations For Foreign Civil Aircraft Flight In Iran, Reported to ICAO, 1964. (Hereafter cited as Regulations for Civil Aircraft).

[10]Ibid.

[11]See Section (d) and (e) of Article 5, Civil Aviation Act, Supra note 4.

aviation and co-operation with foreign carriers it is provided that:

> Civil Aviation Department shall encourage co-operation in the operation of the services of foreign air transport organizations which have obtained the right of commercial air transport in Iran, and the services of Iranian air transport organizations, with a view to utilizing more rationally existing means and services and reducing the cost of operation.[12]

It is not intended to go further on details but, however it is worthwhile to mention that all scheduled and non-scheduled air transport services, regular commercial flights, casual commercial flights or any other flights in Iran must be permitted by the Department General of Civil Aviation on the basis of the regulations to be approved by the Civil Aviation High Council. A foreign enterprise may not engage in scheduled or non-scheduled air transport between Iran and a foreign country without a permit issued by the Department of Civil Aviation with the approval of the Civil Aviation High Council.[13] Under Article 22 of the Civil Aviation Act, the Department General of Civil Aviation must prepare regulations for the enforcement of the Civil Aviation Act relating to the flight of Iranian and foreign civil aircraft, airport, nationality

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[12] Op. cit., Supra note 9, Article 11, Regulations For Civil Aircraft.

[13] Ibid.

and registration of aircraft, aircraft factories and maintenance organizations. All regulations made by the Department in exercise of its power are, however, subject to the approval of the Council of Ministers.[14]

IV. Civil Aviation High Council

Civil Aviation High Council was created by Civil Aviation Act 1949, for encouraging and fostering the development of civil aviation and air transport, and for setting the main lines to be followed by the Iranian negotiators with foreign countries in concluding bilateral air transport agreements. Its primary objective is the supervision of the economic regulation of air transport and suggesting by way of advisory opinions on the policy for air transport in the country. According to the new amendment of Article 6 of the Civil Aviation Act, approved by parliament in April 1968, this Council now holds its sessions in the Prime Minister's Office instead of Ministry of Roads and it is composed of eleven high ranking members representing different Ministries and economic organizations of the country.

Under Article 17 of the Civil Aviation Act, every citizen, natural or legal, desiring to undertake

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[14] Op. cit., Supra note 4, Article 22, Civil Aviation Act.

commercial air transport of passenger or cargo in Iran must obtain a valid certificate of public convenience and necessity from the Department General. This certificate will not be granted if the Civil Aviation Council is not satisfied that the proposed undertaking is in the country's interest and is a public necessity. In addition to this, Civil Aviation High Council must be satisfied that the applicant is capable of performing such undertaking in a proper manner.[15] The Department General cannot revoke or temporarily suspend the operating certificate or limit the rights granted therein without the consent of the Council. This Council will take into consideration the gravity of the contravention or its recurrence for revoking any kind of operating certificate, when the holder of such a certificate fails to comply with any one of its provisions.[16]

In accordance with section 'B' of Article 6 of the Civil Aviation Act, the second duty of the Council is "to advise on the issue, revocation, or temporary suspension of operating certificates, and the limitation of the rights mentioned in any operating certificate." Therefore, neither a bilateral agreement on aviation

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[15] Ibid. Article 17.

[16] Ibid. Article 18.

may be concluded, nor a temporary authorization for the establishment of scheduled commercial air services between Iran and any foreign state may be granted, unless the Civil Aviation High Council considers, that the establishment of these air services is compatible with the interest of the country. The Council must be satisfied that these air services can meet the requirements of the air transport of passengers and cargo between Iran and the requesting State and express a favourable opinion on the proposed agreement.[17]

In order to prevent air carriers giving any undue or unreasonable preferences or advantages to anybody or to subject them to unjust discrimination, equitable tariffs for transportation by air of passengers and cargo must be approved by the Council.[18] Under Article 19 of the Regulations for Foreign Civil Aircraft Flight in Iran, the rates fixed by the foreign air transport companies for carrying passengers and cargo to and from Iran shall not be applicable unless previously approved by the Council. Any changes in the said rates shall also be subject to approval by the High Council

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[17] Op. cit., Supra note 9, Article 7, Regulations For Civil Aircraft.

[18] Op. cit., Supra note 4, Section (c) of Article 6, Civil Aviation Act.

of Civil Aviation.[19]

V. Department of Civil Aviation and Conclusion of Bilaterals

Bilateral air transport agreements are an integral and important aspect of the regime under which the international air transport is operating today. An airline generally cannot operate to a foreign country and carry traffic to and from that country without express permission of the government of that country. Such permission is normally given in bilateral air transport agreements.

The question of bilateral air transport agreement is considered by the Iranian Government as a means for providing an adequate opportunity for the participation of Iranian Carrier in international air traffic routes. International air transport policy in Iran is mostly based upon a continuation of a system of bilateral agreements. The Department General of Civil Aviation has primary responsibility for coordination of international air transport activities with the other interested governments. Under section (d) of Article 4 of the Civil Aviation Act, the Department is responsible to "foster air communication with foreign countries on a

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[19] Op. cit., Supra note 9, Article 19, Regulations For Civil Aircraft.

reciprocal basis for the purpose of developing and strengthening the social and economic relations of Iran with those countries."[20] In the specific subject of bilateral agreements, the actual negotiation is delegated to the Department of Civil Aviation.

According to the section (f) of Article 5 of the Civil Aviation Act, the Department of Civil Aviation is in charge of drafting aviation agreements and conventions with foreign states, which are to be submitted by the Government to the Parliament for ratification.[21] In practice the procedure is as follows: Iran National Airlines, which is now the only international carrier of the country, may request a special authorization from The Department of Civil Aviation to operate a service to a given foreign country. This request is also communicated to the Ministry of Foreign Affairs for information and necessary action once the request is cleared by the Department of Civil Aviation. If the Department of Civil Aviation finds, after having consulted the Civil Aviation High Council, on this application, that the establishment of the proposed service is for the benefit of the country and that the

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[20] Op. cit., Supra note 4, Section (d) of Article 4, Civil Aviation Act.

[21] Ibid. See Section (f) of Article 5.

airline is able to perform such transportation and also considers that this service is required by the public, it may then request the Ministry of Foreign Affairs to undertake necessary steps with the foreign country concerned to permit such services. The Treaties and Legal Affairs Department of the Ministry of Foreign Affairs is usually in close contact with the Department of Civil Aviation and with this coordination they undertake to obtain the necessary permission for Iran Air to operate its proposed service.

Usually, the Ministry of Foreign Affairs gets in touch with the foreign country concerned for the negotiation of a bilateral air transport agreement. This contact is established either through Iranian Diplomatic Mission in that particular country or through that particular country's diplomatic mission in Iran. In case the foreign government involved is receptive to the proposal for the conclusion of a bilateral air agreement, the two sides then get together at a given place in Iran or that particular country for formal negotiations. The same procedure is also applied when the Department of Civil Aviation, acting under instructions of Civil Aviation High Council, requests some amendment in any bilateral agreements already in

force with any other country.

An Iranian delegation negotiating a new bilateral air transport agreement is normally made up of three members of the Department of Civil Aviation including the Director General of Civil Aviation, one official from the Ministry of Foreign Affairs and three members of the Iran National Airlines including the Managing Director of Iran Air. When negotiating is connected with the amendment of an existing bilateral agreement, the Ministry of Foreign Affairs usually does not send any official to such negotiations. Once the parties agree upon the various terms and conditions, the agreement is drafted and such mutually accepted draft is initialed by the Head of the Delegation of each side, that is in Iran the Director General of Civil Aviation. As already explained above, however, this agreed draft is subject to the diplomatic exchange and ratification by parliament and His Imperial Majesty.

VI. Forms of Agreements

There is no general accepted system for classifying air transport agreements. However, they could broadly be classified into four categories as follows:

1. Agreements without capacity clause in which the airlines of both contracting parties are entitled to provide as much capacity as they desire over the specified routes indicated in a respective agreement.

2. Agreements with Bermuda capacity clauses which we will talk about later.

3. Agreements with predetermination-type capacity clauses.

4. Agreements with capacity clauses which are neither Bermuda nor predetermination-type.[22]

Broadly speaking, international air transport is not completely based on a special form of agreement which is to be called "bilateral agreement." Many airlines operate international scheduled services to and from different countries without a bilateral agreement. Iran has no bilateral agreements with Iraq, Kuwait, Syria, Jordan and Saudi-Arabia, but their airlines have commercial flights to Iran and the Iranian carrier also operates international air services to some of these countries. These operations are based on special permits, issued temporarily by the respective aeronautical authorities of two countries. All these operations are, however, restricted only to the third

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[22]"Bilateral Agreements", Yearbook of Air and Space Law (1965), pp. 184-187.

and fourth freedoms.[23] This practice is provided for in Article 6 of Regulations for Foreign Civil Aircraft which indicates,

> So long as no bilateral or multilateral agreement on civil aviation is concluded between Iran and a foreign State requesting establishment of scheduled commercial air services between Iran and its territory, the Department of Civil Aviation may issue a temporary authorization to set up scheduled commercial air services between Iran and that country for a period of six months.

This authorization may be extended upon the expiration. Temporary permissions are frequently granted prior to the conclusion of a formal bilateral agreement.

Another form in which air agreements are concluded is by exchange of notes through diplomatic channels between the Ministry of Foreign Affairs and the head of diplomatic mission of the country concerned. This practice is particularly applicable in the case of amendment, modification or clarification of an earlier agreement. Many of the Iranian bilateral agreements have been amended through diplomatic exchange of notes and some of these notes have been approved by the parliament.[24]

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[23] As explained in writing to the writer by senior officers of the Department General of Civil Aviation, Iran.

[24] Originally parliament argued that all amendments should be submitted in pursuance of Article 24 of the Constitutional Law and this was done. The practice now acceptable is that it is not necessary to submit minor amendments to parliament.

A third practice or the most normal way of operating an international scheduled air service in Iran is within the framework of bilateral air transport agreement. There are some variations in the structure and in the language of Iranian agreements, but the important provisions of most of them are the same. Repeated efforts have been made since the Chicago Convention 1944, to achieve a certain amount of uniformity in the drafting of bilateral agreements. The Chicago Conference, 1944 developed a standard form of bilateral agreement for the exchange of commercial rights in scheduled international air services in order to secure a degree of uniformity in such bilateral agreements.[25] The Chicago Model was followed by many states until 1946. The significant change to the Chicago Model was made at the Bermuda Conference between the United States and the United Kingdom in 1946.[26] The capacity clauses of the Bermuda Agreement rejected the pre-determination of

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[25]Cheng, Law of International Air Transport (1962), p. 26.

[26]See "Development in Anglo-American Civil Air Relations since 1943", a lecture given by Mr. Satterthwaite, October 20, 1948, at Aircraft Recognition Society. See also Kittrie, "United States Regulation of Foreign Airlines Competition." J.A.L.C. Vol. 29 (1963). See also American view in the Chicago Conference, 1944, and its changes in the Bermuda Conference 1946 by Stoffel, "American Bilateral Air Transport Agreements On the Threshold of the Jet Transport Age." J.A.L.C. Vol. 26 (1959), pp. 121-122.

capacity and substituted, therefore, the ex post facto review. The bilateral air transport agreements of Iran with the United States, United Kingdom, Pakistan and some other countries which will form the later part of this study, are based on Bermuda principles. Certain modification to the Bermuda principles was accepted in the agreement with India in 1960. In most of the recent bilateral agreements and in some recent amendments to existing agreements, a rather restrictive policy toward the capacity and frequency clauses has been followed by Iranian negotiators. For instance Article 12 of the agreement between Iran and Italy, February 1968, provides that for the application of capacity clauses of the agreement the designated airlines of both contracting parties shall consult with a view to reach an agreement between themselves; the agreement thus reached shall be submitted to the respective aeronautical authorities for approval.[27] Article 7 of air transport agreement between Iran and Netherlands, October 1949, as amended in March 1968 provides that the established services shall have as their primary objective to provide a capacity at a reasonable load factor adequate to the current and reasonably anticipated requirements

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[27]Section (c) of Article 12 of Air Transport Agreement between Iran and Italy, February 12, 1968.

for the carriage of passengers, cargo and mail between the territories of the contracting parties. The Commercial aspects of the agreed services shall be subject of a separate agreement between the designated airlines of both contracting parties. Such a commercial agreement shall cover matters dealt with third and fourth freedom, as well as matters relating to commercial co-operation including, inter alia the carriage of traffic to and from third countries (fifth freedom).

VII. Negotiations

Article 6 of the Chicago Convention which forbids the operation of scheduled international air services in the airspace of another contracting state without special permission, indirectly provides for bilateral negotiations amongst different countries for exchange of commercial rights. Since the Chicago Convention, the method of bilateral negotiations has been followed all over the world, and scheduled international air services have been developed under the framework of bilateral air transport agreements. Negotiation for a bilateral air transport agreement between each pair of countries depends primarily upon the transportation needs of the two countries concerned,

secondly upon the political relationship which exists between the two nations at the time of negotiations and, thirdly upon the relative bargaining strength of each nation. However, in most bilateral negotiations operational requirements are already dictated to the negotiators and they have to follow the principles which have already been agreed upon.

The geographical location of a country is also one of the important factors which effects the negotiation of a bilateral agreement. Iran is located in an international highway and many countries who start bilateral negotiations with Iran are under pressure from their airlines to obtain fifth freedom rights and not just third and fourth traffic rights. Naturally, the support of the national airline requires continuous negotiation for the establishment of new bilateral agreements or the amendment of the earlier agreements.

As mentioned before, the primary responsibility for negotiating a bilateral air transport agreement in Iran has been given to the Department of Civil Aviation. However, the Ministry of Foreign Affairs, within its general responsibility for maintaining friendly relations with other countries may put pressure on the Department of Civil Aviation to open negotiation with any country.

Negotiations for a bilateral air transport agreement are usually conducted through diplomatic channels. For instance a foreign government submits a diplomatic note to the Ministry of Foreign Affairs concerning the desire of its airline to operate scheduled international air services to Iran. The Ministry of Foreign Affairs then sends this note to the Department of Civil Aviation and strongly recommends that it take the matter under special consideration. The Department of Civil Aviation after consultations with the Civil Aviation High Council, reports to the Ministry of Foreign Affairs, the advantages or disadvantages of the operation of such services.

For the operation of new services, it has been the established policy of the Foreign Affairs Department to insist on bilateral negotiations. Civil Aviation Authorities may, however, in certain cases, disagree with the initiation of bilateral negotiation, if in their considered opinion the traffic requirements between Iran and requesting country are not sufficient to justify the operation of the proposed services and most of the capacity which is going to be offered would be used mainly for fifth and sixth freedoms.

Nevertheless, when the civil aviation

authorities agree with the operation of a new service the draft proposal of each party is exchanged through diplomatic channels and a date for negotiations is fixed. The Iranian negotiating team is usually led by the Director General. Sometimes it happens that the understanding of two sides upon what has been agreed in a bilateral negotiation is different. Therefore new bilateral negotiations are required between the parties concerned before ratification or coming into force of an agreement.

VIII. Designation of Airlines

A successful negotiation of a bilateral air transport agreement does not of itself necessarily permit the air carriers of both parties to exercise their commercial rights immediately after conclusion of the agreement. In general, all bilateral air services agreements require the contracting parties, prior to the inauguration of the agreed services, to designate the airlines that are to take the advantage of the rights obtained under the agreement.[28] The aeronautical authorities of each party must also be satisfied that the designated air carriers are competent enough to operate such services. In the case of Iran, the Civil Aviation High

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[28]Cheng, op. cit., Supra note 25, pp. 359-363.

Council must be satisfied with the competence of a designated foreign air carrier. Under Article 7 of Regulations for Foreign Civil Aircraft, no commercial air service may be operated in Iran, unless the Civil Aviation High Council considers that the establishment of the above mentioned services is compatible and if it expresses a favorable view, a license is issued by the Department of Civil Aviation.

The wording of designation clauses in Iranian agreements is not uniform. For instance Article 4 of the agreement with the United Kingdom provides that "Each Contracting Party shall have the right to designate in writing to the other Contracting Party one or more airlines for the purpose of operating the agreed services on the specified routes."[29] The other contracting party shall without delay, grant to the airline designated the appropriate operating authorization, subject to fulfilment of national laws and regulations, and satisfaction of the substantial ownership and effective control standards. Under Article 3 of the agreement with the United States when one of the contracting parties gives the operating permission to the designated airline of the other party, the other one is also bound to give this permission

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[29]See Article 4 of bilateral air transport agreement between Iran and the United Kingdom, May 2, 1960.

without undue delay. However, it is provided that the designated airline or airlines may be required to qualify before the competent aeronautical authorities of that party, before being permitted to engage in operation.[30]

In practice, all governments who have a bilateral air transport agreement with Iran have never failed to designate their airline to operate on specified routes. Usually a foreign government designates its airline to the Iranian government through diplomatic channels. In the meantime the foreign airline concerned makes an application to the Department of Civil Aviation for a special permit and certificate of operation. The airline is considered to be fit and properly able to perform such air transportation under the Iranian laws and regulations.

In the agreement with the Soviet Union, Iran National Airlines and Aeroflot are designated by name in Article 2 of the respective agreement. Moreover, it is provided that the operating permit will be granted without undue delay, and not later than thirty days after receipt by one contracting party, of the intention to operate on the specified routes, from the other

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[30]Article 3 of Air Transport Agreement between the Imperial Government of Iran and the Government of the United States of America January 16, 1957.

contracting party.[31]

IX. Substantial Ownership And Effective Control

One of the important provisions in bilateral air transport agreements is that substantial ownership and effective control of the designated airline or airlines must be vested in nationals of the designating party. The other party is entitled to block the exercise of the rights granted if this proves not to be the case.[32] From the historical point of view, the question of substantial ownership and effective control, originated in the Lima Conference of 1940 in order to prevent German owned companies registered in Latin America from conducting their activities near the Panama Canal Zone.[33] After the Chicago Conference of 1944, this clause was introduced for reasons of economic protection, to prevent indirect operation by third States not parties to a bilateral agreement. It also prevents airlines and investors from circumventing national laws by acquiring a substantial share in a foreign airline,

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[31] See Air Transport Agreement between The Imperial Government of Iran and the Government of the Union of Soviet Socialist Republics, August 17, 1964. Docs. Iran. Tr.

[32] Wassenbergh, Post War International Civil Aviation Policy And the Law of the Air. The Hague, Second edition (1962), p. 62.

[33] Ibid., pp. 62-63.

as well as prohibiting a single state from acquiring a far greater share of international traffic by holding substantial interests in foreign carriers.[34]

According to Wassenbergh, the requirement of substantial ownership and effective control is normally satisfied by a holding of 51 percent of shares in an airline, although even 30 percent could be called a substantial participation, depending partly on what powers are accorded under the airline's by-laws. Therefore the question, that whether an airline is substantially owned by a certain State or by its nationals may depend on the powers granted to such airline under its by-laws.

In all Iranian agreements, one or more Articles deal with the substantial ownership and effective control of the designated airlines. It has been an accepted rule, since the early time of commercial flight, that a designated airline should be substantially owned and effectively controlled by the State designating it or its nationals. This question was concluded in the International Air Services Transit Agreement in 1944 and Section 5 of Article III of this agreement provides that "Each contracting State reserves the right to withhold or revoke a certificate or permit to an air transport

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[34] Ibid.

enterprise of another State in any case where it is not satisfied that substantial ownership and effective control are vested in nationals of a contracting State, . . ." While there is no specification of nationality of the aircraft to be used by the designated airline, all Iranian bilateral agreements have used wording similar to that used in section 5 of Article III of The Transit Agreement. Therefore a designated airline can operate a scheduled international air service by making use of aircraft which are registered in another country unless other factors are present.

The wording of the ownership clause in Iranian agreements is slightly different from each other. The earlier agreements follow the Chicago Standard Form. For instance Article 5 of the agreement with the United Kingdom reads as follows:

> Each Contracting Party shall have the right to revoke an operating authorisation or to suspend the exercise of the rights specified in Article 2 of the present Agreement by an airline designated by the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of these rights:
>
> a) in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in nationals of such Contracting Party.

The same formula is used in the agreements with the United States, Italy, France and Pakistan. In the

agreement with Scandinavian Countries each party has the right to refuse to grant the specified rights or to withhold the rights granted or to impose such conditions as it may deem necessary on the exercise by an airline of those rights, in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the contracting party designating the airline.[35]

X. Initialing, Signature and Ratification

Full powers to ratify a treaty or to accede to a treaty are now obsolete, presumably because ratification and accession are the acts of governments themselves.[36] Today international negotiations are conducted by agents representing the negotiating States and these agents have no power to bind their governments to a treaty. Initialing is the term for the first confirmation given by the parties to an agreement concluded by their representatives. In Iran the delegates to a conference or negotiations for an air transport agreement are not given full powers or credentials to sign an

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[35] See Article 3 of Agreement between The Imperial Government of Iran and The Government of Sweden Relating to Commercial Air Services Between And Beyond Their Respective Territories, October 31, 1949. Docs. Iran, Tr.

[36] McNair, op. cit., Supra note 1, p. 120.

agreement at the conclusion of the conference. The only authorization which the chairman of a delegation has, is to initial the agreed text of an agreement and it generally means that both parties have agreed upon technical and commercial clauses of that agreement. In the aviation agreements, this function is usually given to the aeronautical authorities and the Director of the Department General of Civil Aviation initials all bilateral air transport agreements.

The second step for the conclusion of a bilateral agreement is the appointment of plenipotentiaries by both governments to sign the agreement. In the case of Iran, generally, the Minister of Foreign Affairs or the head of the diplomatic mission to the country concerned is appointed as a signatory for a bilateral air transport agreement. In this step both plenipotentiaries mutually submit their full power for verification in order to assure that representatives are duly authorized to speak and sign on behalf of their Governments. For instance in the preamble of most bilateral agreements of Iran after desiring to conclude an agreement for the purpose of establishing and operating commercial air services, it is indicated that they "have accordingly appointed their plenipotentiaries

for this purpose as follows. . . ." This step usually takes place in a formal way when the agreement has been embodied in proper form and the plenipotentiaries sign and seal it with their own seals.

The third step is ratification which means the final confirmation given by the parties to an agreement concluded and signed by their representatives. This step includes the exchange of the documents embodying that confirmation. In the case of Iran ratification means the legal process of the law-making in the country which means the approval of the legislature and ratification by His Majesty. At this stage the parliament under the constitution has the final responsibility to consider the whole agreement, and may even propose amendments for clearance through diplomatic channels. Therefore, the function of ratification is to make a treaty or an agreement binding; if it is refused it falls to the ground in consequence.[37]

According to Oppenheim no rule of international law prescribes the length of time within which ratification must be given, or refused. If this is not specially provided for by the contracting parties, a reasonable length of time must be presumed to be

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[37]Oppenheim, International Law (Eighth edition 1963), Edited by Lauterpacht, Vol. I, pp. 903-904.

mutually granted. In most cases, however, all Iranian bilateral agreements contain a clause stipulating that they are subject to ratification and also prescribing the time within which ratification should take place. For instance Article 20 of the agreement with the United States requires that "This Agreement shall enter into force on the date of receipt by the Government of the United States of America of a notification by the Government of Iran and its ratification of this Agreement." Article 16 of the agreement with Netherlands, October 1949, provides that the agreement shall come into force on the date of an exchange of notes between the two contracting parties stating that this agreement has been ratified by the Iranian Parliament. In some bilateral agreements of Iran it is indicated that the agreement shall be subject to ratification by the contracting parties in accordance with their respective constitutional procedures and shall come into force thirty days after the exchange of the instrument of ratification, or shall come into force on the date of the exchange of the instrument of ratification,[38] which usually takes place

[38]The majority of the Iranian agreements take the date of exchange of the instrument of ratification for entering into force of the respective agreement. The Soviet agreement provides that the agreement shall come into force on the date of exchange of notes between the contracting parties informing each other that they have complied with their own constitutional requirements.

in the capital of one of the contracting parties. Therefore, it is completely left to the parties to fix the date on which the agreement will enter into force.

XI. Registration and Publication

The question of the registration of international agreements originated during the First World War and Article 18 of the Covenant of the League of Nations provided that "Every treaty or international engagement entered into hereafter by any member of the League shall be forthwith registered with the Secretariat and shall as soon as possible be published by it. No such treaty or international engagement shall be binding until so registered." These provisions with some changes were adopted in Article 102 of the Charter of the United Nations. Under this Article every international agreement entered into by any member of the United Nations shall as soon as possible be registered with the Secretariat and published by it. The same Article provides that no party to any such treaty or international agreement which has not been registered may invoke that treaty or agreement before any organ of the United Nations. Actually it was under the provision of this Article that the Government of Iran in Anglo-

Iranian Oil Company's Case argued that so far no international agreement had been registered under Article 18 of the Covenant or Article 102 of the Charter, this case could not be invoked before the International Court of Justice.[39]

In the case of aeronautical agreements, under Article 81 and 83 of the Chicago Convention, 1944, all members of the ICAO are obliged to register their aeronautical agreements with the Council of the ICAO. Under provisions of Article 81 the obligation to register existing agreements extends not only to aeronautical agreements to which a contracting State is a party, but also to those which its airline entered into with foreign States or foreign airlines.[40] Provisions of this Article are considered to be for those agreements concluded before the entry into force of the Chicago Convention,[41] but Article 83 of this Convention is related

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[39]See International Court of Justice Pleading, Anglo-Iranian Oil Co. Case, pp. 481-483.

[40]See Cheng, op. cit. Supra note 25, pp. 471-73.

[41]Article 81 of the Chicago Convention reads as follows: "All aeronautical agreements which are in existence on the coming into force of this Convention, and which are between a contracting State and any other State or between an airline of a contracting State and any other State or the airline of any other State, shall be forthwith registered with the Council."

to the agreements concluded after the entry into force of the Convention and reads as follows:

> any Contracting State may make arrangements not inconsistent with the provisions of this Convention. Any such arrangement shall be forthwith registered with the Council, which shall make it public as soon as possible.

Either one of contracting parties can take steps to forward certified true copies of an agreement to the Secretariat of the ICAO for registration and there is no standard practice among nations. In Iran the Ministry of Foreign Affairs certifies a copy of the agreement and then sends it for registration with ICAO. All bilateral air transport agreements of Iran, except those which are concluded with the United Kingdom and India, which in this regard follow the Strasbourg Standard clauses, contain an Article providing for the agreement to be registered with ICAO. For instance, Article 15 of the agreement with the Kingdom of the Netherlands provides that: "the present Agreement and all contracts connected therewith shall be registered with the International Civil Aviation Organization." Also the agreement with the Soviet Union which is not a member of ICAO, does not contain any clause relating to the registration of the respective agreement with the ICAO.

In the question of publication, the Secretary-

General of the United Nations has to publish all international agreements registered with it and they usually appear from time to time in the Treaties Series published by the Organization. In order to relieve member States of the ICAO of the duty of having to register their aeronautical agreements twice and also re-publication of such agreements, by ICAO, ICAO adopted in 1949 regulations for the registration of agreements under which it undertakes to register with the United Nations agreements filed by member States with its Council.[42] However from the point of internal laws publication has still another meaning and it is considered as the last step in enacting the law. The procedure of law-making in Iran requires, that after the ratification of an agreement or a treaty it has to be formally promulgated before it can acquire internal validity and be applied by the courts.

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[42]Cheng, op. cit., Supra note 25, p. 473. See also rules for registration with ICAO of Aeronautical Agreements and Arrangements (Annex to ICAO Doc. 8388-LGB/202 adopted by the Council of ICAO on 1st April 1949.

CHAPTER THREE

IRAN'S BILATERAL AIR TRANSPORT AGREEMENTS

The principle that each state has sovereignty in the air space over its territory expressly adopted at the Paris Conference of 1919[1] and reaffirmed in the Chicago Convention of 1944 includes the rights of a state to deny entry to and affirmatively to admit foreign aircraft to its national airspace. That principle has been embodied in Article 3 of the Iranian Civil Aviation Act which provides: "The Government has absolute and exclusive sovereignty over the airspace above its territory and territorial waters."[3] In practice, however, the basic pattern for the establishment of international air services between developed countries was followed by Iranian aviation authorities

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[1] "The High Contracting Parties recognise that every power has complete and exclusive sovereignty over the airspace above its territory." Article 1 of the Paris Convention 1919.

[2] "The contracting States recognise that every State has complete and exclusive sovereignty over the airspace above its territory." Article 1 of the Chicago Convention 1944.

[3] See Civil Aviation Act of July 1949.

and in bilateral negotiations, they had no objection to the flexible principles accepted at the Bermuda Conference of 1946. As a matter of fact, in order to develop local aviation industry and also provide maximum air links to Iran, they encouraged foreign carriers to operate adequate services to the country, and complete freedom to operate international air services was the principle underlying early Iranian bilateral agreements.

The first Iranian bilateral agreements are those concluded with Sweden and Netherlands in November, 1949. They were approved by parliament one year later.[4] At the present time the total number of Iranian bilateral agreements is twenty, sixteen of which have been approved by the legislature, and four are in the process of final ratification. Furthermore, five carriers operate scheduled international air services to and from Iran under temporary authorization granting them third and fourth traffic rights only. The main purpose of this Chapter is to make an analytical study of these bilateral agreements in relation to the past and present policies of Iranian civil aviation authorities.

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[4]Some publications of the Department General of Civil Aviation, Persian text, Iran (1967), p. 26.

I. The Iranian Standard Draft

The procedure for providing standard draft in conclusion of international agreements has a historical background which goes back to the early times of the League of Nations. The main purpose of providing a standard draft agreement is to achieve some degree of uniformity between different legal systems and further to attempt an acceptable multilateral formula to overcome the various conflicting bilateral arrangements.

In the case of bilateral air transport agreements, participating States to the Chicago Conference of 1944, had no important problem in agreeing to a Standard Form of Provisional Route Agreements which was known as "Chicago Standard Draft."[5] Bilateral agreements concluded since 1945 are patterned on the Chicago Model, as modified and amended by certain additional provisions of the Bermuda Agreement of 1946.[6] Before probing into the Iranian standard draft it is appropriate to mention, in general terms, the basic principles of the Chicago Standard Draft as amended by the Bermuda Type Agreements.

The main standard points of the "Chicago Type"

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[5]See Proceedings of International Civil Aviation Conference. The Department of States, Vol. II (1944), pp. 1274-1296.

[6]Francis Deak, Camden, N.J. "The Balance-Sheet of Bilateralism", The Freedom of The Air. Edited by McWhinney and Bradley (1968), p. 160.

are as follows:

> 1) the air transport facilities available to the travelling public should bear a close relationship to the requirements of the public for such transport;
>
> 2) fair and equal opportunity to operate on any international route;
>
> 3) in the operation of the trunk services provided for, in the agreement the interest of the air carriers of the other government should be taken into consideration so as not to affect unduly the services which the latter provide on all or part of the same routes;
>
> 4) adjustment of fifth freedom traffic with reference (a) to traffic requirements in the country of origin and the countries of destination; (b) to the requirements of through airline operation and (c) to the traffic requirements of the area through which the airline passes after taking into account local and regional services; (d) elimination of formula to pre-determine frequencies etcetera and the creation of machinery to obviate unfair competition by unjustifiable increases of frequency or capacity.[7]

The rejection of predetermination of the capacity is one of the distinguished characteristics of the non-Bermuda type agreements. The main points provided in the Bermuda type are primarily, "fair" and "equal" opportunity given to the designated airlines of contracting parties to operate on any route between their respective territories.[8]

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[7]Shawcross and Beaumont, on Air Law (2nd Edit.) (1951), pp. 273-274.

[8]Paragraph (4) of the Final Act of the Bermuda Agreement, 11th February 1946.

The second main point relates to the relationship between carriers competing in trunk services. Under Paragraph 5 of the Final Act of the Bermuda Agreement ". . . the interest of the air carriers of the other Government shall be taken into consideration so as not to affect unduly the services which the latter provides on all or part of the same routes."[9] The third point relates to the relationship between the combined capacity of the operators and the total traffic as a general rule. Paragraph 3 of the Final Act of the Bermuda Agreement provides "that the air transport facilities available to the travelling public should bear a close relationship to the requirements of the public for such transport." The most important provision of the "Bermuda type" or the fourth point relates to the comparative roles of primary and secondary objectives of designated airlines. The primary objective of a designated airline is the carriage of traffic between the carrier's own country and other countries. The right to third country traffic is to be exercised in accordance with general principles of orderly development, and subject to the general principle that capacity should be related to traffic requirements between countries of origin and ultimate

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[9] Ibid. Paragraph (5).

destination of the traffic, the requirements of through airline operation, and traffic requirements along the route after taking account of local and regional services.[10]

A third and less widely accepted category is the "British Type" agreement which was concluded between England and Union of South Africa in October, 1945.[11] The two main characteristics of this type of agreement which are more or less accepted in some recent bilateral agreements of Iran are as follows:

(a) Frequencies are to be determined between the operators (the designated airlines) subject to the approval of the contracting parties.

(b) The total route capacity is to be divided equally between the designated airlines of the contracting parties with provision for a revision of the proportion if such equality proves not to be justifiable.

Most bilateral agreements of Iran are based on the principles of the Bermuda Agreement. We shall now examine in detail the general principles of Iranian standard draft and compare them with the agreements so far concluded by the Iranian authorities.

II. Technical Definitions

The preamble of Iranian standard draft deals

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[10] Ibid. Paragraph (6) of the Final Act.

[11] Shawcross and Beaumont, op. cit., Supra note 7, p. 174.

with the names of the countries and their desires, on the basis of equality, to conclude an agreement for the purpose of establishing and operating commercial air services between their respective territories. The plenipotentiaries of both parties are appointed by their names and they are required to exhibit and exchange their full powers. In most bilateral agreements of Iran the definition of some technical terms such as, aeronautical authorities, designated airline, territory, air service, international air service and stop for non-traffic purposes are included in Article One while in some other they are specified in the preamble.

In bilateral negotiations among States parties to the Chicago Convention definition of technical terms does not create any problems, because they are the same terms which are accepted in Article 96 of the Chicago Convention. Even in the agreement concluded in 1965 with the Soviet Union, which is not a member of the Chicago Convention, the same definitions are included in the first article.[12] According to section (d) of Article 1 of Iranian Standard Draft "the term 'air service' shall mean any scheduled air service performed

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[12]See Air Transport Agreement Between The Imperial Government of Iran and The Government of The Union of Soviet Socialist Republics (August 17, 1964), Teheran, Docs. Iran, Tr.

by aircraft for the public transport of passengers, mail or cargo." International air service is defined as a service "which passes through the airspace over the territory of more than one State." A clear distinction between scheduled and non-scheduled international air services was, however, one of the problems that was not conclusively determined in the Chicago Conference. Therefore, in 1952, the Council of ICAO developed a definition which reads as follows:

> A scheduled international air service is a series of flights that possesses all the following characteristics:
>
> (a) it passes through the airspace over the territory of more than one State;
> (b) it is performed by aircraft for the transport of passengers, mail or cargo for remuneration in such a manner that each flight is open to use by members of the public;
> (c) it is operated, so as to serve traffic between the same two or more points, either
> (I) according to a published timetable, or
> (II) with flights so regular or frequent that they constitute a recognizably systematic series.[13]

All bilateral agreements of Iran deal with scheduled international air services and non-scheduled or casual flights are regulated under temporary authorization of aeronautical authorities.

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[13]ICAO Definition of Scheduled International Air Service ICAO Doc. 7278-C841 of 10th May, 1952.

III. Application of National Laws and Regulations

In accordance with the provisions of Article 11 of the Chicago Convention, 1944, the air navigation laws and regulations of each 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." This procedure is followed from the principle of airspace sovereignty which was incorporated in the Paris Convention on the Regulation of Aerial Navigation, 1919, and later in Article 1 of the Chicago Convention.

Complete and exclusive sovereignty over territorial airspace requires that a foreign aircraft, together with its crew and passengers, while within the territory of another State, must comply with laws and regulations of overflying country. In the same way the last paragraph of Article 5 of the International Air Services Transit Agreement, December 1944, provides that each contracting State reserves the right to withhold or revoke a certificate or permit to an airline of another State "in case of failure of such air transport

enterprise to comply with the laws of the State over which it operates."

Since the Chicago Convention, the applicability of national laws over foreign aircraft relating to entry into or departure from a given country has been incorporated in national laws of different countries. For instance Article 8 of Civil Aviation Act of Iran, 1949, provides that: "A foreign aircraft may, as long as it complies with the laws and regulations of the country, fly over or land in Iran and take up or put down passengers cargo or mail . . ."[14]

Most bilateral air transport agreements to which Iran is a party contain provisions to the effect that laws and regulations of one contracting party relating to admission into or departure from its territory of aircraft engaged in international air navigation, shall apply to the aircraft of the designated airlines. A typical clause is Article 5 of the agreement with the United States as follows:

> (A) The laws and regulations of one contracting party relating to the admission to or departure from its territory of aircraft engaged in international air navigation or to the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of the airline or airlines designated by the other contracting party, and shall be complied with

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[14] Op. cit., Supra note 3, first part of Article 8.

> such aircraft upon entering or departure from, and while within the territory of the first contracting party.

In the second paragraph of the same Article, laws and regulations of each party, relating to entry, clearance, immigration, passports, customs, and quarantine are applied to passengers, crew or cargo of aircraft of other party. In the agreement with the Soviet Union, the same wording is used but an additional paragraph requiring that each contracting party shall supply to the other, copies of the relevant laws and regulations in this regard,is included.

In this respect, a second category of bilateral agreements are those which have no affirmative provision concerning the application of national laws, but have so provided indirectly by providing sanctions where a designated airline of the one contracting party fails to observe the other party's laws and regulations. For instance Paragraph (b) of Article 3 of bilateral agreement with the Netherlands provides that:

> Each Contracting Party shall have the right to suspend the exercise by a designated airline or airlines of the rights granted under Article 1 of the present Agreement or to impose such conditions as it may deem necessary on the exercise by an airline or airlines of those rights in any case where the said airline or airlines fail to comply with the provisions of Article 11 and 13 of the Convention in their present form or with the conditions prescribed in the present Agreement. . . .

In this type of agreement, regulations of substantial national ownership and regulations of applicability of national laws are combined in one Article whether in one paragraph like agreement with Pakistan or in two or three paragraphs like agreement with the United Kingdom, Belgium and Turkey. Regrouping of the substantial national ownership clause with the clause concerning compliance with local laws and with the terms of the agreement was done in the Strasbourg Standard Form.[16] Article 5 of the agreement with the United Kingdom follows this model and provides that:

> (1) Each Contracting Party shall have the right to revoke an operating authorization or to suspend the exercise of the rights specified in Article 2 of the present Agreement by an airline designated by the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of these rights:
>
> a) in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in nationals of such Contracting Party, or
>
> b) in the case of failure by that airline to comply with the laws or regulations of the Contracting Party granting these rights, or
>
> c) in case the airline otherwise fails to operate in accordance with the conditions prescribed under the present agreement.

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[16] Cheng, Law of International Air Transport (1962), p. 385.

A third category in which application of national laws is made by reference to the relevant Articles of the Chicago Convention is represented by the agreement with France which has no indication of application of national laws. As far as the regulations of Article 11 and 13 of the Chicago Convention are applicable among member States to this convention, there is no necessity to insist on the provisions of application of national laws in bilateral agreements. However, in agreements with non-member States to the Chicago Convention, where there is no established multilateral legal framework, special provisions have to be made, like the agreement with the Soviet Union which contains some exceptional provisions in this respect.[17]

IV. Use of Airports and Similar Charges

One of the important privileges given to the member States of the Chicago Convention is the possibility of using airports and other facilities of the other contracting States without discrimination. Under provisions of Article 15 of the Chicago Convention

> Every airport in a contracting State which is open to public use by its national aircraft shall likewise . . . be open under uniform conditions to the aircraft of all other

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[17] See Article 4 of the Agreement with U.S.S.R. Op. cit., Supra note 12.

> contracting State, of all air navigation facilities, including radio and meterological services, which may be provided for public use for the safety and expedition of air navigation.[18]

The Convention specifically provides for equality of charges, and also lays down that all such charges shall be published and communicated to the ICAO "upon representation by an interested contracting State." Charges are subject to review by the Council of the ICAO, which is to report and make recommendations thereon for the consideration of the other contracting States.[19]

The use of airports and other facilities in connection with the agreed services is sometimes expressly referred to, in some bilateral agreements of Iran. Agreements with the United States, Italy and the Soviet Union, which the latter one is rather simplified compared to the others,[20] follow the same procedure in this respect. Article 11 of the agreement with Italy of February, 1968, provides that:

> In order to prevent discriminatory practices and to assure equality of reciprocal treatment, both Contracting Parties agree that subject to the customs formalities in force in their respective territories:
>
> (A) Each of the Contracting Parties may impose or permit to be imposed just and reasonable charges for the use of public airports and other facilities

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[18] Articles 15 and 68 of the Chicago Convention 1944.

[19] Ibid., Article 15.

> under its control. Each of the Contracting Parties agrees, however, that these charges shall not be higher than would be paid for the use of such airports and facilities by its national aircraft engaged in similar international services.

In the Soviet Agreement the provisions of the Chicago Convention relating to the provision of necessary measures for safety of flights such as radio, lighting, meteorological and information on main and alternate airports where landings may be made are included in one Article.[21] In most bilateral agreements of Iran there is no direct reference to the use of airports and other facilities or charges therefor. In the bilateral agreements with the Netherlands, Sweden, France, Turkey and Pakistan there is only one article indicating that relevant Articles of the Chicago Convention are integral part of the present agreement and shall be binding upon the parties.[22] If there are

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[20]Article 7 of the agreement with Soviet Union provides "in order to prevent discriminatory practices and to assure equality of treatment, both Contracting Parties agree that: 1. The Charges which one Contracting Party may impose, or permit to be imposed on the designated airline of the Other Contracting Party for the use of airports and other facilities, shall be at the same level as that of the other Contracting Party."

[21]Ibid. See Article 6.

[22]Relevant Articles of the Chicago Convention are Articles 15, 24, 31, 32, 33 and 35.

any amendments to the relevant Articles of the Chicago Convention, which shall come into force in accordance with Article 94 of the Convention, the amended Articles shall be similarly binding between the contracting parties. In the agreement with the United Kingdom there is no provision relating to the use of airport and similar charges, or relevant Articles of the Chicago Convention, but it has provided some exclusive regulations relating to the exemption of customs duties including supplies of fuels and lubricants and aircraft stores.

V. Personnel and Airworthiness Licensing Certificates

Rules relating to the airworthiness of aircraft and licensing of operating crew are included in Article 13 and 14 of the Civil Aviation Act 1949. Under provisions of these Articles no aircraft can fly over Iranian territory unless it has a valid certificate of airworthiness, and no person may pilot an aircraft or act as a member of the crew participate or assist in operating the aircraft, unless he holds an appropriate and valid license.[23] These certificates have to be issued by the appropriate authorities of the country in

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[23]See Articles 13 and 14 of the Civil Aviation Act, op. cit. Supra note 3.

which the aircraft is registered.

The principle of recognition of certificates of airworthiness and different licenses issued or rendered valid by each single State is incorporated in Article 33 of the Chicago Convention. However contracting States to the Chicago Convention will not benefit from the international recognition of certificates and licenses issued or rendered valid by them, unless their own standards "are equal to or above the minimum standards which may be established from time to time pursuant to this Convention." Moreover, under provision of Article 32(b), "each contracting State reserves the right to refuse to recognise, for the purpose of flight above its own territory, certificates of competency and licenses granted to any of its nationals by another contracting State."

Among Iranian bilateral agreements, those concluded with the United States, U.S.S.R. and Italy contain special provisions relating to the certificates of airworthiness and personnel licenses. The recognition of certificates issued by the other party applies only to those certificates and licenses that are still in force in the issuing country, and both parties have the right not to recognize the licenses granted to its

national by another contracting State. Article 10 of the agreement with the United States provides that:

> Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by one contracting party, and still in force, shall be recognized as valid by the other contracting party for the purpose of operating the routes and services provided for in this Agreement, provided that the requirements under which such certificates or licenses were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the Convention on International Civil Aviation . . .

Therefore, these certificates are subject to the conformity with the ICAO standards in order to qualify for mutual recognition. In the agreement with the Soviet Union special provision had to be made in respect of all those matters covered by the Chicago Convention and its annexes. For instance Article 8 of this agreement provides that,

> (1) Aircraft of the airline designated by one Contracting Party during flights over the territory of the other Contracting Party shall have identification marks of the respective State, established for international flights. Certificates of registration, certificates of airworthiness, manifests showing the origin of the passengers and cargo and other aircraft documents established by the civil aviation authorities of the Contracting Parties, and also permission for radio equipment. Pilots and other crew members shall have appropriate certificates. All of the aforementioned documents issued or recognized as valid by one Contracting Party shall be recognized as valid within the territory of the other Contracting Party.

In most bilateral agreements made by Iran, including the agreements with France, Scandinavian Countries, Belgium, India, Pakistan, Turkey and the Netherlands there is no direct undertaking to recognize each other's certificates of airworthiness and personnel licenses for the purpose of the agreed services. In these agreements parties have simply referred the subject to the relevant Articles of the Chicago Convention and they have considered Articles 31, 32 and 33 of this Convention, in their present form, as an integral part of their bilateral agreement. No similar provision is found in the agreement with the United Kingdom, because this agreement has followed the Strasbourg Standard clauses in which there is no reference to certificates of airworthiness and personnel licenses.

VI. Customs Regulations

Before we begin to examine the relevant customs articles of Iranian bilateral agreements, it would be appropriate to mention very briefly something about customs regulations in Iran. Regulation relating to customs in Iran are contained in Chapter VI, Article 38 to Article 44, of Air Navigation Regulations, August 6,

1939. Regulations relating to the departure and arrival of aircraft are specified in more detail in fifteen articles in Appendix P to the regulations. Article 3 of Appendix P defines the customs airport as an airport which is specified for the public necessity and at which some customs facilities and officers are provided. Every aircraft entering Iranian territory must make its first landing at a customs airport or international airport. In the case of an aircraft which compelled to land in other places in genuine emergencies such as accident, stress of weather, etcetera, the commander of the aircraft is obliged to report the occurrence of the incident to the police or army officers. The commander cannot fly again before the officer concerned signs his journey log book.

Before the departure of aircraft the person in charge of it must deliver his journey log book to the customs officers and also a manifest and declaration of goods or drugs for the signature of the customs officer. Under Article 10 of Appendix P of Air Navigation Regulations, on arrival of aircraft the same documents must be delivered to customs collector. If the aircraft is carrying cargo, the person in charge must have the declaration of goods and merchandise signed by the proper

officers of customs at the aerodrome from which he took off for Iran. Goods imported in the Iranian territory are considered goods of the country the officers of which have signed the log book and declaration of goods.[25] The only exemption from customs duties is provided under Article 13 of Appendix P which states that on the arrival of aircraft to the territory of Iran, fuel, lubrications and oil are free from customs duties.[26]

At the international level, the Chicago Convention provides the following customs exemptions to the aircraft of Contracting States engaged in international air navigation:

1. temporary exemption from the duty for the aircraft itself, while it is on a flight to, from, or across the territory of another contracting State.

2. exemption from customs duty, inspection fees or similar national or local duties or charges of "fuel, lubricating oils, spare parts, regular equipment and aircraft stores on board an aircraft of a contracting State, on arrival in the territory of another contracting State and retained on board on leaving the territory of

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[25] See Article 7 of Appendix P, Air Navigation Regulations, Iran, August 1939.

[26] Ibid., Article 13.

that State . . .[27]

3. exemption from customs duty of "spare parts and equipment imported into the territory of a contracting State engaged in international air navigation . . .[28]

All these exemptions are subject to the customs regulations of the State concerned and goods may be kept under customs supervision.

In bilateral agreement with the United States the same provisions have been accepted. However, it is worthwhile to mention that in this agreement customs exemption for fuel, lubricating oils, technical supplies, spare parts, and store retained on board aircraft are permitted to the aircraft of the airlines which is authorized to operate the route specified in the agreement. Therefore, it could be argued that the customs exemption provided under Article 11 of the bilateral agreement with the United States does not extend to all aircraft of the designated airline of the United States unless they are operating the agreed services. Some of the other agreements which follow the same procedure are those concluded with the Soviet Union and Italy. However,

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[27]See Article 24(a) of the Chicago Convention.

[28]Ibid., Paragraph (b).

the Italian agreement contains an additional paragraph as does the agreement with France as follows:

> (F) Fuels, lubricating oils, normal equipment, spare parts and aircraft stores which are exempt from any duties and charges under provisions of the above paragraphs cannot be unloaded without the permission of the Customs Authorities of the Other Contracting Party. When they cannot be used or consumed they shall be re-exported. Waiting for their use or re-exportation they shall be kept under the control of the Customs Authorities.

In most bilateral agreements of Iran, such as the agreements with Sweden, Turkey, Pakistan and the Netherlands there is no Article relating to the exemption from customs duties for fuel, lubricating oils, spare parts or regular equipment, but the provisions of Article 24 of the Chicago Convention are considered to be an integral part of the agreement. In the agreement with the United Kingdom there are special provisions relating to the customs exemption. The first exemption in this agreement is related to "all customs duties, inspection fees and other duties and taxes" of

> aircraft operated on international services by the designated airlines of either contracting party, as well as their regular equipment, supplies of fuels and lubricants and aircraft store (including food, beverages and tobacco) on board such aircraft . . . on arriving in the territory of the other contracting party, provided such equipment and supplies remain on board the aircraft up to such time as they are re-exported or are used on the part of the journey performed over that territory.

Moreover, this agreement goes to the following stipulations:

> (2) There shall also be exempt from the same duties and taxes, with the exception of charges corresponding to the service performed:
>
> a) aircraft stores taken on board in the territory of a Contracting Party, within limits fixed by the authorities of said Contracting Party, and for use on board outbound aircraft engaged in an international service of the other Contracting Party;
>
> b) Spare parts introduced into the territory of either Contracting Party for the maintenance or repair of aircraft used on international services by the designated airlines of the other Contracting Party;
>
> c) fuel and lubricants destined to supply outbound aircraft operated on international services by the designated airlines of the other Contracting Party even when these supplies are to be used on the part of the journey performed over the territory of the Contracting Party in which they are taken on board.[29]

There is no similar provisions in any other Iranian bilateral agreement but in many cases, like the agreements with France, Belgium and India both parties have granted most-favoured-nation or most-favoured foreign-airline treatment.[30] Therefore their airlines

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[29]See Articles 6 and 7 of the Agreement Between The Imperial Government of Iran and the Government of the United Kingdom of Great Britain and Northern Ireland For Air Services Between and beyond Their respective territories, May 1960.

[30]See Article 9 (b) of Agreement with France April 1960, DOCS. Fr. Tr. See also Article 10 (b) of agreement with Belgium, April 14th 1958, DOCS. Belg. Tr. and also Article 8 (a) of agreement with India, August 10th, 1960, DOCS. Iran, Tr.

will be able to benefit from the same exemptions which are provided in the agreement with the United Kingdom.

VII. Operating Rights

The main purpose of the International Air Transit Agreement is to enable airlines of the contracting parties to operate scheduled international air services across the territory of other parties, with or without landing for non-traffic purposes.[31] Naturally the question arises whether it is necessary to mention in bilateral agreements the exchange of transit rights while both sides are parties to the Transit

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[31]Under paragraph 1 of section 3 of International Air Services Transit Agreement "Each Contracting State grant to the other contracting States the following freedoms of the air in respect of scheduled international air services: (1) the privilege to fly across its territory without landing; (2) the privilege to land for non-traffic purposes." Moreover in order to provide reciprocity toward countries willing to have air services provided by other nations paragraph 1 of section 3 of the same agreement permits the grantor State to impose upon the airline having the right to make technical stops for non-traffic purposes the obligation of offering of reasonable commercial service at the points at which such stops are made, but subject to the following conditions: (a) there must be no discrimination as to airlines operating over the same route, (b) be in accordance with the capacity of the aircraft, (c) must be not in prejudical to the normal operation of the international air service, (d) there must be no prejudice to the rights and obligations of contracting states.

Agreement. It can be argued that States parties to the Transit Agreement conclude their bilateral agreements with special reference to the transit rights due to historical factors. The bilateral aviation agreements concluded prior to the Chicago Conference contained some provisions indicating that the establishment and operation of international scheduled air services into or across the territory of another State, with or without landing for non-traffic purposes, required the prior consent of the State over whose territory the flights were to take place.[32] At the Chicago Conference, first paragraph of the "Chicago Standard Form" provided that "the contracting parties grant the rights specified in the Annex hereto necessary for establishing the international air routes and services therein described. . . ." The rights specified in the annex are rights of transit, non-traffic stop and of commercial entry as the case requires. Moreover, it was provided that where rights of non-traffic stop are granted, the annex will include a designation of the ports of call at which stops can be made. Therefore, after the Chicago Conference, it has become a customary rule to include a general statement

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[32]P. P. Heller, Grant and Exercise of Transit Rights, A Master Thesis (1954), pp. 50-51.

on the exchange of transit rights in bilateral agreements even if both sides are parties to the Transit Agreement.[33]

Iranian bilateral agreements have followed the same procedure and first two freedoms are granted in the same way as the traffic rights are granted. Bilateral agreements with the United States and Italy can be classified in one category. Article 2 each of these agreements, provides that:

> Each Contracting Party grant to the other Contracting Party the rights:
>
> I to fly without landing across the territory of the other Contracting Party;
>
> II to land in the territory of the other Contracting Party for non-traffic purposes; and
>
> III to operate the international air services on the routes specified in the schedule annexed in this agreement.

There are in these types of agreements additional provisions relating to the operation of air services in the areas of hostilities or under military occupation. It is provided that operation of transit

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[33]Transit Rights are referred to the first and second freedom of the air which they do not involve the right of commercial operation. The first two freedoms are merely authorizations given by the grantor-State to the flag-State for an airline (or airlines) designated by the latter, while operating on agreed service, to fly over its territory either non-stop which is considered the first freedom or with a stop or stops for non-traffic purposes, such as refueling which is considered the second freedom.

or traffic rights in such cases are subject to the approval of the competent military authorities. These provisions are taken from Article 9 of the Chicago Convention in which every contracting State has been given the right to restrict or prohibit the aircraft of other States from flying over certain areas of its territory. In the same way Article 10 of the Iranian Civil Aviation Act, 1949, provides that after approval of the Council of Ministers, The Department General of Civil Aviation may, for reasons of military necessity or public safety, prohibit or restrict, or subject to special conditions, the flight of Iranian or foreign aircraft over certain areas of Iranian territory.[34]

In bilateral agreements with the Scandinavian countries, France, Belgium and the Netherlands in different wording first Articles of the respective agreements are devoted to the operating rights. For instance Article 1 of the agreement with Sweden reads as under:

> Subject to the provisions of the present Agreement each Contracting Party grants the airline or airlines designated by the other Contracting Party the right, while operating the agreed services, to fly their aircraft in transit across its territory as well as the right to land in the said territory at points specified in the attached schedule, for non-

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[34] See Article 9 of the Chicago Convention 1944, and Article 10 of the Civil Aviation Act, 1949.

> traffic purposes and also for the purpose of picking up or putting down international traffic in passengers, cargo and mail.

In this type of agreement when it is referred to the right of commercial entry and departure for picking up or putting down international traffic including passenger, cargo and mail it is referred to the third, fourth and fifth freedoms which are known as traffic rights. These rights are given by the grantor-State to the flag-State to carry international traffic to or from points in the grantor-State.[35]

A unique provision in this regard is set out in the agreement with the United Kingdom in which the right to carry international traffic is specifically related to the routes or points specified in the appropriate section of the schedule annexed to the respective agreement.[36] On the other hand, the agreement

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[35]The third freedom consists in the right to carry traffic from the home State of the carrier to the grantor-State. The fourth freedom is the right to carry traffic from the grantor-State to the flag-State of the carrier. In fact exchange of third and fourth freedom are the main purposes of a bilateral agreement. The fifth freedom is the privilege of carrying traffic between the grantor-State and third States situated along an agreed route including anterior-points, intermediate-points and beyond points. For further information see B. Cheng, op. cit., Supra note 16, pp. 8-17.

[36]See Article 2 of the Agreement with the U.K. Op. cit., Supra note 29.

with India is different from others providing that each Contracting Party grants to the other party the rights of exploitation of the air services specified in the annex to the agreement. In this agreement there is no specific provision relating to the reciprocal exchange of commercial rights as it is provided in other agreements.

The principle of reciprocity is expressly incorporated in most Iranian agreements and it is intended that the rights granted to both sides are to be of comparable value and the designated airlines of both contracting parties have the right to operate the agreed services on a basis of fair and equal opportunity. In a further Article or paragraph it is provided that the interest of the airline of the other contracting party shall be taken into consideration so as not to affect unduly the services which the latter provides on all or part of the same route. Without this mutual exchange of commercial rights no international air service can be started.

Another type of traffic right is called cabotage in which the right to carry traffic from one point in the territory of a State to another point in the same State is granted to the designated airlines

of other party to a bilateral agreement. Under the provisions of Article 7 of the Chicago Convention the contracting parties reserve their right to deny cabotage rights to other contracting States and undertake not to seek from or grant to any other State such privileges on an exclusive basis. It could be argued that the grant and receipt of cabotage rights on a non-exclusive basis are permitted under the Chicago Convention, but many countries including Iran have incorporated in their aviation laws a prohibition on the grant of cabotage rights to any other airline except their own national airlines. Article 9 of the Iranian Civil Aviation Act, 1949 provides that "Commercial transportation by air of passengers, cargo and mail from one point to another in the Country is reserved exclusively to Iranian aircraft."[37] Therefore, all Iranian bilateral agreements, except the agreement with India, contain in various forms provisions excluding cabotage rights. For example the agreement with the Kingdom of the Netherlands provides that

> Nothing in the provisions of the present agreement shall be construed or regarded as conferring on the airline designated by one of the Contracting Parties the right to take up, in the territory of the other Contracting Party, passengers cargo or mail

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[37] Op. cit., Supra note 3., Article 9.

> carried for hire or reward and destined for another point in the same territory.

However, even in the agreement with India in which there is no express reservation as to cabotage, it is difficult to imagine that the parties intended to grant cabotage rights.

VIII. Specification of Routes

Policies governing the specification of the routes to be operated by the designated airlines exercise a more profound influence than any other factor on the value of the transit and traffic rights granted under an agreement. The principles of reciprocity and self-protection in bilateral agreements may require long negotiations between contracting states upon the specification of routes. Every state tries to gain as much freedom as possible for its carrier in order to provide flexibility of operation and full enjoyment of traffic rights. On the other hand, ever increasing competition among international carriers requires some restrictive protection of national airlines, and the specification of routes in bilateral agreements has become a means of regulating this competition. Contracting parties to a bilateral agreement enjoy control over a specified route not only in respect of

those points which are within their respective territories, but also every single point along that route whether or not within their own territories. These points must be those specified in the route schedules and may not be varied except in accordance with the terms of the agreement.[38]

A fair exchange of routes in any bilateral agreement has to be based upon the following steps: first of all the market potential of the route should be evaluated; secondly, the proportion of this market which can be attributed to the carriers of the two contracting parties should be determined; and thirdly, the share of each party from the point of passenger and cargo has to be calculated.[39]

Bilateral agreements of Iran have followed some different modes of specifying routes. In some agreements it is provided that routes could be extended beyond the territory of other contracting party, while in others specified points are just those located in the territory of the two contracting parties. The

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[38]See Cheng, op. cit., Supra note 16, p. 367.

[39]Frank Loy, "Bilateral Air Transport Agreements: Some Problems of Finding A Fair Route Exchange." McWhinney and Bradley, op. cit., Supra note 6, p. 180.

exploitation of intermediate points between the two parties is a general rule accepted almost in all Iranian agreements and none of them have failed to specify routes for both parties. However, in some agreements traffic points including intermediate and beyond points are specified in the schedule to the agreement, and in others considerable freedom is given to both sides by referring to some flexible phrases like "via intermediate points" and "beyond points." It is intended now to show the variety in Iranian agreements by examining the different modes of specifying routes in these agreements.

In bilateral agreement with Turkey, March 1951, all the traffic points on the specified routes are individually indicated and may be altered only by agreement between the contracting parties. The schedule annexed to this agreement provides that routes to be operated by the designated airline of Iran are: "(a) points in Iran-Baghdad-Halab-or Damascus-Ankara-Istanbul"; "(b) points in Iran-Ankara-Istanbul." Section two of the schedule concerning Turkish route states "(a) points in Turkey-Halab-Damascus-Baghdad-Teheran; (b) points in Turkey-Tabriz-Teheran."

In practice modification of these routes is

subject to special agreements between the competent aeronautical authorities of both contracting parties and these arrangements are not formally recorded in the route schedule of the agreement. Iran National Airlines has recently been operating seven direct weekly flights through Istanbul, Turkey with traffic rights to Europe, even though this route pattern is not mentioned in the schedule of the agreement.

The most generous provisions in the specification of routes is found in the agreement with the United States, 1957, in which complete freedom of flight is provided for the carrier of the United States. The designated airline of the United States is entitled to operate air services on each of the routes specified via intermediate points, in both directions and make scheduled landing in Iran "from the United States of America to Teheran and or Abadan and points beyond, via intermediate points." The points given to the designated airline of Iran in the schedule of this agreement are generally referred to the intermediate points in both direction which will be determined at a later time. However it is clear that no beyond points from the territory of the United States are available for the Iranian carrier if in future it decides to

operate services to the United States.

In most Iranian agreements a number of predetermined points are given to the designated carriers of both parties in order to choose the most profitable route at different times. For instance the most alternative points are provided in the agreement with the United Kingdom in which the following points are granted to the Iranian designated carrier:

(1) Teheran-Baghdad-Damascus or Beirut or Ankara or Istanbul or Cairo-Athens or Rome or Vienne-Frankfurt or Geneva or Zurich or Basle-Nice-Paris or Brussels-London;

(2) Teheran-Karachi-New Delhi or Bombay or Colombo-Bangkok-Hong Kong-Tokyo and points beyond.

However designated airline of both sides may operate different flights through different points but may not operate on the same flight through more than one of the points shown as alternatives.

It is of special interest to note that under this agreement the Iranian designated carrier has no beyond traffic rights for any trans-Atlantic services; the only beyond traffic right having been granted being for Tokyo through the British held colony of Hong Kong. This illustrates a position of comparative disadvantage for the Iranian carrier because the British carrier on the other hand has beyond traffic rights in both

directions from Iran.[40] Furthermore in this agreement it is provided that both carriers may on any or all flights omit any points as far as they begin their services from a point of their respective territories. In other words, any points en route, operate from national point of departure, may be omitted in this agreement.[41]

The Agreement with Italy also provides that intermediate points may be omitted on any or all flights. This agreement differs from others in that either party has expressly the right not only to omit one or more points on the specified routes but in addition to terminate services in the territory of the other contracting party. Beyond points given to the Italian designated airline after Karachi-Bombay or New Delhi-Bangkok are divided (a) Hong Kong-Manila-Tokyo and vice versa, and (b) Singapore-Djakarta-Manila-Sydney and vice versa. The provision relating to the

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[40] Routes to be operated by the designated airline or airlines of the United Kingdom is as follows: "London-Dusseldorf or Frankfurt or Zurich or Geneva or Rome or Athens-Istanbul or Beirut or Tel Aviv or Cairo-Damascus-Baghdad-Teheran or Abadan and points beyond."

[41] "The designated airline or airlines of Iran may on any or all flights omit calling at any of the above-mentioned points, provided that the agreed services on these routes begin at a point in Iranian territory." The same provision is provided for the designated airline of the United Kingdom. Note to the Route Schedule of the Agreement with the U.K. 1960.

right of designated airlines of both parties to operate with full traffic rights on the specified routes is stated in the annex to this agreement. Moreover, changes in the specified routes which have been suggested by the designated airlines after consultation between themselves are subject of the approval between the aeronautical authorities of two parties.[42]

After the agreement with the United States the most flexible routes can be found in the agreements with France and Scandinavian countries. Routes to be served by the designated airline of France are points in France through intermediate points in Europe, Near and Middle East to Teheran and Abadan and beyond to points in Persian Gulf (except Bahrein and Kuwait) or towards Far East and Pacific. The intermediate points given to the Iranian designated airline are points in the Middle and the Near East or points in Europe to Nice and Paris, with one beyond point, London. Accordingly the Iranian carrier is not allowed to operate on one service through all intermediate points located between Teheran and Paris although this right is given to the designated carrier of France. Considerable latitude in the selection of final points

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[42]Last paragraph of the Annex to the Air Transport Agreement between Iran and Italy, 12 February, 1968.

of departure from the respective countries is provided in the agreement with Scandinavian Countries. In the schedule of routes attached to the Sweden agreement, the route to be operated by the designated airline of Sweden is "Stockholm via intermediate points in Europe and the Middle and Near East to Teheran and/or Abadan and points beyond in both directions." The same general route is given to the Iranian designated airline.

The intermediate points are sometimes specified as countries rather than cities in certain agreements. For instance in the annex to the agreement with India the routes given to the designated airline of Iran are (1) points in Iran-points in Afganistan points in Pakistan-Delhi and points beyond; (2) points in Iran-points in Pakistan-Delhi and points beyond; (3) points in Iran-points in Pakistan-Bombay and points beyond. The same routes with beyond points from the Iranian territory are given to the designated airline of India. In the simplified route pattern between Iran and Pakistan, Karachi-Bombay or Karachi-Delhi and points beyond are given to the Iranian designated carrier and three points including Teheran, Zahedan and/or Abadan with beyond points are given to the designated airline

of Pakistan.

Under the annex to the agreement with the kingdom of the Netherlands, as amended by the exchange of notes effective March 1968, five categories of points are provided with full commercial traffic rights for the designated airline of the Netherlands.[43] In comparing these two annexes, it seems that Iranian carrier has received less than it had under the unamended agreement, because it is obvious that in general term "points in the Middle and the Near East and Europe to point or points in the Netherlands and points beyond in both directions" used in the previous schedule, would have provided much more flexibility for the Iranian carrier than the points specified in the new schedule.[44] On

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[43]In the new schedule, the designated airline of the Kingdom of the Netherlands enjoys commercial traffic rights on services from points in the Netherlands into and/or through Iran (Teheran and/or Abadan) on the following points: "1) Bonn, Dusseldorf, Stuttgart, Nurnberg, Munchen, 2) Points in Austria, Czechoslovakia, Hungary and Yugoslavia, Rumania, Bulgaria, Greece, Cyprus, Lydda Airport, 3) Points in North Africa, 4) Points in Jordan, 5) Points in Ceylon, Burma, Thailand, Malaysia, Singapore, Vietnam, Indonesia, Japan. Further points in the Far East to be agreed upon later."

[44]Under the new annex to the agreement with the Netherlands the Iranian designated airline "will enjoy commercial traffic rights on services into and/or through the Netherlands on the following points: Points in Iran, Lebanon, Turkey, Greece, Italy, Austria, Switzerland, Germany, France, Netherlands, United Kingdom, North and South America."

the other hand, it seems that four routes provided in the main schedule, to be operated by the designated airline of the Netherlands, had been prepared with much more attention to the competitive situation of both carriers in the same routes.

In the annex to the agreement with Belgium, general points in the Middle and the Near East and Europe with beyond points in both directions were given to the designated airlines of both countries. But the concept of regional traffic rights restricting carriage of traffic between neighbouring countries was incorporated in the main schedule annex to this agreement. In paragraph 3 of the annex, the designated airline of Belgium was prohibited from carrying passenger, cargo or mail to West Pakistan-Afganistan-Iraq-Syria-Saudi-Arabi and Kuwait or take passenger, cargo and mail from these countries to Iran. A similar restriction was placed on the Iranian designated airline. It was denied of traffic rights between Belgium and West Germany, Austria and the United Kingdom.

However, under a diplomatic note exchanged in April 1958, the contracting parties agreed that provisions of paragraphs 3 and 4 of the annex, relating to the restriction of traffic carriage between

neighbouring countries by the carrier of other party will not be applicable if the designated airlines enter into a commercial agreement. This commercial agreement would be subject of the approval by the aeronautical authorities of both parties. Nevertheless, the exchange of these notes did not change the provisions of paragraph 5 of the annex to the Belgian agreement in which designated airline of Belgium is prohibited from operating cargo services between Teheran-Beirut and vice-versa.

During recent years, the Iranian aeronautical authorities have changed their attitude and have resorted to more protectionist policies by demanding more detailed and restrictive specification of routes in the annexes to the agreements. This attitude is clearly reflected in all new bilateral agreements and also in the Iranian efforts to modify all existing agreements. For instance under the new annex to the agreement with Belgium, effective by exchange of notes in June 1969, the following route is specified for operation of Iranian carrier: Teheran-Beirut-Ankara and/or Istanbul-Moscow-Athens-Sofia-Bucharest, Belgrade-Rome-Geneva and/or Zurich-Budapest-Vienna-Prague-Munich and/or Frankfurt and/or Hamburg-Bruxelles-

Paris-London-New York or Montreal. In comparing new routes given to the designated airline of Belgium with those given to other countries it seems that contracting parties have tried to specify routes on the basis of non-competitive principles especially in the case of neighbouring countries relevant to each carrier.

It is also of special interest to note that in the annex to the agreement with the Soviet Union the traffic rights between Teheran and Moscow are reserved exclusively for the designated airlines of the contracting parties.[45] Furthermore, in this agreement provision is made for non-scheduled flights. It provides that for the operation of such services the designated airline of each party may require from the civil aviation authorities of the other party at least 36 hours before the intended flight.

IX. Regulation of Competition and Capacity

The most complicated problems in bilateral air transport agreements are undoubtedly related to capacity provision and regulating competition in specified routes. The degree of control to be exercised over provision of

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[45] Consequent upon this development, Pakistan International Airlines had to omit its stops at Teheran from its Karachi-Moscow-London flight.

capacity plays an important role in economic aspects of civil aviation. In any bilateral agreement geographical location, the relative development of national aviation, commercial importance, political prestige and many other factors have great influence on determination of capacity to be offered and operated by designated airlines.

Controversy of the United States of America and the United Kingdom upon the exchange of commercial air rights in the Chicago Conference, 1944, came to a compromise at Bermuda in 1946, and they agreed upon a formula governing traffic and capacity clauses which has been used in many bilateral agreements since that time. Under this formula air transport facilities available to the traveling public should bear a close relationship to the requirements of the public for such transport and there shall be a fair and equal opportunity for the carriers of two nations to operate on any route between their respective territories. Moreover, the airline of one country shall take into consideration the interests of the airlines of the other country so as not to affect unduly the other's services. The capacity which the designated air carriers of the contracting parties are allowed to provide is

related in the first place to third and fourth freedom traffic.

According to some aviation expert, a definite answer cannot be given to the question that whether the Bermuda capacity clause gives "a positive right" to exercise the fifth freedom or it is a conditional right.[45a] On the other hand, however, it is argued by some others that the term of "primary objective" in the Bermuda Agreement has left room for other objectives like fifth freedom traffic, because it is not indicated the only object to be dealt with,[46] but there is no concrete answer to the question of the quantity of fifth freedom allowed in relation to the quantity of third and fourth freedom. Nevertheless, in further paragraphs the right to carry fifth freedom traffic is related to traffic requirements between the country of origin and the country of ultimate destination of the traffic, to the requirements of through airline operation, and to the traffic requirements of the area

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[45a] See "The Historical Background to Air Transport Agreements (Part Two)" Current Topics 127/R in ITA Bulletin No. 8, of 21 February 1966, p. 213.

[46] See P. Van Der Tuuk Adriani, "The Bermuda Capacity Clauses" J.A.L.C. (1955) Vol. 22, pp. 407-408.

through which the airline passes after taking account of local and regional services.[47]

Iranian bilateral agreements have followed a variety of provisions and principles dealing with the questions of competition and capacity. They could be all divided into three main categories and a few subsequent categories which are similar to the others in some respects. The main category is agreements that have followed the Bermuda Agreement word for word or with minor drafting alterations. For instance, in the agreement with the United States it is provided that the primary objective of the designated airline is providing capacity adequate to the traffic demands between the country of which such airline is a national and the countries of ultimate destination of the traffic instead of the country of ultimate destination. In this type of agreement there is a clause providing that the designated airline of both contracting parties shall operate the agreed services on the specified routes on the basis of fair and equal opportunity, but they are not similar in the consideration of the interest of the airline of the other party.

The formula accepted in the agreement with the

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[47]Provisions of Paragraph 6 of the Final Act of the Bermuda Agreement 1946.

United Kingdom is different from that with the United States. But here also the primary objective is serving national traffic - the provision, at a reasonable load factor, of capacity adequate to carry the current and reasonably anticipated requirements for the carriage of passenger, cargo and mail originating from or destined for the territory of the contracting party which has designated the airline. Moreover, the carriage of international traffic taken up and put down on the specified routes in the territories of third States is to be performed in accordance with the general principles that capacity should be related to, and contrary to the American agreement in the first step is related to the traffic requirements of the contracting party which has designated the airline, precisely third and fourth freedoms; while in the agreement with the United States it is provided that capacity should be related "(a) to traffic requirements between the country of origin and the countries of ultimate destination of the traffic." Moreover, here the "requirements of through airline operation" is placed before the "requirement of local and regional services", while in the agreement with the United Kingdom consideration to local and regional services is more

exclusively indicated before through airline operation.[48]

The next general provision in the agreement with the United States on regulating competition and capacity is included in Article 9 which reads as follows:

> in the operation by the airlines of either contracting party of the trunk services described in this agreement, the interest of the airlines of the other contracting party shall be taken into consideration so as not to affect unduly the services which the latter provides on all or part of the same routes.

Although agreement with France has followed the general principles of the Bermuda Agreement, it does not contain any provision pertaining to consideration of the interest of designated airline of the other party.

The agreement with France contains principles more restrictive of the provision of the capacity for fifth freedom traffic. In Section 1 of Article 1 of the French Agreement, it is stipulated that on each of the routes specified in the annex

> the agreed services shall have as their primary objective the provision, at a reasonable load factor, of capacity related to the current and reasonably expected requirements of international

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[48]Under last part of Article 8 of the Air Transport Agreement with the United Kingdom, the general principles that capacity shall be related to are as follows: "a) traffic requirements to and from the territory of the Contracting Party which has designated the airline; b) traffic requirements of the area through which the airline passes, after taking account of other transport services established by airlines of the States comprising the area; and c) the requirements of through airline operation.

> air traffic coming from or destined for the territory of the High Contracting Party which has designated the airline operating the said services.

First of all, the term of "reasonable utilisation factor" introduces a new criteria in the measurement of relative capacity offering between third and fourth and the fifth freedom rights. Secondly, the term of "reasonably expected requirements of international air traffic" leaves the door open for the enforcement of some more control than provided in the agreement with the United States and the United Kingdom.

Within the capacity limitations indicated above, an additional clause provides as a complementary basis to the carriage of third and fourth freedom traffic, "the airline designated by either High Contracting Party may meet the traffic requirements between the territories of third party States situated on the agreed routes on the one hand and the territory of the other High Contracting Party on the other hand."[49] Furthermore, in another paragraph some additional capacity is allowed for carriage of fifth freedom traffic, so long as this is justified by the transportation needs of the contracting

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[49]See Article 7 of the Agreement Between Iran And The French Republic Relating to Agreed Air Services Between Their Respective Territories, April 1960 DOCS, Fr. Tr.

parties. Section (2) of Article 7 of this agreement provides that "Additional capacity may also be provided, over and above that referred to in paragraph (1), whenever this is justified by the traffic requirements of the countries served by the route."

Agreements with the Scandinavian countries are a combination of the agreements with the United States and the United Kingdom. They are similar to the British agreement because it is provided that the designated airlines shall have as their primary objective the provision at a reasonable load factor of capacity to carry the current and reasonably anticipated requirements for the carriage of passengers, cargo and mail. They are similar to the American agreement as the ultimate destination of traffic is required at the first step for determination of capacity. However, in specification of the general principles that capacity shall be related to traffic requirements between the country of origin and the country of destination stands first. Here the interests of the other air transport services established by the airlines of the countries comprising the areas through which the airlines pass is taken into some more consideration than other agreements.

The second category of Iranian bilateral

agreements dealing with regulation of competition and capacity includes the agreement with India which contains certain modifications to the Bermuda formula. First of all the total capacity and frequencies required for the carriage, at a reasonable load factor, of all traffic which may be expected to originate in the territory of each party and to be disembarked in the territory of the other party should be determined by aeronautical authorities of both sides for a period of six months. Thereafter, for every succeeding period of six months they jointly determine the capacity and frequencies required for the carriage of passengers, cargo and mail between two countries. Therefore, in this agreement it is obvious that national traffic is accepted as the primary capacity criterion.

Secondly, it is provided that each party has the right to authorize its designated airlines to make available for the carriage of half the capacity determined by aeronautical authorities of both parties. For the enjoyment of this right, each designated airline has the right to carry its share "whether on services terminating in or services passing through the territory of the other Contracting Party."

Thirdly, for the carriage of fifth freedom traffic different provision is applied in a case that

third country is located between two contracting parties and in the case that it is situated beyond the territory of the other party. In the first case any part of the capacity provided by designated airlines may be used for this purpose, but the capacity that may be used for the purpose of beyond points shall not exceed the capacity provided for the carriage of national traffic, third and fourth traffic. Such a capacity may be agreed between aeronautical authorities as being unlikely to prejudice unduly the interests of the airline of other party operating between the latter's territory and the third country concerned.

Fourthly, in case of unexpected demands of traffic, the designated airlines may agree between themselves for some temporary increase in the agreed capacity which is subject to the approval of the aeronautical authorities of the contracting parties.

The third category of this study relates to some recent bilateral agreements including those with the Soviet Union, Italy and recent amendments to the agreements with Belgium and the Netherlands. Iran like many other countries pays subsidies to its carrier in various forms and it is considered absurd to pay subsidies which might be reduced or eliminated by

third country is located between two contracting parties and in the case that it is situated beyond the territory of the other party. In the first case any part of the capacity provided by designated airlines may be used for this purpose, but the capacity that may be used for the purpose of beyond points shall not exceed the capacity provided for the carriage of national traffic, third and fourth traffic. Such a capacity may be agreed between aeronautical authorities as being unlikely to prejudice unduly the interests of the airline of other party operating between the latter's territory and the third country concerned.

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applying restrictions to the capacity offered, or the traffic carried, by the foreign competitors of the national airline. Consequently this group of agreements does not follow the liberal philosophy of Bermuda-type capacity clauses. In this type of agreement there is a definition of the term "capacity" which in relation to an aircraft "means the payload of that aircraft available on a route or section of a route" while the term capacity in relation to an agreed service "means the capacity of the aircraft used on such service, multiplied by the frequency operated by such aircraft over a given period and route or section of a route."

In this type of agreement, it is provided that the primary objective of designated airlines is to provide a capacity at a reasonable loadfactor adequate to the current and reasonably anticipated requirements for the carriage of passengers, cargo and mail between two contracting parties. In the Soviet agreement this is summarized and provides just a capacity for the carriage of passengers, cargo and mail between two countries. The Italian agreement contains restrictive provisions on fifth traffic right providing that "the designated airline of both contracting parties may provide a capacity related to the traffic requirements between the

territories of third countries listed on the schedule annex to the agreement and the territory of the other contracting party; however such additional capacity must not exceed that determined in paragraph (A) of the present agreement." These provisions are not found in the other three agreements, but all of them are similar in the main point, that is to say the consultation and agreement between designated airlines upon the practical application of capacity clauses whether for national traffic or third country traffic.[50] However, agreement thus reached must be submitted to the aeronautical authorities for approval. In the agreement with the Soviet Union and Italy disagreement of designated airlines upon determination of capacity is referred to aeronautical authorities while in two recent amendments there is no provision in this respect. Italian agreement even goes further and limits the frequency of flights to two weekly services to be operated with aircraft DC-8, Boeing 727 or similar type.

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[50]Paragraph 2 of Article 9 of the Agreement with the Soviet Union reads as follows: "For the practical application of the present Article the designated airlines of both Contracting Parties shall consult with a view to reaching an agreement between themselves. The agreement thus reached shall be submitted to the respective aeronautical authorities for approval."

X. Rates and Fares

In the Chicago Conference of 1944, it was argued that rates should be subject to the approval of an international aeronautical agency, on a governmental level, and the principles upon which rates could be fixed were considered to be the costs of the most efficient operator. As there were no set principles for such an international agency, and also no criteria to determine as to who was the most efficient operator, this suggestion did not gain sufficient support from the participating States.[51] Another suggestion was to fix any international rate by means of bilateral agreements without any international agency, but it was realized that rate-making on an international level, even between two countries only, was a complicated matter which had to be exercised by well-trained specialists.

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[51] "It was pointed out, quite wide differences in standards of living between Countries. Some airlines were government enterprises, either in ownership or control, and might not be required to pay taxes or to seek their capital in the open market. Airlines might also be assisted by hidden subsidies and benefits, such as free use of airports, radio aids and navigation facilities; government financed training or equipment purchase; and other cost reducing factors . . . before an international tribunal attempting to determine a rate, they might well be closely guarded secrets whose withholding could unduly influence the international rate structure." J. G. Gazdik, "Rate-Making and The IATA Traffic Conferences" 16 J.A.L.C. (1949), p. 308.

Later another theory was suggested that rates should be fixed by the agreement among the carriers operating in international services. It was considered that airlines who have greatest experience in the rate-making field should establish international traffic rates among themselves. This theory was adopted in the Bermuda Conference and has been accepted since then by the majority of the countries engaged in international air transport operations.[52]

Bermuda agreement was a compromise between the British and American views of the economic principles to govern the conduct of international air services. Both parties agreed that all "rates to be charged by the air carriers . . . shall be subject to the approval of the contracting parties within their respective constitutional powers and obligations,"[53] and each party has the right to disapprove any rate proposed by the other's carrier. The governing principles of rate making are stipulated in paragraph (h) of the Annex to this agreement which provides that rates shall be fixed at a reasonable level, due regard being paid to all relevant factors such as cost of operation,

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[52]See Ibid., pp. 298-322.

[53]Paragraph (a) of Article II, of the Annex to the Bermuda Agreement, February 1946.

reasonable profit and the rates charged by other air carriers. To these principles, another factor is added by Professor Bin Ching which is to be called characteristic of services like standards of speed and accommodation.[54]

Most Iranian bilateral agreements provide that tariffs shall be established at reasonable levels, due regard being paid to all relevant factors, including economical operation, reasonable profit, difference of characteristics of services and the tariffs charged by other airlines on any section of the route. The principles and procedure of tarrif regulation are extended to all the agreed services except in the agreement with France and the United Kingdom in which rates are to be fixed for carriage between the territories of the contracting parties only.[55] Consequently it is unnecessary to agree upon the extra parties traffic and national third-country traffic in these two agreements. The procedure

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[54]See Cheng, op. cit. Supra note 16, p. 445. It may be mentioned here that the aviation industry in these days considering proposals for a 25-30% surcharge on the existing rates for the coming generation of SSTs such as the Concorde, TU-144 and the Boeing 2707.

[55]See Article 8 of the bilateral agreement with France April 1960 and Article 9 of the Agreement with the U.K. May 1960.

adopted by the majority of Iranian bilateral agreements for exercising control over tariffs can be summarized as follows:

First, the rates to be charged by the airline of either contracting party between two territories of contracting States on all the agreed services are subject to the approval of the aeronautical authorities of the contracting parties. In Iran approval of tariffs is made under article 6(c) of the Civil Aviation Act which empowers the Civil Aviation High Council "to approve equitable tariffs for transportation by air of passenger and cargo."[56] Under Article 19 of Regulations for Civil Aircraft, rates fixed by the foreign air transport companies for carrying passenger and cargo to and from Iran shall not be applied unless previously approved by the High Council of Civil Aviation. Any changes in the approved rates are subject to approval by the same Council.[57] For instance paragraph (a) of Article 13 of bilateral agreement with the United States provides:

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[56]See Civil Aviation Act of July 1949.

[57]Ibid.

a) The rates to be charged by the airlines of either contracting party between points in the territory of the United States and the points in the territory of Iran referred to in the annexed schedule shall, . . . be subject to the approval of the aeronautical authorities of the contracting parties, who shall act in accordance with their obligations under this Agreement, within the limits of their legal powers.

Secondly, any rate proposed by an airline of either of the contracting parties, shall be filed with the aeronatuical authorities of both contracting parties at least thirty days before the proposed date of its introduction. In most agreements both parties have agreed to reduce this time limit in individual cases. If a contracting party is opposed to the tariffs proposed by an airline, it must notify the other contracting party in writing within the first fifteen days of the thirty day's period.[58] The minimum time limit in the agreement with Belgium, for submitting proposed tariffs in advance, is forty-five days prior to the proposed date ofintroducing the new tariffs.

Thirdly, the majority of Iranian agreements refer to the IATA rate-fixing machinery as the channel through which agreement between the airlines is to be made and consultation with other airlines concluded.

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[58]See bilateral air transport agreement of Iran with the U.S.A. 1957, U.K. 1960 and Turkey 1951.

For example Article 8 of bilateral agreement with Sweden provides that

> . . . the tariffs shall, if possible, be agreed upon in respect of each route between the designated airlines in consultation with other airlines operating on the same route or any section thereof. Such agreement shall, where possible, be reached through the rate-fixing machinery of the International Air Transport Association.

Even in the agreement with the Soviet Union after indication of general principles which tariffs should be based upon, it is provided that tariffs shall be established "(a) either in conformity with the appropriate resolutions of the rate fixing machinery of an air transport association and accepted for the purpose by both Contracting Parties; (b) or by agreement between the designated airlines of the Contracting Parties." However, in all agreements it is provided that the enforcement of a rate proposed by IATA is subject to the approval of the aeronautical authorities of contracting states.

Fourthly, if the airlines are not able to reach agreement on the tariffs or the tariffs filed by the airlines are objected to by one or both the contracting parties or the contracting parties cannot approve the IATA rate-fixing machinery, the following procedure is applicable. In the first stage, each

contracting party will exercise its best efforts to agree upon the rate proposed by the other party. In the second stage, the contracting party which is dissatisfied with the rate proposed by the other party, shall so notify the other one within fifteen days. In the third stage, the aeronautical authorities of two contracting parties will use their best efforts to cause such agreed rate to be put into effect by their airlines. If no such agreement can be reached prior to the expiry of thirty days, each party may take such steps as it may consider necessary to prevent the inauguration or continuation of the services. In the end if the aeronautical authorities of the two contracting parties fail to agree within a reasonable time upon the appropriate rate after consultation initiated by the complaint of one contracting party concerning the proposed rate or an existing rate, the regulations relating to the settlement of disputes shall become applicable.[59]

XI. Consultation and Amendment

In international law there is no precise rule concerning amendment or interpretation of international

[59]This procedure is taken from bilateral air transport agreements with the U.S.A., Italy and France.

treaties; however, no party to a treaty may unilaterally modify its terms, unless so authorized by the agreement itself.[60] There are different ways open to the contracting parties in this respect. They may either agree informally upon the terms and conditions of a treaty, or they may agree upon a protocol annexed to the treaty. They may also make a supplementary treaty providing the amendment of the previous treaty. Many treaties contain special clauses providing modification, amendment or interpretation. For instance Article 94 of the Chicago Convention provides that any amendment to this Convention must be approved by a two-thirds vote of the Assembly and shall then come into force in respect of States which have ratified such amendment.

In the case of bilateral air transport agreements there is usually distinction made between modification of the text of an agreement and minor amendments to the routes. It is an accepted rule that any modification of the text of an agreement must be done by the authorities of the contracting parties which were capable of concluding the agreement.

In all Iranian bilateral agreements, it is provided that modification of the text of an agreement

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[60]See Oppenheim, International Law (eighth edition 1963), edited by Lauterpacht, Vol. I, p. 951.

has to be negotiated and effected through diplomatic channels. In practice until a few years ago, modification of the terms of an agreement not only had to be negotiated by appropriate authorities of the government and be confirmed by notes exchanged through diplomatic channels, but it had to go also through all complicated process of parliamentary approval and approval by His Majesty. Today, an amendment of the provisions of an agreement takes place through the aeronautical authorities and it is subject to the exchange of diplomatic notes by both parties. In practice, for the minor changes, relating to the alternation of points in the routes, there is no exchange of diplomatic notes. In fact there is no evidence to say to what extent direct agreement of aeronautical authorities upon amendment of annexes or schedules to an agreement without an exchange of notes could be done. It is also a common provision in all Iranian agreements that any amendment has to be communicated to the Council of the ICAO except in the agreement with the Soviet Union.

Article 15 of the agreement with the United States contains some more provisions that are different from those used in other agreements. It provides:

> If either of the contracting parties considers it desirable to modify the terms of this

> Agreement, it may request consultation between the competent authorities of two contracting parties, and such consultation shall begin within a period of sixty days from the date of the request. A similar procedure shall also be applicable in the event either of the contracting parties desires to consult concerning the application or interpretation of the terms of the Agreement. When the aforesaid authorities mutually agree to the modification of the present Agreement, the said modification shall come into force after it has been confirmed by an exchange of note through diplomatic channels and shall forthwith be communicated to the Council of the International Civil Aviation Organization.

This Article operates only upon the request of contracting parties, firstly for modification of the terms of the agreement and secondly for the application or interpretation of the Agreement. In some bilateral agreements like agreements with France, Belgium and Turkey, reference is made only to the modification of the terms of the agreements and not to the consultation concerning the application or interpretation of the agreements. Nevertheless, in all Iranian agreements, there is some similar provision regarding limitation of time within which consultation must take place. Such consultation generally begins sixty days from the date of the request of the other party. In the agreements with the United Kingdom and Italy it is provided that both parties may agree upon the extension of this period.

Under paragraph (b) of Article 15 of the

agreement with the United States, changes made by either party in the specified routes, except the change of points served by the designated airline in the territory of the other party, shall not be considered as modifications of the agreement. The aeronautical authorities of either party may proceed unilaterally to make such changes, but any change has to be notified to the aeronautical authorities of other party. The only thing which is omitted in this agreement is the fact that what would happen if aeronautical authorities of the other party do not agree with the proposed changes. In this regard agreements with India and Pakistan contain detailed provisions indicating that if changes made by either contracting party prejudice the interests of the air carrier or carriers of the other party, the latter may request consultation in this respect.[61] In some agreements there is no distinction between amendment of the text and revision of the annex or schedule to the agreement. Typical of these are the bilateral agreements with the United Kingdom and Italy and minor changes of the route schedules are therefore commonly effected by exchanges of diplomatic notes.

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[61]See Article XI of Agreement between The Imperial Government of Iran and the Government of India For Air Services. DOCS. Iran, Tr. See also Article 12 of the bilateral air transport agreement with Pakistan, May 1957.

In recent years, it has been the policy of Iranian bilateral negotiators to draw some more pronounced distinction between modification of the agreement and modification of its annex. In some new bilateral agreements or recently amended agreements, it is precisely indicated that changes in the order of the points served on the specified air routes or omissions of any part of the specified air route shall not be considered as modification of the agreement. The aeronautical authorities of either party may therefore, proceed unilaterally to make such changes or omissions provided, however, that notice of any change or omission shall be given without delay to the aeronautical authorities of the other contracting party.[62]

XII. Settlement of Disputes

General clauses on the peaceful settlement of disputes relating to the interpretation or application of a treaty are usually included in any international treaty. The procedure of settlement of disputes adopted by the Chicago Convention provides that the contracting parties shall try first to settle their disputes by

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[62]See Article 11, paragraph (b) of Air Transport Agreement with the Kingdom of the Netherlands, November 1949, as amended in March 13th, 1968.

direct negotiations before the matter is brought to the Council. The Council of ICAO as an executive body has original jurisdiction over the disagreements, provided the parties fail to settle their differences through their own negotiation. Under the Chicago formula any interested State may bring the matter before the Council and the Council has the power to hear the dispute and act in accordance with rules of international law governing judicial proceeding.[63] However, no member

[63]For the first time in April 1952 the ICAO Council faced a disagreement between two contracting States, namely India and Pakistan relating to the interpretation or application of the Chicago Convention and the Transit Agreement. India alleged that Pakistan was disregarding her obligations under provisions of Articles 5, 6 and 9 of the Chicago Convention and also provisions of Air Services Transit Agreement. India maintained that Pakistan, in establishing prohibited areas along the border of Afganistan and refusing to allow Indian aircraft to overfly it, was preventing direct Indian services between Delhi and Kabul in Afghanistan, because any practicable route for these services involved overflight across West Pakistan. India also insisted that the prohibition was discriminatory because an Iranian airline was operating a scheduled air service over the prohibited area. A working group was established by the Council of ICAO in which the representative of Pakistan intimated the willingness of his government to discuss the terms of a settlement with the Indian government. The Council approved the recommendation of working group to invite both parties to enter into further direct negotiations. In the end an amicable settlement reached between the parties and it was brought before the ICAO Council. For further information see B. Cheng, op. cit. Supra note 16, pp. 101-104.

of the Council is entitled to vote in the consideration of any disagreement to which it is a party.[64]

According to the interpretation of relevant Articles of the Chicago Convention, given by Professor Cheng, in the matter of dispute all member States have a choice whether to appeal to an ad hoc tribunal or to the International Court of Justice, or where all the parties to a dispute have accepted the Statute of the International Court of Justice, an appeal from a decision of the ICAO Council may be brought before the International Court of Justice.[65]

In the case of bilateral air transport agreements, different organs are invested with competence to settle the disagreements between contracting states. Some agreements recognize the exclusive competence of the ICAO Council and others leave the parties a choice between the Council and an arbitral tribunal, another body or person.[66] Some agreements recognize the competence of the Council only after failure of the parties to agree on the choice of an arbitral tribunal,

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[64]See Article 84 of the Chicago Convention, December 1944.

[65]See Cheng, op. cit., p. 104.

[66]For the list of the States recognizing the competence of Council and or other organs, see ICAO DOC. 1171, 1515/52, pp. 15-22.

body or person. Certain bilateral agreements refer to a special tribunal established or to be established in ICAO for the purpose of settling disputes arising thereunder. This procedure was adopted in some earlier bilateral agreements in which contracting parties considered the possibility of the establishment in the ICAO of a special tribunal. In some other bilateral agreements the president of the Council is empowered to appoint arbitrators or umpires, but in some recent agreement nomination of third arbitrator and even national arbitrator is given to the president of the International Court of Justice.

This variety of procedure for settlement of disputes in bilateral agreements is due to many reasons. First of all Article 9 of the "Chicago Standard Form" was left blank, with a note stating that the parties could insert these provisions for arbitration, if they so desired; consequently bilateral agreements which were based on the Chicago type failed to follow a uniform practice.

In the Bermuda Agreement it was provided that the disputes which cannot be settled by negotiation shall be referred to the Interim Council of the Provisional International Civil Aviation Organization

(PICAO), which must now be read as "ICAO". In the annex to the Bermuda Agreement there is an additional arbitration clause for air transport rates. If contracting parties cannot agree on common rates, either party may refer the matter to PICAO for advisory report. This procedure also was not followed even by contracting parties to the Bermuda Agreement. For example in bilateral agreement between Iran and the United States the provision of the Bermuda Agreement is avoided and the dispute is referred to a tripartite independent arbitral tribunal. Moreover, if either party fails to designate its own arbitrator within a specified time, the other party may request the President of the International Court of Justice to make the necessary appointment by choosing the arbitrator or arbitrators.[67]

The International Civil Aviation organization never took any serious steps to formulate rules governing arbitration of bilateral agreements and settlement of disputes arising between contracting States. This negative attitude of ICAO is considered rational by some commentators because of its composition of

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[67]See Paragraph 2, Article 16 of Air Transport Agreement between Iran and the U.S.A. 1957.

government deligates who have been chosen for their knowledge of international air transport rather than their experience in a judicial function.[68] That is probably the reason that many countries have omitted in their bilateral agreements any reference to the ICAO for settlement of their disputes and instead they have provided a private tripartite tribunal in which the President of the International Court of Justice is the appointing authority in case a party fails to name his appointee to the tribunal, or if the two members fail to agree on the third within the time limit specified in the agreements.

In all bilateral agreements of Iran there are provisions relating to the settlement of disputes and we shall now proceed to analytically examine them to study the procedure adopted in this respect. In some agreements the dispute could be related to the interpretation or application or schedule annexed to the agreement, while in other agreements the dispute is referred to the interpretation and application of the agreement and not the schedule.[69] The first procedure

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[68]Cheng, op. cit. Supra note 16, p. 460.

[69]For example bilateral agreement with the U.S.A. follows the first category and the agreement with Italy and France follow the second procedure.

laid down in all Iranian agreements is that if a dispute arises between the contracting parties as to the interpretation or application of an agreement, both parties should endeavour to settle it by negotiating between themselves. The procedure adopted in the agreement with the Soviet Union provides that the dispute may be settled primarily by direct negotiations between the designated airlines; secondly between aeronautical authorities and in the third step it should be referred to the contracting parties. Direct negotiation is universally recognized as the initial means of peaceful settlement of any kind of dispute and bilateral agreements are not an exception to this method of solving international controversies.

The second procedure for the settlement of a dispute is provided in case the contracting parties fail to reach agreement by negotiation. Under this procedure the parties may refer the dispute for decision for an advisory opinion to some person or body. In practice, the majority of disputes are settled through diplomatic correspondence, while there is no reference to this step in bilateral agreements. In many cases the aeronautical authorities fail to reach any agreement upon their different interpretation of an agreement or

its annex and the only way for solution to the problem is through diplomatic channels. However, there are no criteria determining what extent of negotiations shows that a dispute cannot be settled by negotiation, except in the agreements with Switzerland, 1954 and Turkey 1951, which provide that if contracting parties fail to reach an agreement within 90 days by negotiation, they may agree to refer the dispute to some person or arbitral tribunal. As mentioned before, the reference of dispute to some person or body, designated by mutual agreement between contracting parties, is the second step, which is found in all agreements made by Iran. If the parties fail to refer the dispute for a decision to some person or body a different procedure may be applicable. Some earlier agreements provide that the dispute may be referred to any tribunal competent within the ICAO or the Council of the ICAO, which is considered in some agreements as the final step,[70] while in some others, International Court of Justice has the final jurisdiction for settlement of disputes. The Agreements

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[70]The final procedure adopted in the agreement with Pakistan provides that if there is no tribunal within the ICAO the dispute shall be submitted to the Council of ICAO, but in the agreement with India the final solution of any dispute is given to an arbitral tribunal set up in the ICAO. So far there is no satisfactory arbitral tribunal set up in the ICAO, it seems that this agreement has failed to provide final solution for

with Sweden and the Netherlands fall within the later category providing that

> If they fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to an arbitral tribunal appointed by agreement between them or to some other person or body. If they do not so agree, or if, having agreed to refer the dispute to an arbitral tribunal, they cannot reach agreement as to its composition, either of the Contracting Parties may submit the dispute for decision to any tribunal competent to decide it which may hereafter be established within the International Civil Aviation Organization. If there is no such tribunal, the dispute shall be submitted to the Council of the Organization or, failing that, to the International Court of Justice.

In the Soviet agreement if the parties fail to reach an agreement through diplomatic negotiations, the dispute may be referred to mutually accepted experts.

In the agreements with the United States and some other countries there is some more emphasis on the settlement of disputes by means of an advisory report and the promise of contracting parties to use their best to put into effect the opinion expressed in any such advisory report. However, a third provision for settlement of disputes, is the possibility of submitting any controversy to an arbitral tribunal. The procedure

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settlement of a dispute as it is provided in other agreements. See Article 13 of Air Transport Agreement Between Iran and India, August 1960. DOCS. Iran, Tr.

for the establishment of this tribunal is slightly different. It consists of two members appointed by the parties and a third member of the nationality of a third State, to be agreed upon by the two members. In the agreement with the U.S. when a request for arbitration has been received, the two national arbitrators must be appointed within two months and the third member within one month. In the agreement with Italy the appointment of national arbitrators must take place within sixty days and the third one also within sixty days of the appointment of the first two arbitrators.

The fourth step begins when contracting parties are unable to appoint their arbitrators or agree upon the third arbitrator within the time limit specified in the agreement. In the agreements with France, Italy and the United Kingdom, it is provided that if either party fails to nominate an arbitrator or the third arbitrator is not appointed within the period specified, either party may request the President of the ICAO Council to appoint an arbitrator or arbitrators. The Italian and the British agreements in this respect are slightly different from the others as they specify that the third arbitrator must be a national of a third State

and shall act as the president of the arbitral tribunal. The American agreement follows a different procedure: in case of difficulty in the nomination of the national arbitrator or of the third member, it simply provides that "either party may request the President of the International Court of Justice to make necessary appointment . . ."

In some agreements it is simply provided that the contracting parties shall comply with any decision given under the arbitral process,[71] while in other agreements, there are some exceptional regulations relating to the compliance with awards and sanction for the enforcement of that award. The majority of Iranian agreements provide that the contracting parties not only undertake to comply with any decision given by an arbitral tribunal or some other organ, but they have also accepted the following procedure. If and so long as either contracting party or its designated airline fails to comply with the decision reached in accordance with the respective article, the other party may limit, withhold, or revoke any rights derived from the respective agreement.[72] The Soviet agreement also follows the same

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[71]For instance agreement with the U.K. follows this procedure.

[72]Agreements with Belgium, France, India, Netherlands, Pakistan, Sweden and Turkey follow this procedure.

procedure if the parties fail to implement the decision of the experts. Some other provisions which exist only in a few Iranian agreements are the equal division of the expenses of the arbitral tribunal between the contracting parties.

In the history of civil aviation the provisions for settlement of disputes through arbitration have been utilized in only two cases.[73] In general practice States try to settle their disputes through consultation or negotiation and not arbitration. In both cases the United States took the initiative to arbitrate his dispute with France,[74] and Italy,[75] when contracting

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[73]Lissitzyn, "International Aspects of Air Transport in American Law", J.A.L.C. Vol. 33 (1967), p. 96.

[74]In arbitration between U.S.A. and France two questions came up for resolution. First what is the meaning of the term "Near East" as used in the bilateral agreement between U.S. and France 1946. Secondly, what are the legal consequences of the temporary authorization given by France under protest to Pan Am's successive variations and extensions of its traffic rights through Paris to points beyond in Turkey, Baghdad and Teheran. The tribunal decided that neither Istanbul, Ankara nor Teheran could be included in the description "Near East" for the purposes of interpretation of the 1946 bilateral agreement. It decided further that Pan Am was entitled however to operate services between the U.S. and Iran or Turkey via Paris. In such operations the arbitrators were of the opinion that the U.S. designated carriers could exercise 5th freedom traffic rights between Paris and Points in Iran. Completeprocess of this arbitration appears in 3 International Legal Materials (1964), p. 668. For further information see article by P. B. Larsen, "Arbitration of the United States-France Air

parties failed to reach any agreement through direct negotiation.

XIII. Other Provisions

Before coming to the question of termination of bilateral air transport agreements and concluding this study, it is probably worthwhile to give a comparative study of other provisions of Iranian bilateral agreements which could not be explained in previous headings. Generally speaking, in all Iranian agreements there are similar provisions concerning the mutual supply of the relevant information, statistical and otherwise, for the purpose of periodical review. The majority of them provide in similar wording that the aeronautical authorities of each party shall supply to the aeronautical authorities of the other party, at the request, all the necessary information and statistics relating to the frequency and the capacity of the agreed services and the traffic, carried through the territory of the other party including information concerning the origin and destination of such traffic.

Traffic Reights Dispute", J.A.L.C. (1964), pp. 231-247.

[75]Advisory opinion of the arbitral tribunal regarding the dispute between U.S.A. and Italian Republic is published in International Legal Materials Vol. IV (1965), pp. 974-987. See also article by M. A. Bradley, "International Air Cargo Services: The Italy-U.S.A. Air Transport Agreement Arbitration", McGill Law Journal, Vol 12 (1966), pp. 312-326.

The agreement with India requires further data providing that each party shall cause its airline to supply to the other party, as long in advance as practicable, copies of time tables, tariff schedules and the type of aircraft to be operated on the specified air services.

In the agreements with the United States, Soviet Union and Italy additional provisions require that this information would be that normally prepared and published for national aeronautical authorities, and any additional statistical data, if requested, shall be the subject of mutual discussion and agreement between the two contracting parties. The agreement with Belgium is unique in this respect providing that such information and statistics shall not exceed those currently required by the Council of ICAO.

Another provision which all of the Iranian agreements contain provides for the amendment of the agreement if a multilateral convention comes into force in the future. For instance Article 19 of the agreement with the Soviet Union provides that:

> If a general multilateral convention or agreement on traffic rights for scheduled international air services comes into force in respect of both Contracting Parties, the present Agreement shall be amended as so to conform with the provisions of such convention or agreement.

In all Iranian agreements except those concluded with the United Kingdom and India, almost in similar wording, it is provided that no provision of the agreement shall be deemed to confer sole and exclusive rights on the other contracting party or its airline or to grant to those airlines preferential rights as compared with the airlines of any other State. On the other hand British and Indian agreements are unique in respect to mutual consultation regarding the implementation of, and satisfactory compliance with the terms of the agreement which is not included in any other agreement. The agreement with the United Kingdom with more emphasis states that

> In a spirit of close cooperation, the aeronautical authorities of the Contracting Parties shall consult each other from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of the present Agreement and the Schedules thereto.

Under provisions of the Indian Agreement, this consultation takes place if the need arises for the implementation of the agreement.

Among all Iranian agreements two, namely British and Indian agreements introduce some provisions relating to the change of gauge which means the operation of an air service by a designated airline in such a way

that one section of the route is flown by aircraft different in capacity from those used on another section.[76] There is no provision regarding change of gauge in other Iranian agreements partly because this country is located in an area which there is no necessity for change of gauge in the agreed services and the designated airlines prefer to continue their route with the same type of aircraft which they have started with. The conditions contained in the change of gauge clauses of both agreements are rather similar, providing that the designated airline of each party may make a change of gauge at a point in the territory of the other party on the following conditions: (a) the change of gauge must be justified by reason of economy of operation; (b) the aircraft used on the section more distant from the terminal in the territory of the former contracting party are to be smaller in capacity than those used on the nearer section; (c) the aircraft of smaller capacity shall be scheduled to connect with the aircraft of larger capacity and shall arrive at the point of change for the primary purpose of carrying traffic transferred from, or to be transferred

[76]This is the definition of the term "change of gauge" given in Article 1 of the air transport agreement between Iran and the United Kingdom, 1960.

into, the aircraft of larger capacity; and (d) there must be an adequate volume of through traffic. The last condition is not found in the agreement with India. In both agreements the provisions of capacity clauses govern all arrangements made with regard to change of gauge.

Some special provisions which have not previously appeared in other Iranian agreements are found in the agreement with the Soviet Union. Generally speaking, these provisions cover many problems including the establishment of flight routes and the points for crossing national boundries, the payment of accounts between the designated airlines and investigation of accident with immediate steps to assist the crew members and passengers.[77] Moreover, the general provisions for safety of flight, the supply of necessary information, procedure of air traffic control, equipment and communication facilities are incorporated in an additional annex to this agreement. In notes exchanged in the date of signature, each party has authorized the other party to maintain in the territory of first party a number of technical, operational and commercial staff required by its airline not exceeding

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[77]See Articles 3, 11, 12 of the agreement with the Soviet Union,. op. cit. Supra note 12.

five persons. On a reciprocal basis both parties have agreed to provide conditions which will enable the above-mentioned staff to discharge their duties without let or hindrance.

XIV. Termination

In international law, it is an accepted rule that treaties which are not concluded for ever may be dissolved by withdrawal after notice by one of the contracting parties.[78] The possibility of such withdrawal is expressly provided in many international treaties. For instance under Article 95 of the Chicago Convention any contracting state may give notice of denunciation of the Convention three years after its coming into effect by notification addressed to the government of the United States, which shall at once inform each of the contracting parties. The period within which this denunciation takes place is one year from the date of the receipt of the notification. Some other treaties are concluded for a certain period of

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[78] Treaties, however, which are apparently intended, or expressly concluded for the purpose of setting up an everlasting condition of thing, and, further, treaties concluded for a certain period of time only, are as a rule not terminable by notice, although they can be dissolved by mutual consent of the contracting parties. All treaties of peace, and all boundary treaties, belong to this class. Oppenheim, op. cit., supra note 60, p. 938.

time or considered to remain effective as long as another international treaty is valid or is in force. Naturally, after expiration of such time or cancellation of original treaty, these kinds of treaties terminate e.g. Article III of International Air Services Transit Agreement provides that this agreement shall remain in force as long as the Chicago Convention, 1944, is in force. However, it is provided that this agreement may be denounced by any contracting party by one year's notice given to the depository state.[79]

Bilateral air transport agreements belong to the category of the agreements which are not included to last in perpetuity. In most bilateral agreements there is always some provision that they may be terminated

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[79]Even those treaties which are concluded for ever or for a period of time which has not yet expired, may nevertheless be dissolved by mutual consent of the contracting parties. Such mutual consent can be evidenced in three different ways. First the parties can expressly and purposely declare that a treaty shall be dissolved; this is rescission. Or, secondly, they can conclude a new treaty concerning the same objects as those of a former treaty, without any reference to the latter, although the two treaties are inconsistent with each other. This is substitution. Or, thirdly, if the treaty is one that imposes obligations upon one of the contracting parties only, the other party can renounce its rights. Ibid., pp. 937-938.

by either contracting party within a limited period of time. The general procedure adopted in Iranian bilateral agreements for termination of an agreement is as follows:

1. Either of the contracting parties has the right to notify the other of its intention to terminate the agreement. This step is called notification.

2. This notification has to be sent simultaneously to the International Civil Aviation Organization. This requirement for notification to ICAO has, however, not been provided in the Agreement with the Soviet Union.

3. The agreement terminates one year or twelve months after the date of receipt of the notice by the other contracting party.

4. In the absence of acknowledgment of receipt by the other contracting party, notice shall be deemed to have been received fourteen days after the receipt of the notice by the International Civil Aviation Organization.

5. The agreement shall not terminate if the notice is withdrawn by mutual agreement before the expiry of the mentioned period.

In addition to the above provisions, which can

be found in all Iranian agreements, in some of them "termination" is a right given to the contracting parties who may at any time notify the other one of its intention for denounciation of the agreement,[80] while in other agreements it is expressly provided that "the present agreement shall terminate one year after the date of receipt by one contracting party from the other contracting party of notice to terminate . . ."[81] Moreover in some bilateral agreements made by Iran, the expression of months is used, probably to avoid any possibility of confusion with one year. In this regard, agreements with the United Kingdom and France are similar while the rest follow the expression of one year within which the agreements terminate. The Agreement with France provides in addition that if during twelve months the notice to terminate is withdrawn or a new agreement is concluded between the parties, it must be communicated to the ICAO. However,

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[80]This formula is accepted in bilateral agreements with the United States and the United Kingdom. See Article 19 and 15 of the respective agreements.

[81]See Article 14 of the bilateral air transport agreement between Iran and Sweden. October 1949. DOCS. Iran, Tr.

as mentioned before, parties who can conclude a treaty can also lawfully terminate it by agreement. This procedure is applicable when the parties to an agreement decide to conclude a new agreement superseding an earlier agreement. For instance, bilateral agreement with Turkey, dated April 20, 1937, was terminated and superseded by a new agreement which was concluded in Teheran on March 20th, 1951.[82]

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[82]See Article 19 of Bilateral Air Transport Agreement Between Iran and Turkey March 20th, 1951, DOCS. Tur. Tr.

CONCLUSION

This analysis of Iranian bilateral air transport agreements comes to the conclusion that all early bilateral agreements follow the Bermuda principles with unlimited freedom in specification of routes. This flexible policy allowed international carriers to provide as much capacity as they considered expedient and use as many intermediate and beyond points as they desired.

After the establishment of Iran National Airlines, it was felt that some restriction was required to protect the national carrier against well established bigger airlines on international routes. At the time of Iran Air's initial activities it had become clear that an infant airline could not survive without the direct support of the government and the demand of the national carrier for protection against excessive foreign competition has caused some changes in the Iranian civil aviation policy to insist on principle of

reciprocity as a means of maintaining a balance between national and foreign carriers. Considerations of national prestige, cultural relations with other countries, facilitation of official and non-official contact, attraction of tourism, maintaining a well trained group of pilots and crews and aviation facilities for military reasons, all together with many other factors caused the awakening of governmental interest in air transport. Therefore, the existing framework of Iranian bilateral air transport agreements which is mostly based on the Bermuda Agreement and specially the way that routes are exchanged is not satisfactorily meeting the goals of the Iranian civil aviation policy.

The present policy of Iranian civil aviation is based on the fact that the Bermuda capacity principles have not been completely rejected; however, capacity restrictions are permitted on certain categories of traffic, known as secondary justification traffic, on the basis of ex post facto review of traffic carried. For the practical application of this theory it has been recognized that the designated air carriers of both parties should consult each other and evaluate the economic value of specified routes from the point of passengers, cargo, utilized capacity and growth of

market potential with a view to reaching an agreement between themselves. The agreement thus obtained between the designated airlines is subject to approval by the respective aeronautical authorities of both parties. This policy has been criticized on the ground that determination of capacity and specification of routes should not be delegated to the designated airlines. They reply that, as the final decision is taken by the aeronautical authorities, the designated airlines have a merely advisory role. Moreover, if designated airlines fail to agree, the aeronautical authorities of the contracting parties shall agree on the practical application of aforementioned principles for the operation of the agreed services on the specified routes.[83]

Another controversy is related to the share which the air carrier of each of the two contracting parties may carry in the agreed services. In all Iranian agreements it is provided that there shall be a fair and equal opportunity for the designated airline of both contracting parties to operate the agreed services. For instance in all early Iranian agreements

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[83]As explained in writing to the writer by Senior Officers of the Department General of Civil Aviation, Iran.

a well established carrier was allowed to carry fifth freedom traffic from point in Iran to some unlimited points in third countries. The Iranian carrier was unable to operate to more than one or two points for fifth freedom rights and therefore some adjustment was required in exchanging of commercial routes.

Iranian civil aviation authorities do not expect that stronger international carriers to settle down to the lower level of their weaker national airline, but they claim that their nationals should travel by Iranian airlines. For the achievement of this policy in July 4th 1965 an order was issued by the government ordering considerable reduction on international rates for several categories of Iranian citizens to fly by the national carrier.

However, with the introduction of the jumbo jets and the expected operation of supersonic jets, the small airlines will have some problems in acquiring and operating them as they had when the jet aircraft appeared in the late 1950s. The writer is of the opinion that considering the technological development in the aircraft production and its consequential effects on the airline operation, the Iranian civil aviation authorities do not have much choice in keeping

their national carrier in good fiscal health. They may either plunge deeper into more protectionist policies by pre-determining capacity in all existing bilateral agreements, which is in itself by no means an easy task or in the alternate they may adopt a more positive attitude in seeking a merger of their airline with the airlines of neighbourly countries such as Turkey and Pakistan. It would be mutually beneficial if the national airlines of Iran, Turkey and Pakistan either merge their international operations or form a new company to take over their international operations in the era of Jumbo Jets and SSTs. A project on these lines has already been discussed under the auspices of Regional Co-operation for Development and it is possible that it may evolve under the pressing impact of the economics of this decade's air transportation.

BIBLIOGRAPHY

Air Navigation Regulations. (Iranian text, August 1939).

Annual Report, Department General of Civil Aviation of Iran (Iranian text 1967-68).

Azzie, Ralph. "Some Specific Problems Solved by the Negotiations of Bilateral Air Agreements" McGill Law Journal, Vol. 13 (1967).

Bradley, M. A. "International Air Cargo Services: The Italy-U.S.A. Air Transport Agreement Arbitration", McGill Law Journal, Vol. 12 (1966).

Browne, Edward G. The Persian Revolution of 1905-1909. Cambridge, The University Press (1910).

Calkins Jr. G. Nathan. "The Role of the Civil Aeronautics Board in the Grant of Operating Rights in Foreign Air Carriage." J.A.L.C., Vol. 22 (1955).

Cheng, Bin. The Law of International Air Transport, London (1962).

_____. "High Contracting Parties in Air Law", The Journal of Business Law (1959).

Civil Aviation Act Approved on 19 July, 1949.

Cooper, John C. The Right to Fly. New York (1947).

_____. "The Proposed Multilateral Agreement on Commercial Rights in International Civil Air Transport." J.A.L.C., Vol. 14 (1947).

Cooper, John C. "Air Transport and World Organization." Yale Law Journal, Vol. 55 (1946).

Cribbett, Sir George. "Some International Aspects of Air Transport." Royal Aeronautical Society. (September 1950).

Current Topics 127/R in ITA Bulletin No. 8 (February 1966).

Davies, R. E. G. A History of the World's Airlines, London (1964).

Development of Inland Transport and Communication in Iran. Published by Ministry of Roads, Teheran, Itan (February 1964).

"France United States Air Transport Arbitration Decision" December 22, 1963. International Legal Materials, Vol. 3 (1964).

Gazdik, J. G. "Rate Making and the IATA Traffic Conferences." J.A.L.C., Vol. 16 (1949).

Goedhuis, Dan. "The Air Sovereignty Concept and United States Influence on its Future Development." J.A.L.C., Vol. 22 (1955).

_____. "The Development of Rules to Govern International Aviation Communications." Transport And Communication Review, Vol. V (July - September 1952).

Healer, H. Max. "Revisions to the Mexico-United States Air Transport Agreement, 1965-1970." J.A.L.C., Vol. 32 (1966).

Heller, P. P. Grant and Exercise of Transit Rights, A Master Thesis, Montreal (1954).

Higham, R. Britain's Imperial Air Routes 1918 to 1939. London (1960).

History of Commercial Flight in Iran. (Iranian pamphlet).

"HOMA-The IRAN AIR." The Flyer, 20 Years of Aviation in Pakistan, Vol. V, No. 3, Special Issue (March 1968).

International Civil Aviation Organization. Aeronautical Agreements and Arrangements (Annex to Document 8388 - LGB/202 adopted on 1st April 1949).

ICAO, Aeronautical Agreements and Arrangements, Document 8853 - LGB/278 (January 1970).

_____. Annual Report for 1964, TA 6/1.33.

_____. Bulletin, Vol. XIV (1959).

_____. Development of International Air Passenger Travel Middle East. Circular 93-AT/17 (August, 1969).

_____. Document 7278 - C841 (May 10th, 1952).

_____. Document 1171 (15/5152).

_____. Handbook on Administration Clauses in Bilateral Air Transport Agreements. Circulars 63 - AT/6 (1962).

_____. Handbook on Capacity Clauses in Bilateral Air Transport Agreements. Circular 72 - AT/9 (1965).

International Court of Justice Pleading, Anglo-Iranian Oil Co. Case United Kingdom v. Iran (1952).

Iran Almanac and Book of Facts. Second edition (1962) Echo of Iran, and Eighth edition (1969).

IRAN SHAHR, A Survey of Iran's Land, People, Culture, Government and Economy. Teheran: University Press (1963).

"Italy-United States Air Transport Arbitral. Tribunal Advisory Opinion", July 17, 1665. International Legal Materials, Vol. IV (1965).

Jack, Peter. "Bilateral Agreements" Air Law Group. Journal of The Royal Aeronautical Society. Vol. 69 (July 1965).

Jones, Harold A. "The Equation of Aviation Policy", J.A.L.C., Vol. 27 (1960).

Kittrie, Nicholas N. "United States Regulation of Foreign Airlines Competition", J.A.L.C., Vol. 29 (1963).

Lambton, A. K. S. "Dustur", The Encyclopaedia of Islam. Edited by Lewise, B. Pellat, Ch. and Schacht, J. New edition, Vol. II (1965).

Larsen, Paul B. "Arbitration of the United States - France Air Traffic Disputes", J.A.L.C., Vol. 30 (1964).

_____. "The United States - Italy Air Transport Arbitration: Problems of Treaty Interpretation and Enforcement", American Journal of International Law, Vol. 61 (1967).

Lissitzyn, O. J. International Air Transport and National Policy. New York (1942).

_____. "Bilateral Agreements on Air Transport." J.A.L.C., Vol. 30 (1964).

_____. "Change of Aircraft on International Air Transport Routes." J.A.L.C., Vol. 14 (1947).

_____. "International Aspects of Air Transport in American Law." J.A.L.C., Vol. 33 (1967).

_____. "The Legal Status of Executive Agreements on Air Transportation." J.A.L.C., Vol. 17 (1950) and Vol. 18 (1951).

Mankiewicz, R. H. "Air Law Conventions and the New States." J.A.L.C., Vol. 29 (1963).

McCarrol, John C. "The Bermuda Capacity Clauses in the Jet Age." J.A.L.C., Vol. 29 (1963).

McClurkin, Robert J. G. "The Geneva Commission on a Multilateral Air Transport Agreement." J.A.L.C., Vol. 15 (1948).

McNair, A. D. The Law of the Air, Third edition, London (1964).

McNair, L. The Law of Treaties (1961).

McWhinney, E. and Bradley, M. A. The Freedom of the Air (1968).

O'Connell, D. P. "State Succession and Problems of Treaty Interpretation", J.A.L.C., Vol. 30 (1964).

Oppenheim, L. International Law. Edited by Lauterpacht, H. Eighth edition, Vols. I and II (1963).

Proceedings of The International Civil Aviation Conference. Department of State Publication 2820, International Organization and Conference Series IV, Vols. I and II, Washington (1949).

Publication of the Department General of Civil Aviation of Iran. (Iranian text, 1966-67).

Regulations For Foreign Civil Aircraft Flight in Iran. Reported to ICAO in 1964.

"Results of the Anglo-American Civil Aviation Conference; Joint Statement of the United Kingdom and United States Delegations." Department of State Bulletin, Vol. XIV No. 347 (1946).

Sackrey, Jr. Charles M. "Overcapacity in the United States International Air Transport Industry." J.A.L.C., Vol. 32 (1966).

Sand, Pratt and Lyon. An Historical Survey of the Law of Flight. Montreal (1961).

Satterthwaite, "Development in Anglo-American Civil Air Relations Since 1943." (A lecture given on October 20, 1948).

Shawcross, C. N., Beamont, K. B. Air Law, Vols. I and II, Third edition. London (1966).

"Standard Clauses for Bilateral Agreements Dealing with Commercial Rights of Scheduled Air Services" (ECAC) J.A.L.C., Vol. 27 (1960).

Stoffel, A. W. "American Bilateral Air Transport Agreements on the Threshold of the Jet Transport Age." J.A.L.C., Vol. 27 (1959).

Van der Tuuk Adriani, P. "The 'Bermuda' Capacity Clauses." J.A.L.C., Vol. 22 (1955).

Wager, Walter H. "International Airline Collaboration in Traffic Pools, Rate-Fixing and Joint Management Agreements." J.A.L.C., Vol. 18 (1951).

Warner, Edward P. "The International Convention for Air Navigation; and the Pan American Convention for Air Navigation; Comparative and Critical Analysis." Air Law Review, Vol. 3 (1932).

Wassenbergh, H. A. Post-War International Civil Aviation Policy and The Law of the Air. Second edition, the Hague (1962).

Watkins, Harold D. "Major Challenges Face Iranian Efforts to Build Carrier." Aviation Week & Space Technology. (June 26, 1967).

Wheatcroft, S. Air Transport Policy. London (1964).

Wilber, Donald N. Iran Past and Present. Fourth edition, Princeton: University Press (1958).

World Airline Records "Standard Reference of the Industry." 6th edition (1965).

World Aviation Directory, U.S.A. (Winter 1966-67).

Yearbook of Air and Space Law 1965. Institute of Air and Space Law, McGill University (1967).