# AIRCRAFT: NATIONALITY AND COOPERATIVE ARRANGEMENTS

By

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*In memory of my father*

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## PREFACE

At all stages, early and late, I benefited from the advice of Professor Martin A. Bradley. For his intervention on matters of fact, law, taste, and grammar, I could not be more grateful. His friendly and always unfailing assistance has not only made the writing of this work possible, but also pleasant and memorable. For all errors, I am, of course, solely responsible.

Y.S.

## ABSTRACT

The purpose of this work is to study the principle of nationality and registration of aircraft and its attributes, and to see how this principle is applied to aircraft operated by international operating agencies and to aircraft registered in one state and leased, chartered or interchanged by operators belonging to other states.

The work is divided into five parts.

The first part deals with the definition and classification of aircraft.

The second part traces the history of nationality of aircraft from the period prior to the Paris Convention on the Regulation of Aerial Navigation, 1919, up to the time of signature of the Chicago Convention on International Civil Aviation, 1944.

The third part deals with the principle of nationality of aircraft under the Chicago Convention with particular reference to the rights and obligations which are exchanged between the states that are parties to the Convention.

The fourth part deals with the cooperative arrangements of aircraft which are envisaged by the Chicago Convention, 1944, namely: (i) joint operating organizations, (ii) pooled international air services, and (iii) international operating agencies with particular references to aircraft operated by international operating agencies.

The fifth part deals with cooperative arrangements of aircraft which are not envisaged by the Chicago Convention, 1944, such as lease, charter and interchange of aircraft with particular reference to the problems arising out of these arrangements, the proposed solutions to these problems and an evaluation of the proposed solutions.

## SOMMAIRE

La présente étude porte sur le principe qui régit la nationalité et l'immatriculation des aéronefs et sur ses corollaires, et vise à déterminer comment ce principe est appliqué aux aéronefs utilisés par des organismes internationaux d'exploitation et aux aéronefs immatriculés dans un Etat mais loués, affrétés ou banalisés par des exploitants appartenant à d'autres Etats.

L'étude est divisée en cinq parties.

La première traite de la définition et de la classification des aéronefs.

La deuxième retrace l'historique de la nationalité des aéronefs depuis la période qui a précédé la Convention portant réglementation de la navigation aérienne, conclue à Paris en 1919, jusqu'à la Convention relative à l'aviation civile internationale, signée à Chicago en 1944.

La troisième porte sur le principe régissant la nationalité des aéronefs dans la Convention de Chicago et traite en particulier des droits et obligations échangés entre les Etats parties à la Convention.

La quatrième concerne les arrangements de coopération envisagés par la Convention de Chicago de 1944 pour les aéronefs, à savoir 1) les organisations d'exploitation en commun, 2) les services internationaux mis en pool et 3) les organismes internationaux d'exploitation, particulièrement en ce qui concerne les aéronefs que ces organismes exploitent.

La cinquième partie traite des arrangements de coopération pour aéronefs qui ne sont pas envisagés par la Convention de Chicago de 1944, comme la location, l'affrètement et la banalisation; elle examine en particulier les problèmes qui découlent de ces arrangements et les solutions qui leur sont proposées, et fait une évaluation de ces solutions.

## ABBREVIATIONS

| | |
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| A | Assembly |
| A.J.I.L. | American Journal of International Law |
| AN | Air Navigation Commission |
| AT | Air Transport Committee |
| BEA | British European Airways Corporation |
| B.O.A.C. | British Overseas Airways Corporation |
| B.Y.I.L. | British Yearbook of International Law |
| C. | Council |
| C.A.A. | Central African Airways |
| CAB | Civil Aeronautics Board |
| CITEJA | Comité International Technique d'Experts Juridiques Aériens |
| C.L.P. | Current Legal Problems |
| CPAIR | Canadian Pacific Airlines |
| CPAM | Committee for Purchases of Aviation Materials |
| DDL | Det Danske Luftfartselskab A/S |
| DNL | Det Novske Luftfartselskab A/S |
| EAAC | East African Airways Corporation |
| ECAC | European Civil Aviation Conference |
| ESAS | Scandinavian Airlines System, European Division |
| FAL | Facilitations |

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| IATA | International Air Transport Association |
| ICAN | International Commission for Air Navigation |
| ICAO | International Civil Aviation Organization |
| I.C.L.Q. | International and Comparative Law Quarterly |
| IFTA | Institut Français du Transport Aérien |
| ITA | Institut du Transport Aérien |
| J.A.L.C. | Journal of Air Law and Commerce |
| J.R.AE.S. | Journal of The Royal Aeronautical Society |
| KLM | Royal Dutch Airlines |
| LC | Legal Committee |
| LE | Legal Commission |
| LCI | Lease, Charter and Interchange |
| OSAS | Overseas Scandinavian Airlines System |
| PAL | Philippine Airlines |
| PANAGRA | Pan American-Grace Airways, Inc. |
| PANS | Procedures for Air Navigation Services |
| PICAO | Provisional International Civil Aviation Organization |
| RECUEIL LA HAYE | Recueil des Cours Professés à l'Académie de Droit International de la Haye |
| S | Session |
| SATC | Special Air Transport Conference |

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| SAS | Scandinavian Airlines System |
| SITA | Société Internationale de Télécommunications Aéronautiques |
| SUPPS | Regional Supplementary Procedure |
| TE | Technical Commission |
| WD | Working Draft |
| WP | Working Paper |

## FOREWORD

One of the fundamental principles of the Chicago Convention on International Civil Aviation, 1944, is nationality of aircraft. It is the means by which the Convention attaches most of the rights and obligations that it creates to aircraft and the state of registry, irrespective of who owns or operates the aircraft. Yet the rules of the Convention on nationality and registration of aircraft can give rise to serious practical problems when an aircraft registered in one state is cooperatively arranged to be operated by an operator belonging to another state.

In these days of skyrocketing inflation, aircraft cost and aircraft operating costs are becoming higher and higher every day. This, coupled with severe competition between airlines, has made flying the most expensive form of transportation, and many airlines are unable to survive without government subsidies. As a result, many airlines turn to cooperative agreements and arrangements in order to reduce costs, to improve the efficiency of their operations, and to eliminate unreasonable competition.

Fortunately, most of the cooperative agreements and arrangements are in consonance with the letter and spirit of the Chicago Convention on International Civil Aviation, 1944, particularly Chapter XVI which expressly permits (Article 77) and even encourages (Article 78) contracting states to enter

into various forms of cooperative agreements and arrangements in the field of air transport. Thus, a contracting state may participate in

(i) joint operating organizations (Article 77), or

(ii) pooled international air service (Article 77), or

(iii) international operating agencies (Article 77).

Article 79 further indicates that, if a state wishes to participate in joint operating organizations, or pooled international air service, it may do so either through its government or through an airline company designated by its government (Article 79). Of the three forms of the cooperative agreements and arrangements permitted by the Chicago Convention, 1944, the first two forms do not raise any problem in connection with the principle of nationality and registration of aircraft under the Convention since they fit into the general fabric of the Chicago Convention of national registration. The real problem is raised by the third form, namely *"international operating agencies"*, when the draftsmen of the Chicago Convention, 1944, left it to the Council of ICAO *"to determine in what manner the provisions of the Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies"*, (last sentence of Article 77).

In addition to the cooperative agreements and arrangements which are permitted by the Chicago Convention, 1944, modern technological developments and economic pressures have forced states and airlines to enter into new forms of cooperative agreements and arrangements which are not expressly permitted by the Chicago Convention, 1944, but fit into the general aims and objectives of the International Civil Aviation Organization (ICAO). They are, inter alia, to ensure, *"the safe and orderly growth of international civil aviation through out the world"* (Article 44(a)), and *"to prevent economic waste caused by unreasonable competition"* (Article 45(c)). Such new forms of cooperative agreements and arrangements include:

(i) commercial agency agreements,
(ii) interline traffic agreements,
(iii) ground handling agreements,
(iv) technical cooperation agreements, and
(v) lease, charter and interchange of flight equipment agreements.

The first four types of cooperative agreements and arrangements mentioned above do not raise any practical difficulty in connection with the application of the provisions of the Chicago Convention, 1944. However, serious practical difficulties are placed by lease, charter and interchange of aircraft when an aircraft registered in one state is operated by an operator belonging to another state.

The purpose of this work is to study the principle of nationality and registration of aircraft and its attributes, and to see how the principle is going to be applied to aircraft operated by international operating agencies, and to aircraft which are registered in one state and leased, chartered or interchanged by operators belonging to other states.

*PART ONE*

## THE AIRCRAFT DEFINITION AND CLASSIFICATION

### I. DEFINITION OF AIRCRAFT

Among the states, parties to the Chicago Convention on International Civil Aviation, 1944,[1] as previously among those, parties to the Paris Convention on the Regulation of Aerial Navigation, 1919,[2] aircraft is defined as,

> *"Any machine that can derive support in the atmosphere from the reactions of the air against the earth's surface."*[3]

The definition excludes machines which are able to fly in the air independent of any support from the reactions of the air, such as missiles, rockets and earth satellites. It also excludes machines which fly on a cushion of air, better known as "hovercraft".[4]

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1/ ICAO. DOC. 7300/5. "The Convention on International Civil Aviation was signed at Chicago on December 7, 1944. It came into force on April 4, 1947, thirty days after the receipt of the twenty-sixth ratification of the Convention. In general, the Convention provided for matters of air navigation and air transport and set up the International Civil Aviation Organization which is the principal organ concerned with development and regulation of international air transport. As of May 8, 1977, there are 138 member states.

2/ The Convention was signed at Paris on October 13, 1919. Some thirty-eight states were parties to it. The Paris Convention, 1919, was superseded by the Chicago Convention, 1944.

3/ Annex A of the Paris Convention, and Annexes 6, 7, and 8 to the Chicago Convention, 1944. On the meaning and status of Annexes see Infra, footnote 6.

4/ McNair, "The Law of the Air", London (1964) at p. 46.

The (ICAO) Council on November 8, 1967 implemented a decision that all air cushion type vehicles such as "hovercraft" and ground effect machines should not be classified as aircraft.[5/] However, neither in the Chicago Convention, 1944, nor in the Paris Convention, 1919, is the definition of the term aircraft included in the Convention itself. It is included in Annexes thereto.[6/]

But this narrow definition of aircraft as used in the Annexes to the Paris and Chicago Conventions is not exclusive.

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5/ Annex 7 to the Chicago Convention "Aircraft Nationality and Registration Marks." Third Edition. (May 1969) at p. 3.

6/ The Council of ICAO is empowered in accordance with Articles 54, 39, and 90 of the Convention on International Civil Aviation, 1944, to adopt and amend from time to time international standards and recommended practices, to be designated as Annexes to the Chicago Convention, 1944, for the sake of convenience. The differences between the international standards and the recommended practices are that: (i) The uniform application of the contents of the international standards is reorganized as necessary for the safety or regularity of international air navigation, while the uniform application of the contents of the recommended practices is regarded as desirable in the interest of safety, regularity or efficiency of international air navigation, (ii) Under Article 38 of the Convention, 1944, contracting states are under an obligation to notify the council of ICAO of any differences between the national regulation or practices of a state and those established by an international standard. The Convention does not impose any obligation with regard to recommended practices; however, since the knowledge of differences from recommended practices may also be important for the safety of air navigation, the council of ICAO has invited contracting states to notify such differences.

Many countries 7/ in their municipal laws in the field of civil aviation have departed from the narrow conventional definition of aircraft and adopted a wider definition of the term to include any machine which derives its lift in flight independent of any aerodynamic forces. The wider definition of aircraft is consonant with the natural meaning of the word. The expression, 'aircraft', includes all machines designed for flight in the air, whether or not they can derive support from the reactions of the air. However, the narrow conventional definition of aircraft is more widely adopted.8/

## II. CLASSIFICATION OF AIRCRAFT

Following the narrow definition of aircraft as used in the Annexes to the Paris and Chicago Conventions, Annex 7

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7/ e.g. USA: Civil Aeronautics Act 1938 S. 1, 1(4): *"Aircraft means any contrivance now known or thereafter invented, used, or designed for navigation of or flight in the air";*
French Aerial Navigation Law of May 31, 1924, Art. 1: For the purpose of this Law, aircraft means vehicle which is able to rise or to fly in the air;
Canadian Aeronautical Act 1919 S. 6(1);
Dominican Civil Aerial Navigation Law 1949, Art. 3;
Egyptian Air Navigation Regulation 1935, Art. 1(2);
Guatemalan Civil Aviation Law 1949, Art. 9;
The Brazilian Air Code of 1939 (Art. 18) goes so far as to extend the meaning of "aircraft" to all machines capable of flight and navigation in space as such, i.e. both airspace and outerspace.

8/ Cf. Cheng, Bin "State Ships and State Aircraft" Vol. II (1958) C.L.P. at p. 227.

to the Chicago Convention, 1944,[9/] contains a table of general classification of aircraft which is composed of (i) lighter-than-air aircraft, and (ii) heavier-than-air aircraft.

(i) As to the first category, a lighter-than-air aircraft includes *"any machine which is supported chiefly by its buoyancy in the air"*.[10/] It can either be power driven such as an airship or non-power driven such as a balloon. The power driven airship can either be rigid or non-rigid.

On the other hand, there are two types of balloons, free and captive balloons. Both of them can either be spherical or non-spherical. However, if it is non-spherical, it is better designated as "a kite balloon".

(ii) Turning now to the second category of aircraft, namely, the heavier-than-air aircraft. It includes any machine which can derive its lift in flight chiefly from aerodynamic forces. As in the first category, a heavier-than-air aircraft can either be power driven or non-power driven.

A power driven heavier-than-air aircraft includes, firstly, the aeroplane which is *"any machine that can derive its lift in flight chiefly from aerodynamic reactions on surfaces which remain fixed under given conditions of flight"*.[11/]

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9/ Supra, footnote 5 at p. 8.

10/ Ibid.

11/ Ibid.

The aeroplane can either be a land plane or a ski plane, depending on whether it is equipped with ski-type landing gear or otherwise. The type of the landing gear of the aeroplane is also important to determine the category of the aeroplane, namely, whether it is a seaplane or amphibian.

Secondly, a power driven heavier-than-air aircraft includes also the rotorcraft, which is *"supported in flight by the reactions of the air on one or more rotors"*. The rotorcraft is either a 'gyroplane' or a helicopter. A gyroplane is a heavier-than-air aircraft supported in flight chiefly by the reactions of the air on one or more rotors which rotate freely on substantially vertical axes. The gyroplane can either be a land gyroplane or a ski gyroplane, depending on whether it is equipped with land-type or ski-type landing gear. There is also a sea gyroplane and an amphibian gyroplane.

The other type of the rotorcraft is the helicopter, which includes any machine which is heavier-than-air, supported in flight by the reactions of the air on one or more power driven rotors.[12/] A helicopter can either be a land helicopter or a ski helicopter, depending on the type of its landing gear. There is also a sea helicopter and an amphibian helicopter.

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12/ Ibid.

The third type of a power driven heavier-than-air aircraft is the ornithopter, which is supported in flight chiefly by the reactions of the air on planes to which a flapping motion is imparted.[13/] Like the aeroplane and the rotorcraft, the ornithopter can be a land, ski, sea, or an amphibian ornithopter. It all depends on the type of its landing gear.

## III. STATE AIRCRAFT AND CIVIL AIRCRAFT

Aircraft is either a state aircraft or a civil aircraft. Article (3) (b) of the Chicago Convention, 1944, provides, that *"aircraft used in military, customs, and police services shall be deemed to be state aircraft"*. Whether the Conventional definition of state aircraft is intended to be exhaustive or not is controversial. Some writers [14/] doubt very much that it is intended to be exhaustive. They find support from the Air Transport Committee of the International Civil Aviation Organization (ICAO), which, in its classification of International Civil Aircraft Operations, seemed to consider all government owned and operated aircraft as state aircraft.[15/] However, if we consider the corresponding provisions in the 1919 Paris Convention on the Regulation of Aerial Navigation (Article 30), the corresponding provisions in

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13/ Ibid.

14/ Bin Cheng, "High Altitude Flights", Vol. 6 (1957) Int. & Comp. LQ at p. 495.

15/ ICAO Doc. 6895-AT/695-26/8/1949.

the Chicago interim agreement on International Civil Aviation, 1944, (Article viii, Section 3), and two multilateral agreements concluded under the auspices of the International Civil Aviation Organization, namely the 1948 Geneva Convention on Rights in Aircraft, (Article III) and the 1952 Rome Convention on Surface Damage (Article 26), it would appear that any aircraft engaged in military, customs and police services is to be considered state aircraft. Other aircraft, even though owned or operated by the state, are not considered state aircraft, within the meaning of the Chicago Convention, 1944. Furthermore, Article 79 of the Chicago Convention clearly envisaged the operation of air-services by states, whether directly through their governments or indirectly through wholly state-owned or partly state-owned companies.16/

All aircraft which do not fall within the above Conventional definition of state aircraft are regarded as civil aircraft. The distinction between the two is very important indeed. For the Regime established by the Chicago Convention on International Civil Aviation, 1944, is applicable only to civil aircraft. Article 3(a) of the Convention provides that: the *"Convention shall be applicable only to civil aircraft"*. Consequently, all the privileges and obligations 17/ established by the Chicago Convention are respectively granted and imposed

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16/ Supra, footnote 8 at p. 233.

17/ Infra, Part III, p. 23.

vis-à-vis civil aircraft, in contrast to state aircraft. Not only this but state aircraft of contracting states are expressly denied the right *"to fly over the territory of another state or land"*, unless they have authorization, and in accordance with the terms of the authorization.18/

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18/ Article 3(c) of the Chicago Convention, 1944. There is no consensus among states on the treatment to be accorded to state aircraft which enter the airspace of a foreign state without prior authorization. However, the fear of states to protect their territorial security from intruding state aircraft has lead to tragic aerial incidents. See, Johnson, D.H.N., "Rights in Airspace", Manchester, 1965, p. 74. Lissitzyn O.J., "The Treatment of Aerial Intrusions in Recent Practice and International Law", (1953) 47 AJ. I.L. p. 559.

*PART TWO*

## HISTORY OF NATIONALITY OF AIRCRAFT

### I. PERIOD PRIOR TO THE PARIS CONVENTION OF 1919

*A. OPINIONS of JURISTS*

One of the fundamental principles of the Chicago Convention, 1944, is nationality of aircraft. It is the means by which the Convention attaches most of the rights and obligations that it creates to aircraft and the state of registry, irrespective of who owns or operates the aircraft. Yet the rules of the Convention on nationality and registration of aircraft can give rise to many problems when an aircraft is leased, chartered or interchanged. In order to understand the problems arising out of the cooperative arrangements of aircraft, it is necessary to touch upon the principle of nationality of aircraft.

The origin of the principle, that a "vessel" should possess a nationality linking it to a given state, which is somewhat similar to the relationship of an individual who owes allegiance to his state,[1/] can be traced back to the early days of customary international law. The rationale of a "vessel's" nationality in maritime law is that, *"nationality will provide the basis for the intervention and protection by a state"*, and

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1/ Nationality has been defined as *"the status of a natural person who is attached to a state by the tie of allegiance"*. Harvard Research in International Law - Nationality, (1929), Vol. 23, American Journal of International Law, Supplement, pp. 13, 22.

*"it is also a protection for other states for the redress of wrongs committed by those on board against their nationals."*[2/] This attribute of nationality, namely, the right of the flag state to protect her vessels against any abuse which they might suffer from vessels of other states, and the right to control and guarantee the conduct of her vessels, had lead to the peaceful utilization of the high seas.[3/] In the absence of sovereignty over the high seas, chaos might result if the fact of nationality of vessels had not been accepted by states into maritime law.[4/]

By analogy to maritime law, the first definite statement that aircraft should have a nationality like that of vessels seemed to have been made by Fauchille in 1901.[5/]

In his report to the Institute of International Law in 1902 Fauchille proposed among other things that: *"aircraft are of two categories - public and private; that aircraft may carry only the flag of the state to which they belong - private aircraft belong to the state where they have been registered on an official register kept for that purpose, such registration being based on*

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2/ Alexander Pearce Higgins and C. John Colombos, The International Law of the Sea. (London, 1953), p. 189.

3/ Cooper, J.C. "A study on the legal status of aircraft". In Exploration in Aerospace Law, ed. by I.A. Vlasic (Montreal, 1968), p. 205.

4/ Ibid., p. 207.

5/ Ibid., p. 217.

*the nationality of the owner, the commander, and three-quarters of the crew."* 6/

He also proposed that the air is free and he acknowledged that states ought to have certain rights of self-preservation. This, in itself, distinguished between national and foreign aircraft on the basis of nationality. Furthermore, nationality will be required, as in maritime law, to provide a national protector and guarantor in international law for the conduct of aircraft of a given state, both over national territory and over the high seas.7/

Although Fauchille's proposals to the Institute of International Law were never acted upon (1902), his views on applying the principle of nationality to aircraft, as it had long been applied to vessels, soon began to receive wide acceptance.8/ However, no formal action was taken by any international body until 1910.

*B. COMITE JURIDIQUE INTERNATIONAL de L'AVIATION*

It seems that the first international action by a non-official meeting on nationality of aircraft was taken by

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6/ Ibid., p. 218.

7/ Ibid., p. 281.

8/ Among the writers who had accepted Fauchille's views on nationality of aircraft, Cooper J.C., op. cit., at p. 218, mentions (i) Merignac in 1903, (ii) Hilty in 1905, who *"discussed the control of the entry of foreign state balloons into the airspace over another state"*, (iii) Von Groté in 1907, who held that *"airships should have nationality like vessels and be regarded as portions of their same territory"*, (iv) Meyer in 1908, who held that

the *"Comité Juridique International de l'Aviation"* 9/ in the *"Code de l'Air"* drafted by the Committee in January 1910. The second chapter was devoted to home ports and nationality of aircraft. It provided among other things that aircraft were to be registered and have a nationality.

During its first meeting at Paris in the following year (1911), the Comité Juridique accepted the principle of nationality of aircraft. But it did not accept dual nationality of aircraft. The aircraft would have the same nationality as its owner, who must have it registered in the public register.10/

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*"each airship must have nationality"*, (v) Meilia in the same year, who was of opinion that, the airworthiness of an airship must be determined by its state, (vi) Daus, who declared that, *"an aircraft flying above the high seas must be regarded as part of the territory of its country of origin"*, (vii) Grunwald in 1908, who was of the opinion that, *"state airships, like state vessels were to be regarded as portions of their respective states"*, (viii) Kuhn, who suggested a system of governmental inspection for aircraft *"like that now prevailing over ships of the sea"*, together with registration of all aircraft in a particular locality and *"a nationality symbolized in the carrying of the flag"*, (ix) Zitelmann in 1909, who held that *"airships flying above the open sea should be treated as portions of their respective states when provision was made for them legally to have nationality and carry the national flag"*, (x) Meuver, who stated that the airworthiness of airships must be officially established, that each airship should have a name and a number and be entered upon a public register, that a certificate of registration should be issued, and thereafter the airship should carry the flag of its state. Cooper J.C., op. cit., pp. 217-220.

9/ Honig, J.P., "The legal status of aircraft", p. 43, (The Hague, 1956).

10/ Ibid., p. 43.

*C. INSTITUTE OF INTERNATIONAL LAW*

At the meeting of the *"Institut de Droit International"* held in Paris in March, 1910, Fauchille submitted a report on the legal status of aircraft to be considered by the Institute. He states that every aircraft should have a nationality, the nationality of the aircraft should be determined by the nationality of its owner and each aircraft ought to be registered on a register kept by the state, to which the aircraft belongs, or by the state, in which the owner of the aircraft is domiciled.

During the same session of the Institute, Von Bar 11/ submitted a proposal to the effect that aircraft must be considered as forming part of the state in which they were registered so long as they were in flight. The Institute decided to submit those proposals to the diplomatic conference already arranged by the French government to convene in 1909, but which was postponed until May of 1910.

*D. THE INTERNATIONAL CONGRESS OF LEGAL EXPERTS (VERONA, 1910)*

The Congress was held on May 31, 1910 to consider questions concerning the regulation of air navigation. Among the topics considered by the Congress was the ownership of the aircraft. It was agreed that aircraft ought to have nationality.

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11/ Cooper J.C., op. cit., p. 222.

The conditions for granting nationality must be unified in all states, namely, the aircraft should have the nationality of their owner, and the aircraft ought to be registered in a public register.

*E. INTERNATIONAL AIR NAVIGATION CONFERENCE (PARIS, 1910)*

The first diplomatic conference on air navigation met in Paris from May 18, 1910 to June 29, 1910. But the Conference failed to agree on the final terms of an international convention. However, it is unfair to underestimate the role of the Paris Conference of 1910 on the subsequent development of air law. For, in spite of its failure to reach an agreement,[12/] the discussion of the Conference had laid the foundations for what became later the basic principles of air law.

One of these principles is *"nationality of aircraft"*. In a draft for an international agreement drawn up at the Conference, the first chapter was devoted to the nationality and registration of aircraft. Article two of the draft agreement stated that this only applied to aircraft possessing the nationality of contracting states.

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12/ *"The Paris Conference of 1910 was the first attempt to secure international agreement. It was attended by eighteen European nations. A treaty was actually drafted, but the Conference divided mainly over the question of territorial sovereignty, was unable to agree on its adoption and was adjourned without reaching agreement."* Jennings, R.Y. "International Civil Aviation and the Law", (1945) 22 British Yearbook of International Law, pp. 191-192.

Article three provided that the nationality of the aircraft should be based on the nationality of its owner, this being determined in accordance with the national laws of each state.13/

Article four provides that once an aircraft possesses the nationality of a state, it cannot acquire the nationality of another state. This is similar to what became known under the Chicago Convention as dual registration, which is also prohibited by the Convention.14/

It is noteworthy that, during the 1910 Conference, there was no consensus among delegates on nationality of aircraft. The delegations of Switzerland and the Netherlands had proposed that aircraft should be treated the same way as motorcars; consequently, they need only identification.15/ But the majority of the states present felt that aircraft should be attached to a particular state, which would be responsible for it to other states, and that the aircraft itself should be entitled to the protection of such a state. It was recognized that this guarantor and protector relationship between the state and the aircraft is similar to the relationship existing between a vessel and the state, whose flag it carries, which clothes the vessel, as far as public law is concerned, with a legal quality called *"nationality"*.

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13/ Honig, J.P., op. cit., p. 43.

14/ Infra, Part III.

15/ In counter argument to the view that *"aircraft should be treated the same way as motorcars and what they need is only identification"*, see the passage quoted from Jennings, op. cit., infra, p. 20.

In private law, the position is somewhat different. It was made clear at the conference that the flag state of the aircraft would not thereby be responsible in private law for damages caused by force majeure, fault or negligence of the aviator, nor would the national character of aircraft adversely affect the solution of conflict of laws and jurisdiction which air navigation might have in civil and penal matters.16/

However, the soundness of the principle of nationality of aircraft, which indicates in public law the responsibility of the flag state to other states for the conduct of the aircraft in question and the right of such aircraft to international protection by the flag state, is evidenced by the rapid acceptance which it acquired after the Paris Conference of 1910,17/ until it was formally incorporated into the Paris Convention on the Regulation of Aerial Navigation of 1919.

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16/ Cooper, J.C., op. cit., p. 224.

17/ Cooper observed that in 1911, the first British Aerial Navigation Act (1 & 2 Geo 5) the power to classify and differentiate between national and foreign aircraft was implicit in the Act, which implies that the Act accepted the principle of nationality of aircraft. He also cited a decree signed by the President of France on November 21, 1911, which was also an implicit recognition of the principle of nationality of aircraft.
Cooper, J.C., op. cit., p. 226.

## II. THE PARIS CONVENTION ON THE REGULATION OF AERIAL NAVIGATION 1919

After the signature of the armistice in 1918, which ended the hostilities of the first world war, the Paris Conference set up an Aeronautical Commission which produced the *"Convention for the Regulation of Aerial Navigation"*, signed at Paris on October 13, 1911 by the representatives of twenty-six allied and associated governments.[18/] The Convention, however, did not become universal since it has been ratified only by thirty-three states, and the United States, the USSR, Germany, China, Brazil, Hungary, Turkey, and several smaller states never acceded to it. Yet the convention was a great step forward; it enunciated the general principles of international air law. Among these principles is *"nationality of aircraft"*. The Convention did not recognize any category of aircraft other than the national aircraft of a contracting state.

Consequently, the enjoyment of the privileges secured in the Convention is not conferred upon aircraft in general, but granted exclusively to *"the aircraft of contracting states"*. The Convention was clear on the principles governing the legal nexus between aircraft and a contracting state. Article 6 of the

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18/ The following states were parties to the Convention: Argentina, Australia, Belgium, Bulgaria, Canada, Czechoslovakia, Denmark, Eive, Estonia, Finland, France, Great Britain, Greece, India, Iraq, Italy, Japan, Latvia, Netherlands, New Zealand, Norway, Paraguay, Peru, Poland, Portugal, Rumania, Spain, Sweden, Switzerland, Thailand, Union of South Africa, Uruguay and Yugoslavia, Paraguay adhered in 1940.

Convention provides that *"Aircraft possess the nationality of the state on the register of which they are entered."*[19/] Article 7 also provides that the conditions for the registration of aircraft in a state are exclusively within the competence of the municipal law of that state.[20/] Article 8 provides that an aircraft cannot be registered in more than one state [21/] and finally Article 10, which requires from every aircraft engaged in international aviation must bear the appropriate nationality and registration marks.[22/]

It has sometimes been suggested [23/] that the concept of nationality is *"an unnecessary intrusion into air law"*, for mere registration divorced from the narrow requirements of nationality is sufficient for all administrative purposes, and an aircraft which finds itself in a state other than its state of registration is no more in need of the trappings of nationality than a motorcar is.[24/]

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19/ See Article 17 of the Chicago Convention, infra, part III, p. 21.

20/ See Article 19 of the Chicago Convention, infra, part III, p. 21.

21/ See Article 18 of the Chicago Convention, infra, part III, p. 21.

22/ See Article 20 of the Chicago Convention, infra, part III, p. 21 . Machinery is also provided for the publication of registration, see Article 9 of the Paris Convention and Article 21 of the Chicago Convention.

23/ See, supra, footnote 15.

24/ This view was first expressed by the delegates of Switzerland and the Netherlands in the 1910 Conference. See Honig, J.P., op. cit., at p. 43.

In reply to these views, a passage from an article by Professor Jennings, in the British Yearbook of International Law may be cited. He observed:

> *"the rules governing the nationality of aircraft are in accordance with realities. Aircraft are not analogous to motorcars, for the reason that air transport is regarded by states as an instrument of national policy. The confinement of nationality on aircraft is a claim to control and jurisdiction over them wherever they may be and this claim cannot be disposed of merely by pointing out that states do not make equally extensive claims over their registered motorcars, the point is that they do make the claim over their registered aircraft, and the claim embraces, economic, political and financial considerations of the highest importance. It is idle to suppose that a concept as powerful as nationality can be disposed of merely by demonstrating that the conventions could be more conveniently administered without it."* 25/

It is because of these considerations that the subsequent conventions on air law followed the pattern laid down by the Paris Convention of 1919 in recognizing only one category of aircraft, namely, aircraft registered in a contracting state. Thus the Havana Convention of 1928 followed the same principle by providing in Article 7 that *"Aircraft shall have the nationality of the state in which they are registered and cannot be validly registered in more than one state."*

It has been submitted that 26/ by the time when aircraft became the primary international carriers across the Atlantic and

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25/ Jennings, R.Y., op.cit., at p. 297.

26/ Cooper, J.C., op. cit., p. 237.

Pacific oceans with the outbreak of World War II, the principle of nationality of aircraft was accepted into customary international law as the nationality of merchant vessels had been in the past.

The protective jurisdiction of the flag state and the responsibility of that state for the conduct of its aircraft were fully recognized whether the state of the flag of the aircraft was or was not a party to the Paris Convention of 1919 or the Havana Convention of 1928.

Thus, when the Paris Convention of 1919, the Havana Convention of 1928, and the Chicago Convention of 1944 provide that *"aircraft have the nationality of the state in which they are registered"*, they merely purported to be declaratory of a principle of customary international law.

*PART THREE*

## THE CHICAGO CONVENTION AND NATIONALITY OF AIRCRAFT

The Chicago Convention, 1944, following the pattern laid down in the Paris Convention, 1919, did not recognize any category of aircraft other than the national aircraft of a contracting state. Both Conventions agree on the principles governing the legal relationship between aircraft and a contracting state. Article 20 of the Chicago Convention imperatively provides: *"every aircraft engaged in international air navigation, shall bear its appropriate nationality and registration marks".*[1/] This certainly

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1/ See Article 10 of the Paris Convention. Both Conventions provide machinery for the publication of information concerning the registration and ownership of aircraft registered in a particular state. See Article 9 of the Paris Convention and Article 21 of the Chicago Convention which provides: *"Each contracting state undertakes to supply to any other contracting state or to the International Civil Aviation Organization, on demand, information concerning the registration and ownership of any particular aircraft registered in that state. In addition, each contracting state shall furnish reports to the International Civil Aviation Organization. Under such regulations as the latter may prescribe, giving such pertinent data as can be made available concerning the ownership and control of aircraft registered in that state and habitually engaged in international air navigation. The data thus obtained by the International Civil Aviation Organization shall be made available by it on request to the other contracting state."*

refers back to Articles 17 [2] and 18 [3] under which *"aircraft have the nationality of the state in which they are registered"*, and *"cannot be validly registered in more than one state, but its registration may be changed from one state to another"*. Article 19 of the Chicago Convention which is derived from Article 7 of the Paris Convention, 1919, left the conditions for the registration and transfer of registration of aircraft in a state to be determined by the municipal laws and regulations of that state. It is noteworthy that originally Article 7 of the Paris Convention provided that no aircraft could be entered on the register of a contracting state unless it belonged wholly to nationals of that state or to a national company of which the president and chairman and not less than two-thirds of the directors were nationals of that state. The purpose of the draft, in the opinion of Jennings [4], is to prevent Germany from *"regaining a foothold in international civil aviation by operating through aircraft registered in another state"*. However, largely on German insistence the Article was amended by a protocol in 1929 which left it to the discretion of each state to determine in accordance with its municipal laws to what persons and under what conditions it would accord the right of registration.

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2/ Article 6 of the Paris Convention, 1919.

3/ Article 8 of the Paris Convention, 1919.

4/ Jennings, R.Y., "International Civil Aviation and the Law", 22 British Yearbook of International Law.

The drafters of the Chicago Convention, 1944, were well aware of the importance [5/] of the principle of nationality and registration of aircraft not only as the basis for the intervention and protection by a state, but for the administration of the Convention. Most of the rights exchanged under the Chicago Convention, 1944, including the rights of non-scheduled flights under Article 5 are in regard to aircraft registered in the contracting states. In addition, a number of obligations in the Convention are moored to the nationality of aircraft. Consequently, if aircraft are to come under the terms of the Convention, there must be some machinery for identification. The principle of nationality and registration of aircraft provide such machinery. It is, however, essential to touch upon the rights and obligations as exchanged in the Chicago Convention, 1944.

## I. PRIVILEGES EXCHANGED

### *A. RIGHT TO FLY*

In regard to the right to fly, the Chicago Convention, 1944, draws a rigid distinction between scheduled international air services (Article 6), and non-scheduled flights (Article 5).

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5/ Among other things, aircraft is part of national defence potentialities. See the discussion on air power: Cooper, J.C., "Notes on Air Power in Time of Peace", in "Exploration in Aerospace Law", ed. I.A. Vlasic (Montreal, 1968) p. 17. Also carrying the national flag abroad adds to the prestige of the country. Furthermore, the operation of aircraft embraces economic, political, and financial considerations of the highest importance.

While broad rights of entry and transit are exchanged among the contracting states in regard to non-scheduled flights, scheduled international air services may not be *"operated over, or into the territory of a contracting state, except with the special permission or other authorization of that state"*.

The restrictions in regard to scheduled international air services are due to the fact that, at the time of the Chicago Conference, scheduled operations were seen as having a great impact on sovereignty and commerce, hence requiring detailed agreements between the states concerned. In contrast, non-scheduled flights which at that time include, single entity charters, ambulance and taxi services were not seen as having similar significance with the result that they enjoyed relatively broader privileges than scheduled international air services.

However, the Chicago Convention, 1944, although it distinguished between the rights to be accorded to scheduled international air services (Article 6) and non-scheduled flights (Article 5), does not provide a definition of what constitutes a scheduled international air service under the Convention. By 1948 the Assembly of ICAO had recognized the need for a definition in Resolution A2-18 and A4-15. On March 28, 1958, the Council of ICAO, guided by these resolutions, adopted the following

definition with additional explanatory "Notes" for the guidance of member states.[6/]

> *"A scheduled international air service is a series of flights that possess all the following characteristics:*
>
> *a) it passes through the air space 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) in accordance with a published timetable, or*
>
> *(ii) with flights so regular or frequent that they constitute a recognizable systematic series."*

On the other hand, non-scheduled flights have grown to an extent which was not originally envisaged by the Convention [7/], and in some market areas, namely, the North Atlantic [8/] they have developed to a regular pattern of operations, with many of the characteristics of scheduled international air services, which

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6/ ICAO DOC. 7278-C1841, 10/5/52, p. 3.

7/ *"Non-scheduled services are now operated by scheduled airlines, charter affiliates of these airlines and supplemental airlines. There are approximately 400 airlines of 134 ICAO Contracting States operating such services. Between 1964 and 1975 it is estimated that passenger kilometers flown on these services increased five-fold. On an international basis these operations now account for some 22% of total international air traffic."* ICAO DOC. SATC-WP/5 10/1/77, p. 4.

8/ Ibid., p. 4.

could easily be encompassed by the ICAO Council's definition of scheduled international air services. But in practice the definition itself has not been widely accepted. In fact the usefulness of attempting to distinguish between scheduled and non-scheduled operations has been questioned.9/

*Non-scheduled flights*

In regard to non-scheduled flights, the Chicago Convention, 1944, distinguishes between

(i) aircraft of contracting states not engaged in the carriage of passengers, cargo or mail for remuneration 10/ or hire and

(ii) aircraft of contracting states engaged in the carriage of passengers, cargo or mail for remuneration or hire.

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9/ *"To many people who have worked all their lives in the air transport industry, the dichotomy between 'scheduled' and 'non-scheduled' services is one of the basic characteristics of airline operations, and one which does not need to be questioned. To those of us who have been making an ab initio approach to the problems of the airline industry (and indeed to some people in the industry), the validity and usefulness of the distinction between scheduled and non-scheduled operations are not so apparent. We would go further than this and say that many of the problems of the industry in recent years have been aggravated by the confusions caused by this particular distinction and by the failure to recognize that a more significant distinction in the old terms."* British Air Transport in the Seventies. Report of the Committee of Inquiry into Civil Air Transport (London, 1969), p. 55.

10/ The word "remuneration" has been defined by the Council of ICAO to mean any kind of *"remuneration, whether monetary or other, which the operator receives from someone else for the act of transportation"*. ICAO, Definition of a Scheduled International Air Service. Supra, footnote 6.

As to the first category, Article 5 paragraph 1 of the Chicago Convention provides:

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

In contra-distinction to scheduled international air services, Article 5 of the Chicago Convention, 1944, grants aircraft of contracting states, engaged in non-scheduled flights broad privileges without reference to the nationalities of their owners or operators. And if they are not engaged in the carriage of passengers, cargo, or mail for remuneration or hire, they have,

(i) the right to enter and make a final stop for non-traffic purposes. Article 96 of the Chicago Convention defines *"a stop for non-traffic purposes"* as *"a landing for any purpose other than taking on or discharging passengers, cargo or mail"*. In the opinion of the ICAO Council, *"a stop for non-traffic purposes should not be regarded as a traffic stop by reason of the temporary*

*unloading of passengers, mail or goods in transit, if the stop is made for reasons of technical necessity or convenience of operation of the flight".*[11/]

(ii) Right to enter and fly over non-stop.

(iii) Right to enter, fly over and stop for non-traffic purposes on a transit flight. Similarly, according to ICAO Council, this right includes ~~that of taking on or~~ discharging passengers, cargo or mail not carried for remuneration or hire.

The essence of these rights is that, they may be exercised by aircraft of contracting states *"without the necessity of obtaining prior permission"*. Subject of course to the right of the state flown over, under Article 5 of the Chicago Convention, for reasons of flight safety to require aircraft desiring to proceed over regions which are inaccessible or without adequate air navigation facilities to follow prescribed routes or to obtain special permission for such flights. The reason for this exception to the right to fly without prior permission is that, *"a state would not be obliged to undertake search and rescue as a consequence of the irresponsibility of an operator which could entail very high cost".*[12/]

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11/ Ibid., p. 9

12/ Goedhuis, "Problems of Public International Air Law", 81 Recueil La Haye (1952) 205, at p. 203.

Apart from this exception, which was deemed necessary for reasons of safety in air navigation, the principle of the right to fly without prior authorization as laid down in Article 5 paragraph 1 is maintained. As the ICAO Council has stated:

> *"This provision means that generally aircraft are entitled to operate on flights of the type described ... without applying for a permit that may be granted or refused at the election of the state to be entered. Indeed, no instrument designated a 'permit' should normally be required, even if it were automatically forthcoming upon application. Advance notice of intended arrival for traffic control, public health and similar purposes could, however, be required."* 13/

In a questionnaire 14/ dispatched by the Secretariat of ICAO to contracting states on January 26, 1976, on the policy concerning international non-scheduled air transport, in preparation for the special air transport conference (April, 1977), the replies of some 52 countries seem to indicate that: the policy of most states concerning foreign non-scheduled flights not engaged in the carriage of passengers, cargo or mail for remuneration are generally in line with Article 5 paragraph 1, of the Chicago Convention, 15/ where no prior permission is required. However, the majority of states follow the guidance of the ICAO Council to member states on this matter by requiring advance notice for air traffic control, immigration, customs and public health purposes. This is usually done by the filing of a flight

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13/ ICAO Doc. 7278-C/841 footnote 6, at p. 9.

14/ ICAO-Special Air Transport Conference, (Montreal, April, 1977) Information Paper No. 2, p. 29.

15/ Ibid., p. 17.

plan. The period of prior notification varies from state to state, the most common being 24 hours. It is worth mentioning that these rights are usually granted subject to the conditions of reciprocity and compliance with air navigation rules and procedures, which is envisaged by Article 5 paragraph 1 of the Chicago Convention, 1944. In certain cases, it is also mandatory to carry adequate insurance against third party damage.16/

In view of the fact that only 52 states out of the 138 contracting states have responded to the ICAO questionnaire, the answers to the questionnaire should not be considered as reflecting the practice of all states in this matter. A good number of states require prior permission, due mainly to safety or security considerations.17/

As to aircraft engaged in the carriage of passengers, cargo or mail for remuneration or hire, Article 5 paragraph 2 of the Chicago Convention, 1944, provides:

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

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16/ Ibid., p. 17.

17/ Egypt, Finland, Libya, Nicaragua, Philippines, Turkey and United Kingdom in respect of Gibraltar. See Bin Cheng, "The Law of International Air Transport", (London, 1962), at p. 195 note 15.

The main controversy relating to Article 5 paragraph 2 of the Chicago Convention, 1944, is whether aircraft of contracting states engaged in non-scheduled carriage of passengers, cargo, or mail for remuneration or hire are entitled to exercise the right to fly *"without the necessity of obtaining prior permission of the state flown over"*. In 1949, the ICAO Council instructed the Secretariat to make an analysis of Article 5,[18] possibly in an attempt to resolve the controversy.

In its analysis the Secretariat was of opinion that the enjoyment of the privileges provided for in the second paragraph of Article 5 as well as the right in the first paragraph of the same article is not subject to prior permission. The Secretariat in its interpretation of Article 5 did not exclude the possibility of prior permission being required since it is envisaged by the second paragraph of Article 5. However, it concluded that the intention of those who drafted and adopted Article 5 of the Chicago Convention, 1944, was to grant aircraft of contracting states not engaged in scheduled international air services the right to fly without the necessity of obtaining prior permission.

In support of the views of the Secretariat, Professor Goedhuis [19] mentions the following arguments:

> *"a) In the opening words of the second paragraph it is stated that the aircraft as envisaged in the second para-*

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18/ ICAO-Doc. 6894, AT/694, 26/8/49.

19/ Op. cit., footnote 12, at p. 264.

*graph have first the right to enter, or to fly over the territory of another contracting state without landing and to land for non-traffic purposes, without the necessity of prior permission and have in addition the right, under certain conditions of effecting commercial transport.*

b) *The close relation between the two paragraphs suggest that the same type of freedom of operations is envisaged in both cases, any differences being explicitly specified if it had been intended that the second paragraph should differ from the first in so important an issue, this would have been formulated.*

c) *The obtaining of prior permission is the condition laid down in Article 6 for scheduled air services. There would be little point in distinguishing between scheduled and non-scheduled services, if permission were required for the commercial operation of both types of air services.*

d) *If it had been the intention that prior permission was to be required for each exercise of this privilege, it would have been unnecessary to spell out the reservations relating to cabotage (Article 7), or the regulations, conditions or limitations, such reservations suggest precautions which the states felt they might need against the abuse of free operation of non-scheduled air transport. Aircraft that have to obtain prior permission for such flight need no such precautions.*

e) *A privilege to do something that would in general be subject to prior permission in each instance would be scarcely worth formal declaration in an international convention. On the other hand, a situation where some states required prior permission and others did not, would be highly inequitable."*

However, when the matter was taken to the ICAO Air Transport Committee, the majority of the committee did not agree with the conclusion of the Secretariat that the enjoyment of the right envisaged in the second paragraph of Article 5 was not subject to prior permission. The Secretariat was instructed to reconsider the analysis in the light of the decisions of the committee. In the opinion of the Air Transport Committee and in that of the ICAO Council as expressed in its analysis of Article 5, *"the regulations, conditions, or limitations"* which a state may impose under the proviso in the second paragraph of Article 5 include also the requirement of prior permission, even though the right to make such regulations should not be exercised in such a way to render the operation of this important form of air transport impossible or non-effective.20/

Here, the practice of states in this matter is not uniform. According to the Secretariat of ICAO 21/, the national policies with respect to aircraft of contracting states engaged in non-scheduled carriage of passengers, cargo, or mail for remuneration or hire takes a variety of forms ranging from complete freedom to different forms of restrictions.

As to freedom of admission, at least one state (the Netherlands) grants aircraft of all contracting states

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20/ ICAO-Doc. 7278-C/841 (May 10, 1952), p. 12.

21/ ICAO-Special Air Transport Conference, (Montreal, April 1977), Supra, footnote 14 at p. 17.

engaged in non-scheduled flights, whether or not for remuneration or hire, the right to enter without the necessity of obtaining prior permission if such flights are:

> (a) Flights for the purpose of meeting humanitarian or emergency needs;
>
> (b) Taxi-class passenger flights of occasional character on request, provided that the aircraft does not have a seating capacity of more than six passengers and provided that the destination is chosen by the hirer or hirers and no part of the capacity of the aircraft is resold to the public;
>
> (c) Flights on which the entire space is hired by a single person (individual, firm, corporation or institution) for the carriage of his or its staff or merchandise, provided that no part of such space is resold;
>
> (d) Flights for freight transport, provided the opportunity to transport freight for remuneration is not advertised or otherwise publicized.[22/] However, the Netherlands required prior notification of intended arrival for traffic control, public health and similar purposes.

Freedom of admission is also achieved by a multilateral agreement, the Multilateral Agreement on Commercial Rights of Non-Scheduled Air Services in Europe which was opened for signature in Paris on April 30, 1956,[23/] and came into force on July 23, 1957.[24/]

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22/ Ibid., p. 20.

23/ ICAO-Doc. 7695 (1956).

24/ Article 7.

The agreement stemmed from a resolution adopted on March 19, 1953 by the Committee of Ministers of the Council of Europe for Close Co-operation in Commercial Air Transport among European Airlines and European Governments. This step led eventually to the conference on Co-ordination of Air Transport in Europe which met at Strasbourg in 1954. In its report 25/, the Conference was of opinion that *"non-scheduled commercial air services could be allowed freedom of operations, within Europe without prior permission from governments, if such service did not compete with established scheduled services"*. The preamble to the agreement also noted that non-scheduled commercial flights within Europe which did not form scheduled services should be freely admitted.

The non-scheduled flights specifically referred to in the agreement include,

(i) flights performed for humanitarian and emergency purposes,

(ii) taxi-class passenger flights,

(iii) flights on which the entire space is hired by a single person for the carriage of his or its staff or merchandise, and

(iv) single flights not exceeding one per month per operator between the same centres of traffic.

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25/ See Report of ECAC First Session: ECAC/Doc. 7676/ ECACA/1 (1956), p. 13.

Full commercial rights were accorded to such flights without the imposition of the regulations, conditions or limitations mentioned in Article 5 of the Chicago Convention, 1944, provided certain conditions were met. The same rights were accorded to aircraft engaged in the transport of passengers between regions which have no reasonably direct connections by scheduled services. In 1964, ECAC adopted a recommendation 26/ to include affinity group and student flights among the categories of non-scheduled flights which are not subject to prior permission. The final step by which all non-scheduled flights within Europe enjoyed the right to fly without prior permission was taken in 1976 when ECAC adopted a recommendation 27/ superseding that of 1964 to the effect that all non-scheduled flights within Europe should be subject only to prior notification, and that whenever the requirement for full information or for prior authorization is maintained, natural local procedures should be as expeditious as possible, and that states should deal at all times with applications in a liberal spirit.

The trend for the liberalization of the national regulations of non-scheduled flights should be welcomed, because, from the economic standpoint, non-scheduled air transport cannot

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26/ Recommendation No. 2 of the Fifth Session of ECAC, (1944).

27/ Recommendation No. 6 of the Ninth Session of ECAC, (June, 1976).

function properly under the imposition of the requirement of prior permission. It has to be able, for one thing, to react immediately to the demand for transport.

But, in order to ensure that non-scheduled commercial air services do not impair the profitability and efficiency of scheduled air services, states insist upon prior permission. The minimum period required for the application for prior permission varies from state to state, and many range from two to sixty days before the flight. In most cases requests are to be forwarded directly to the aeronautical authorities concerned, but in some instances requests have to be made through diplomatic channels. Documentary proof of a carrier's authority to operate is generally required and some states stipulate that the applicant must be one of the qualified foreign carriers approved to perform non-scheduled flights. This is generally the case among ECAC-member states and Canada. In the United States foreign carriers must first obtain an operating permit.[28/]

Before a permit to operate is granted, states require a certain amount of information concerning a proposed flight. A recommended practice [29/] has developed by which contracting states

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28/ See ICAO Special Air Transport Conference, (Montreal, April 1977), op. cit., p. 18.

29/ Annex 9, to the Chicago Convention, 1944, Facilitation, paragraph 2.3.2.1.

should not require more than the following details in the applications for entry and departure of aircraft engaged in commercial transport on non-scheduled international services:

> *"i) name of operator;*
>
> *ii) type of aircraft and registration marks;*
>
> *iii) date and time of arrival at, and departure from, the airport concerned;*
>
> *iv) place or places of embarkation or disembarkation abroad, as the case may be, of passengers and/or freight;*
>
> *v) purpose of flight and number of passengers and/or nature and amount of freight;*
>
> *vi) name, address and business of charterer, if any."*

In addition, some states require proof of insurance against third party damage.

*SCHEDULED INTERNATIONAL AIR SERVICES*

In contrast to the broad privileges which are granted to all aircraft of contracting states engaged in non-scheduled flights, whether private or commercial, there is a general prohibition in regard to scheduled air services. Article 6 of the Chicago Convention, 1944, expressly provides:

> *"No scheduled international air service may be operated over or into the territory of a contracting state, except with the special permission or other authorization of that state ..."*

In view of this general prohibition, states have concluded sets of bilateral agreements in which they granted certain rights (similar to those granted by Article 5 of the Chicago Convention to non-scheduled flights) to *"designated airlines"*. Such agreements generally provide that, states have the right to withold or revoke a certificate or permit to such designated airlines of the other states in cases where they are not satisfied that the substantial ownership and effective control are vested in nationals of contracting states. Thus, under the Chicago Convention, 1944, non-scheduled flights by aircraft of contracting states enjoy the right to fly without reference to the nationality of their owners or operators. While under bilateral agreements scheduled international air services will not enjoy these rights unless they are substantially owned by nationals of the contracting states.

Apart from the right to fly, the distinction between scheduled and non-scheduled flights does not really matter for the privileges exchanged under the Convention are in regard to aircraft registered in a contracting state whether or not it is engaged in scheduled or non-scheduled flights.

*B. THE EXCLUSIVE RIGHT TO CABOTAGE TRAFFIC*

Among the rights exchanged between the contracting states to the Chicago Convention, 1944, is the right of each state under Article 7 *"to refuse permission to the aircraft of other contracting states to take on in its territory passengers, mail and cargo*

*carried for remuneration or hire and destinated for another point within its territory".* The same article stipulates that, *"Each contracting state undertakes not to enter into any arrangements which specifically grant any such privilege on an exclusive basis to any other state, and not to obtain any such exclusive privilege from any other state."* 30/ This right is referred to in the Convention as "cabotage". The term "cabotage" is an old term used in the International Law of the Sea. However, the term "cabotage" in air law has a different meaning from "cabotage" in maritime law. In maritime law, "cabotage" refers to coastal trade along the same seacoast (petit cabotage) or between ports of the same geographic unit of a state on two different seas, as for example the Atlantic and Mediterranean coast of France.31/

During colonial times, the principle of cabotage was very useful indeed, since the term territory in Article 2 of the Convention included *"the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such state".* Cabotage reserved the right to fly between a contracting state and its colonies to the national

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30/ Article 7 of the Chicago Convention, 1944.

31/ Bin Cheng, "The Law of International Air Transport", (London, 1962), p. 34.

carriers of such states.[32/] However, the doctrine is still useful to very large countries such as the United States, Canada and USSR where the revenue traffic from domestic flights is great.

*C. RIGHTS TO NON-DISCRIMINATORY TREATMENT*

Under the Chicago Convention, 1944, the right of aircraft of contracting states to non-discriminatory treatment is jealously protected. The standard has always been the standard of national treatment.

Thus, Article 9 of the Chicago Convention, 1944, authorizes a state *"for reasons of military necessity or public safety, to restrict or prohibit uniformly the aircraft of other states from flying over certain areas of its territory,"* provided that, *"no distinction in this respect is made between the aircraft of the state whose territory is involved, engaged in international scheduled airline services and the aircraft of the other contracting states likewise engaged."* Here, while it is possible to argue that

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32/ Mr. Peter Jack, in a lecture given to the Air Law Group of the Royal Aeronautical Society on January 26, 1965, has said that, *"Up to the mid-1950's U.K. ~~sabotage~~ gave BOAC, a strong position on all major routes, except for the North Atlantic, virtually all Africa except South Africa, and Egypt was covered; Sudan then being a British condominium; in the Middle East the Gulf States and Aden; to the East Hong-Kong and Malaysia; and to the West the British Islands, in the West Atlantic Area."*
Peter Jack, "Bilateral Agreements", 69
Journal of the Royal Aeronautical Society, (July, 1965), 471.

the protection against non-discriminatory treatment extends only to scheduled international air services. However, the second paragraph of Article 9 extends the safeguard to aircraft of all other states without distinction of nationality, when in exceptional circumstances, or during a period of emergency, or in the interest of public safety, a state decides to establish, temporarily, a prohibited area. It is noteworthy that this right is a very important safeguard preventing contracting states from using prohibited areas to frustrate international air transport.

The right to non-discriminatory treatment in respect of the applicability of air regulations is protected by Article 11 of the Chicago Convention, which provides that the air navigation laws and regulations of each contracting state shall be applied to *"the aircraft of all contracting states without distinction as to nationality"*.

It will be seen from Article 15 that the standard of national and equal treatment as among all contracting states, shall apply to the use of *"all air navigation facilities, including radio and meteorological services, which may be provided for public use for the safety and expedition of air navigation"*, subject, however, to the provisions of Article 68 which permits each contracting state to, *"designate the route to be followed within its territory by any international air service and the airports which any such service may use"*.

Similarly, aircraft of contracting states, if engaged in international air navigation, shall have the right to enjoy in the territories of the member states national treatment in regard to charges for the use of airports and other air navigation facilities.[33/] In addition, there is a general prohibition that "... *No fees, dues or other charges shall be imposed by any contracting state in respect solely of the right of transit over or entry into or exit from its territory of any aircraft of a contracting state or persons or property thereon.*" [34/]

It is noteworthy that the problem of charges to be made for the use of airports and air navigation facilities has occupied the attention of ICAO from its inception.[35/] However ICAO has

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33/ Article 15 of the Chicago Convention, 1944.

34/ Article 15 of the Chicago Convention, 1944.

35/ The first move came from the interim Assembly of PICAO (the predecessor of ICAO) in 1946. It requested the interim Council to study the matter. When ICAO was established, the First Assembly of ICAO, in 1947, requested the ICAO Council to continue this study (Resolution A1-66). Similarly, the second session of the Assembly in its Resolution A2-14 directed the Council inter alia to study the problem and formulate recommendations for the guidance of member state "*with regard to the principles on which providers of these services for international civil aviation may derive revenue therefrom and with regard to the methods that may be employed in the collection of such revenue*".

... continued

never departed from the principle that *"charges must be non-discriminatory both between foreign users and those of the same nationality as the state of the airport and between two or more foreign users"*.

The right to equal treatment in regard to cargo restrictions is provided for by Article 35 of the Chicago Convention, 1944, which reserves the right of each state to prohibit the carriage of dangerous articles by aircraft over its territory provided that no restriction shall be imposed which may interfere with the carriage and use on aircraft of apparatus necessery for the operation of the personnel or passengers. However, the standard of national treatment is related merely to *"national aircraft engaged in international navigation"*, so that such prohibition need not be equally applicable to aircraft engaged in domestic flights.

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At its seventh session, in 1953, the ICAO Assembly, in Resolution (A7-18), directed the Council to transmit to contracting states an objective study concerning airport charges. In 1954, the Council, having received the report from the Air Transport Committee on the matter, decided to circulate it to the member states of ICAO *"with a suggestion of convening a conference on airport charges"*. The Airport Charges Conference met in November, 1956, and made a number of recommendations. The Conference also reviewed the principles relating to airport charging system prepared by the Air Transport Committee and approved inter alia the principle of non-discriminatory treatment in regard to charges for the use of airports and other air navigation facilities. See further ICAO-International Airports Charges, DOC. 7462-C3870 (1954), ICAO DOC. 7745 APC/1-1-(1956).

*D. RIGHT TO CUSTOMS EXEMPTION*

By Article 24(a) of the Chicago Convention, 1944, aircraft of contracting states, engaged in international air navigation are entitled to three types of customs exemption. Firstly, the aircraft itself, if on *"a flight to, from, or across the territory of another contracting state, shall be admitted temporarily free of duty, subject to the customs regulations of the state"*. Secondly, aircraft is entitled to an exemption for *"fuel, oils, spare parts, regular equipment and aircraft stores on board on arrival and retained on board on departure"*. 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 that state shall be exempt from customs duty, inspection fees or similar national or local duties and charges. Thirdly, supplies unloaded after arrival. *"This exemption shall not apply to any quantities or articles unloaded except in accordance with the customs regulation of the state which may require that they shall be kept under customs supervision."*

*E. RIGHT TO EXEMPTION FROM SEIZURE ON PATENT CLAIM*

Again under Article 27 of the Chicago Convention, 1944, not only the aircraft, but the owner, or operator of any aircraft of a contracting state engaged in international air navigation, when such aircraft legally enter into or transit across the territory of another contracting state is exempt from any claim by the territorial state or any person therein, on the ground

that the construction, mechanism, parts, accessories or operation of the aircraft is an infringement of any patent, design, or model duly granted or registered in the territorial state.

The aircraft itself is also exempted from claims, seizure, detention or interference on the same ground by the territorial state or any person therein. It is agreed that no deposit of security in connection with the foregoing exemption from seizure or detention of the aircraft shall in any case be required in the state entered by such aircraft.

Furthermore, the same exemptions from claims, seizure, detention and interference is extended to spare parts and store equipment in storage in the territorial state, and the right to use and install the same in the repair of an aircraft of the first contracting state, provided that any patented part or equipment so stored shall not be sold or distributed internally in or exported commercially from the contracting state entered by the aircraft.[36/]

However, the above exemptions from claims, seizure, detention or interference based on alleged infringements of patent or registered design rights shall apply only to such states, parties to the Chicago Convention 1944, as either

(1) are parties to the International Convention for the Protection of Industrial Property and to any amendments there of or

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36/ Article 27(b) of the Chicago Convention, 1944.

(2) have enacted patent laws which recognize and give adequate protection to invention made by the nationals of the other states, parties to the Chicago Convention, 1944. 37/

*F. RIGHT OF RECOGNITION OF CERTIFICATES AND LICENCES*

Under the Chicago Convention, 1944, there is not only a duty incumbent on every aircraft of contracting states, engaged in international air navigation, to comply with the conditions of Chapter V of the Chicago Convention, with respect to aircraft, but there is a right of mutual recognition of such conditions when they are fulfilled by aircraft of contracting states. Thus, under Article 31, *"every aircraft engaged in international navigation shall be provided with a certificate of airworthiness issued or rendered valid by the state in which it is registered,"* and under Article 30(a), *"aircraft of each contracting state, carry radio transmitting apparatus only if a licence to install and operate such apparatus has been issued by the appropriate authorities of the state in which the aircraft is registered".*

As regards the flight personnel, Article 32(a) provides that, *"the pilot of every aircraft and the other members of the operating crew of every aircraft engaged in international navigation shall be provided with certificates of competency and licences issued or rendered valid by the state in which the air-*

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37/ Article 27(c) of the Chicago Convention, 1944.

*craft is registered".* In addition, when an aircraft registered in one contracting state is in or over the territory of other contracting states, *"radio transmitting apparatus may be used only by members of the flight crew who are provided with a special licence for the purpose, issued by the appropriate authorities of the state in which the aircraft is registered".*

Subject to the provision that, *"the requirements under which such certificates or licences were issued or rendered valid are equal to or above the minimum standards which may be established from time to time pursuant to the Convention. Article 33 says airworthiness and certificates of competency and licences issued or rendered valid by the contracting state in which the aircraft is registered, shall be recognized as valid by the other contracting states."* Furthermore, under Article 32(b), *"each contracting state reserves the right to refuse to recognize, for the purpose of flight over its own territory certificates of competency and licences granted to any of its nationals by another contracting state."*

*G. RIGHT TO ASSIST OWN AIRCRAFT*

It should also be mentioned that under Article 25 of the Chicago Convention, 1944, the owners of an aircraft or authorities of the state in which the aircraft is registered have the right to provide measures of assistance to their aircraft if it is in distress in other contracting states. This

of course does not affect the obligation of a contracting state under Article 25 *"to provide such measures of assistance to aircraft in distress in its territory as it may find practicable"*. And *"in the event of an accident to an aircraft of a contracting state, occurring in the territory of another contracting state, and involving death or serious injury, or indicating serious technical defect in the aircraft or air navigation facilities,"* the state in which the aircraft is registered has the right to appoint observers to be present at the inquiry, which has to be instituted by the state in which the accident occurred. Furthermore, the state in which the aircraft is registered has the right to receive the report and findings of the inquiry.

*H. FACILITATION RIGHTS*

Finally, it should be mentioned that most of the privileges exchanged under the Chicago Convention, 1944, aim to facilitate and expedite navigation by aircraft of contracting states.

It may be recalled that Article 5 of the Chicago Convention, 1944, confers on non-scheduled flights by aircraft of contracting states, certain rights to enter and overfly the territories of other contracting states, and Article 9 limits the right of contracting states to establish prohibited areas.

Under Article 15, airports and other air navigation facilities are open to aircraft of other contracting states on

the standard of *"national and equal treatment"*. To facilitate air navigation, *"No fees, dues, or other charges shall be imposed by any contracting state in respect solely of the right of transit over or entry into or exit from its territory of any aircraft of a contracting state or persons or property thereon"* (Article 15). The Convention also provides for certain exemptions from customs duties (Article 24) and from seizure on patent claims (Article 27). To facilitate air navigation, the Convention has provided for mutual recognition of certificates and licences of aircraft and crew (Article 33, 39-42), and obliged contracting states to give assistance to foreign aircraft in distress in its territory (Article 25) and, in the event of any accident, inquiry has to be instituted by the state in which the accident occurred (Article 26), and observers from the state of registry of the aircraft should be given the opportunity to attend the inquiry (Article 26).

However, the specific reference to facilitation of formalities under the Chicago Convention, 1944, is to be found in Article 22, whereby states agree to adopt all practical measures *"to facilitate and expedite navigation by aircraft between the territories of contracting states, and to prevent unnecessary delays to aircraft, crews, passengers and cargo, especially in the administration of the laws relating to immigration, quarantine, customs and clearance."*

Moreover, mention should be made of Article 16 of the Convention, which, while reserving the right of each contracting

state to search aircraft of the other contracting state on landing or departure, and to inspect the certificates and other documents prescribed by the Convention, provided that the appropriate authorities of each contracting state shall do so *"without unreasonable delay"*.

From the foregoing we have seen that the principle of nationality of aircraft is very essential for the administration of the Convention. Most of the rights exchanged under the Chicago Convention, 1944, and the duties imposed (as we shall see in the next section) are in regard to aircraft registered in a contracting state.

## II. DUTIES IMPOSED

As mentioned earlier, the rationale of the principle of nationality of vessels and aircraft is that, in public international law, nationality will indicate the responsibility of the flag state to other states for the conduct of the vessel or aircraft in question and will ensure the right of a vessel or aircraft to international protection by the national state. Furthermore, in the absence of sovereignty over the high seas and the airspace above it, chaos might result if the principle of nationality of vessels and aircraft had not been accepted into maritime and air law. Thus, it is not surprising to find most of the rights and obligations exchanged between the states parties to the Chicago Convention, 1944, are in regard to aircraft registered in a contracting state.

*A. DUTY TO APPLY AIR REGULATIONS*

Article 12 of the Chicago Convention, 1944, imposes four distinct duties on contracting states, namely:

(i) Duty to adopt measures to insure that every aircraft flying over or manoeuvring within its territory shall comply with the rules and regulations relating to the flight and manoeuvre of aircraft there in force;

(ii) Duty to keep its regulations in these respects uniform, to the greatest possible extent, with those established from time to time and the Chicago Convention, 1944;

(iii) Duty to adopt measures, to ensure that every aircraft carrying its nationality mark, wherever such aircraft may be, shall comply with the rules and regulations relating to the flight and manoeuvre of the aircraft there in force, and over the high seas the rules in force shall be those established under the Chicago Convention, 1944;

(iv) Duty to insure the prosecution of all persons violating the regulations applicable.

In this connection it should also be mentioned that a state is obliged [38] to apply uniformly and without distinction as to nationality of aircraft its laws and regulations relating to admission or departure from its territory, operation, and navigation of aircraft engaged in international air navigation, while within its territory.

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[38] Article 11 of the Chicago Convention, 1944

*B. DUTY TO ENFORCE CONDITIONS WITH RESPECT TO AIRCRAFT*

Since nationality of aircraft indicates in public international law the responsibility of the flag state to other states for the conduct of its aircraft, the Chicago Convention, 1944, obliges the flag state to ensure that aircraft carrying its nationality mark fulfill the Conventional Conditions with respect to aircraft. The primary purpose of those conditions is the safety of civil aviation. Thus, under Article 31 *"every aircraft engaged in international navigation shall be provided with a certificate of airworthiness issued or rendered valid by the state in which it is registered"*, and under Article 30(a) *"aircraft of each contracting State may, in or over the territory of other contracting States, carry radio transmitting apparatus only if a licence to install and operate such apparatus has been issued by the appropriate authorities of the State in which the aircraft is registered ..."*

As regards the licences of personnel, Article 34(a) provides that, *"the pilot of every aircraft and the other members of the operating crew of every aircraft engaged in international navigation shall be provided with certificates of competency and licences issued or rendered valid by the state in which the aircraft is registered"*. Furthermore, when an aircraft registered in one contracting state is in or over the territory of other contracting states, *"radio transmitting apparatus may be used only by members of the flight crew,*

*who are provided with a special licence for the purpose issued by the appropriate authorities of the state in which the aircraft is registered"* (Article 30(b)).

When certificates of airworthiness and certificates of competency are issued or rendered valid by the contracting state in which the aircraft is registered, there is a duty incumbent on other contracting states to recognize them as valid,[39/] subject to the important provision that, *"the requirements under which such certificates or licences were issued or rendered valid are equal to or above the minimum standards which may be established from time to time,"* pursuant, *"to the Chicago Convention, 1944."* However, Article 32(b) of the convention reserves the right of a contracting state to *"refuse to recognize, for the purpose of flight above its own territory, certificates of competency and licences granted to any of its nationals by another contracting state".*

In addition to the above mentioned duties of contracting states in regard to conditions to be fulfilled with respect to aircraft, Article 34 of the Convention provides that, *"there shall be maintained in respect of every aircraft engaged in international navigation a journey log book in which shall be entered particulars of the aircraft, its crew, and of each journey, in such form as may be prescribed from time to time pursuant to the Chicago Convention".*

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39/ Article 32, ibid.

Again, under Article 29 of the Chicago Convention, 1944, every aircraft engaged in international navigation, is obliged to carry the following documents:

(a) its certificate of registration;

(b) its certificate of airworthiness;

(c) the appropriate licences for each member of the crew;

(d) its journey log book;

(e) if it is equipped with radio apparatus, the aircraft radio station licence;

(f) if it carries passengers, a list of their names and places of embarkation and destination;

(g) if it carries cargo, a manifest and detailed declarations of the cargo.

Mention should also be made to the duty of aircraft of contracting states to observe cargo restrictions made by states whereby *"No munitions of war or implements of war may be carried in or above the territory of a state in aircraft engaged in international navigation except by permission of such state."* 40/

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40/ Article 35, ibid. What constitutes munitions of war or implements of war is to be determined by each state. Article 35 provides inter alia *"Each state shall determine by regulations what constitutes munitions of war or implements of war for the purpose of this article, giving due consideration, for the purpose of uniformity, to such recommendations as the International Civil Aviation Organization may from time to time make."*

Similarly, aircraft of contracting states are under a duty to comply with any regulations or prohibitions by a state regarding the *"use of photograpic apparatus in aircraft over its territory"*.[41/]

*C. DUTY TO PROMOTE SAFETY OF FLIGHT*

Since "safety" of flight is one of the basic objectives of the Chicago Convention, 1944,[42/] and the International Civil Aviation Organization (ICAO) which was created by it,[43/] it is not surprising to find some of the duties incumbent on contracting states are aimed at promoting the safety of flight.

Thus, under Article 25 of the Chicago Convention, 1944, a contracting state is under a duty in the event of an aircraft in distress in its territory:

(i) *"to provide such measures of assistance ... as it may find practicable",*

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41/ Article 36, ibid.

42/ The third paragraph of the preamble to the Chicago Convention, 1944, provides, inter alia that *"... the undesigned governments having agreed on certain principles and arrangements in order that international civil aviation may be developed in a safe and orderly manner,"* emphasis added.

43/ Article 44(h) of the Chicago Convention, 1944.

(ii) *"to permit, subject to control by its own authorities, the owners of the aircraft or authorities of the state in which the aircraft is registered to provide such measures of assistance as may be necessitated by the circumstances"*, and

(iii) When undertaking a search for missing aircraft, to *"collaborate in coordinated measures which may be recommended from time to time"* by the ICAO. In so far as this duty is concerned, it would

appear that it is incumbent on a contracting state, within which the aircraft happened to be in distress, whether or not the aircraft is registered in a contracting state.

It should also be mentioned that under Article 26 of the Chicago Convention, 1944, it is the duty of each contracting state in the territory of which an aircraft of another contracting state has met with an accident *"involving death or serious injury, or indicating serious technical defect in the aircraft or air navigation facilities"*:

(i) To institute and inquiry into the circumstances of the accident, in accordance so far as its laws permit, with the procedure which may be recommended by the International Civil Aviation Organisation;

(ii) To give the contracting state in which the aircraft is registered the *"opportunity to appoint observers to be present at the inquiry,"* and

(iii) To communicate the report and findings of the inquiry to the state in which the aircraft is registered.

Needless to say, the value of the conventional obligations on contracting states to assist aircraft in distress and to investigate and report on accidents occurring within their territories has been demonstrated on many occasions.

*D. DUTY TO RESTRICT AIR NAVIGATION*

Mention has already been made to the various articles in the Chicago Convention, 1944, which impose on contracting states the duty to adopt all practical measures to facilitate and expedite air navigation between their territories. In contra-distinction to the duty of the contracting states to facilitate air navigation, there are various articles in the Chicago Convention which impose on contracting states the duty to restrict air navigation.

Thus, under Article 3(c) of the Chicago Convention, *"No state aircraft of a contracting state shall fly over the territory of another state or land thereon without authorization by special agreement or otherwise, and in accordance with the terms thereof."*

Moreover, paragraph (d) of Article 3 imposes upon contracting states a duty, *"when issuing regulations for their state aircraft that they will have due regard for the safety of navigation of civil aircraft."*

A further restriction is in regard to pilotless aircraft, whereby *"No aircraft capable of being flown without a pilot shall be flown without a pilot over the territory of a contracting state without special authorization by that state and accordance with the terms of such authorization."* 44/ Moreover, there is a duty on contracting state when they authorize the flight of pilotless aircraft over their territories, in regions which are open to civil aircraft, that they should insure the control of the pilotless aircraft *"so as to obviate danger to civil aircraft"*.45/

Here, it should be recalled that there are several other restrictions to air navigation imposed by the Convention on contracting states, namely:

(i) Under Article 4 of the Convention, *"each contracting state agrees not to use civil aviation for any purpose inconsistent with the aims of the Convention"*.

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44/ Article 8, ibid.

45/ Article 8, ibid.

(ii) Aircraft registered in any of the contracting states when engaged in commercial non-scheduled flights under Article 5 of the Chicago Convention, 1944, is subject to the right of the state flown over *"to impose such regulations, conditions or limitations as it may consider desirable"*.

(iii) Under Article 6, *"No scheduled international air service may be operated over or into the territory of a contracting state, except with the special permission or other authorization of that state and in accordance with the terms of such permission or authorization."*

(iv) Mention should be made of Article 7 of the Chicago Convention which reserves the right of contracting states to refuse cabotage rights.

(v) Finally, it should be mentioned that under Article 9, a contracting state *"may for reasons of military necessity*

*or public safety"* prohibit uniformly the aircraft of other States from flying over certain areas of its territory *"provided that no distinction in this respect is made between the aircraft of the state whose territory is involved, engaged in international scheduled airline services and the aircraft of the other contracting states likewise engaged."*

*E. DUTY RELATING TO NATIONALITY OF AIRCRAFT*

Following the pattern laid down in the Paris Convention, 1919, the Chicago Convention, 1944, imposes on contracting states the duty to grant their nationality to aircraft registered in them. Thus, Article 17 provides that, *"Aircraft have the nationality of the state in which they are registered"*, and *"cannot be validly registered in more than one state"*.[46/] But its registration *"may be changed from one state to another"*.[47/] Article 19 of the Chicago Convention left the matter to each contracting state to determine the manner in which it is going to register aircraft.[48/] However, there is no uniformity in the practice of states in this matter. In some states the registry is open only to aircraft

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46/ Article 18, ibid.

47/ Article 18, ibid.

48/ Article 19, ibid.

owned by individuals or corporations established in the state of registry. Among those states are: Argentina, Belgium, Bolivia, Burma, Canada, Chile, Dominican Republic, Ecuador, Egypt, India, Lebanon, and Switzerland.[49/]

On the other hand, certain states leave the registry open to national as well as foreign-owned aircraft, for example: Australia, Colombia, El Salvador, Greece, Guatemala, Honduras, Iceland, Italy, Mexico, Sweden and Uruguay.[50/]

These divergent practice of states raise a neat legal problem, that is, whether the Convention prohibits states from registering, under their national laws, aircraft owned and operated by foreign nationals?

As far as non-scheduled air services are concerned, there is no limitation on the power of the state to accord registration rights to aircraft not owned by its nationals.

But as to scheduled air services, the position is somewhat different. Scheduled international air services are usually prohibited from flying over or into the territory of a

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49/ ICAO document prepared by sub-committee on the hire, charter and interchange of aircraft, Caracas, June, 1956. Extracts from National Legislations Concerning Registration of Aircraft. LC/SC/CHA WD No. 20.

50/ ICAO DOC. LC/SC/CHA WD NO. 20-3/12/1957.

contracting state without *"prior permission"*.[51/] In view of this general prohibition under Article 6 of the Chicago Convention, 1944, some states have concluded sets of bilateral agreements in which they exchanged certain privileges between their designated airlines. However, such designated airlines must be substantially owned and effectively controlled by the nationals of the contracting state. However, the limitation on the power of the state to accord registration rights to foreign aircraft is not imposed by the Convention, but by the bilateral agreements. Under the Convention a state is free to accord registration rights to its nationals as well as non-nationals. It is submitted that, because nationals are more loyal to a state than non-nationals, it is better for a state to include in its regulation that aircraft can only be entered in its register if they are substantially owned by its nationals.

Another obligation imposed by the Convention on contracting states is relating to the display of marks. Under Article 20 of the Convention, 1944, *"Every aircraft engaged in international air navigation shall bear its appropriate nationality and registration marks."* In addition, contracting states are obliged [52/] to supply on demand to any contracting state or to the International Civil Aviation Organization (ICAO) information concerning the registration and ownership of any particular aircraft registered in that state.

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51/ Article 6 of the Chicago Convention, 1944.

52/ Article 21, ibid.

Finally, it should be recalled that, the principle of nationality and registration of aircraft is very important for the administration of the Chicago Convention, 1944. For, as we have seen the Convention makes no provision whatever for any category of aircraft, other than the national aircraft of a contracting state. The important point, however, is that the principle of nationality and registration of aircraft places fundamental legal difficulties in the way of any cooperative arrangements for aircraft. The Chicago Conference was evidently aware of the problem, but cannot be said to have provided a solution in Article 77 of the Convention which empowered the Council to *"determine in what manner the provisions of this Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies"*. For the subsequent interpretation of Article 77 of the Chicago Convention, 1944, as we shall see in the next part, is most controversial.

*PART FOUR*

## COOPERATIVE ARRANGEMENTS ENVISAGED BY THE CHICAGO CONVENTION, 1944

### I. HISTORICAL BACKGROUND

#### *A. PRIOR TO THE CHICAGO CONFERENCE, 1944*

In an era of skyrocketing inflation, aircraft cost and aircraft operating costs are becoming higher and higher every day.[1/] This, coupled with severe competition between airlines, has made flying the most expensive form of transportation and many airlines are unable to survive without government subsidies. As a result, many airlines turn to cooperative agreements and arrangements in order to reduce costs, and improve efficiency of their operations and eliminate unreasonable competition.

However, cooperative agreements and arrangements in the field of civil aviation is not a new subject.[2/] The earliest

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1/ As to the costs of aircraft: *"Here are examples of the cost of some large aircraft of the present and future: Boeing 707 - $7,250,000; Concorde - $14,000,000; Lockhead L - 500 - $27,500,000; American Super Sonic Transport - $35,000,000,"* G. Fitzgerald. *"Nationality and registration of aircraft operated by international operating agencies and Article 77 of the Convention on International Civil Aviation, 1944."* The Canadian Yearbook of International Law, 1967 at p. 193. However, these figures were quoted in 1967. The present day figures are, indeed, higher. As to the operating costs, over the ten-year period from 1963 to 1972 the operating costs of the scheduled airlines of ICAO contracting states increased from $6,800 millions to $25,300 millions. ICAO-Circular 122 - AT/32 *"A Review of the Economic Situation of Air Transport"*, (1963-1973) at p. 26.

2/ Cooper, J.C., *"Internationalization of Air Transport"* Exploration in Aerospace Law, ed., I.A. Vlasic (Montreal, 1968) at p. 307.

discussions of cooperative arrangements as a means to improve air services seem to have occurred at a meeting of the Air Transport Co-operation Committee held in Geneva in 1930 under the auspices of the League of Nations Organization for Communications and Transit.[3/] A Belgian delegate suggested the possibility of improving the organization of a single company.[4/] A French delegate supporting him actually suggested that, *"the solution was to be found in an international company or an operation on an international scale in the interest of all the countries of Western Europe."* [5/] The British delegate was of the opinion that such a solution might be found advisable in the future. However, he did not commit himself.[6/] The only objection was expressed by the German delegate.[7/]

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3/ League of Nations Organization for Communications and Transit. Air Transport Cooperation Committee. Minutes of the first session held at Geneva from July 8th to 12th, 1930. League of Nations Publications: VIII - Transit 1930 VIII 14. Official No: C.C.T./A-C/1st session/P.V. (Revised) Geneva, October 20, 1930.

4/ Cooper, J.C., supra, footnote 2, p. 398.

5/ Ibid., p. 398.

6/ Ibid., p. 398.

7/ Ibid., p. 398.

Again in 1932, the Air Transport Cooperation Committee of the League of Nations [8/] discussed, inter alia, *"the creation of international companies operating over vast regions, which have common interests"*. However, the proposal was favoured by Belgium, France and other countries. The United States, United Kingdom, Germany, the Netherland and some other states opposed it.[9/]

The first step towards international cooperation in the field of civil aviation, was taken by Australia and New Zealand, when on January 21, 1944 they signed their famous *"Co-operation Agreement"*.[10/] In matters relating to civil aviation, the agreement provided, inter alia, that, *"The air services using the international air transport authority"*; that, *"full control of international air trunk routes and the ownership of all aircraft and ancillary equipment should be vested in the international air transport authority."*; and that this international air transport authority should be established by an international agreement. In addition, the agreement reserved the right of each

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8/ League of Nations Organization for Communications and Transit. Report of the Air Transport Cooperation Committee on its second session held at Geneva, May 9 to 12, 1932. Official No: C467 - M.237 1932. VIII (Conf. D/CA. 15) series of League of Nations Publications VIII Transit 1932. VIII. 3 Geneva, May, 12, 1932.

9/ Cooper, J.C., supra, footnote 2, p. 399.

10/ Agreement between His Majesty's Government in the Commonwealth of Australia and His Majesty's Government in New Zealand, signed at Canberra, January 21, 1944. Great Britain Parliament Cmd. 6513.

contracting state to conduct all air transport services *"within its own national jurisdiction including its own contiguous territories, subject only to agreed international requirements regarding safety facilities, landing and transport rights for international services and exchange of mails.*

*B. THE CHICAGO CONFERENCE, 1944*

When the Conference on International Civil Aviation 11/ met in Chicago on November 1, 1944, Australia and New Zealand proposed along the lines of their "Co-operation Agreement", which was signed earlier in the same year, *"the establishment of an international air transport authority which would be responsible for the operation of air services on prescribed international trunk routes and which would own the aircraft and ancillary equipment employed in these routes ..."*

The Brazilian delegation, in opposition to the Australian-New Zealand proposal, introduced a motion to the effect that, *"while Brazil shares the determination of those delegations (Australia*

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11/ The Chicago Conference on International Civil Aviation was convened from November 1 to December 7, 1944, upon the invitation of the United States. The final act of the Conference, besides a number of resolutions and recommendations has four treaties annexed to it. They are:

(i) The interim agreement on international civil aviation,
(ii) The Chicago Convention on international civil aviation, 1944,
(iii) The International Air Services Transit Agreement, and,
(iv) The International Air Transport Agreement.

*and New Zealand), that civil air transport should be a source of benefit and security to the world, Brazil is not in a position to accept such a proposal and therefore suggests that the Committee declare that there is no opportunity and necessary unanimity for the organization at the present time of an all-embracing international company".*[12/] The chief Brazilian delegate further stated that, *"our times are not yet ripe for the internationalization of aviation, and perhaps the time will never be ripe for it"*, that *"the solution of human conflicts will not be internationalization but an organization of nationalities,"* that *"we cannot accept internationalization of aviation or international ownership of aircraft - the ownership of aircraft must continue to be national."*

The Conference finally rejected the Australian-New Zealand proposal for international ownership and operations of civil air services on world trunk routes.[13/] Nevertheless, the Conference did not dismiss the subject altogether for it included in Chapter XVI of the Chicago Convention on International Civil

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12/ International Civil Aviation Conference. Verbatim Minutes of Meeting of Committee 1, November 8, 1944, Document 117, 119.

13/ Proceedings of the International Civil Aviation Conference, Chicago, Illinois, November 1 to December 7, 1944. (Publications No. 2820) 2 vols. (The Department of State, Washington, D.C. 1948, p. 546.)

Aviation, 1944, provisions [14] which expressly permit (Article 77), and even encourage (Article 78), contracting states to enter into various forms of cooperative agreements and arrangements in the field of air transport. Thus, a contracting state may participate in: (1) joint operating organizations [15], or (2) pooled international service [16], or (3) international operating agencies.[17] Article 79 further indicates that if a state wishes to participate in joint operating organizations, or pooled international air service, it may do so either through its government or through an

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14/ *"Article 77. Joint operating organization permitted. Nothing in this Convention shall prevent two or more contracting States from constituting joint air transport operating organizations or international operating agencies and from pooling their air services on any routes or any regions, but such organization or agencies and such pooled services shall be subject to all the provisions of this Convention, including those relating to the registration of agreement with the Council. The provisions shall determine in what manner the provisions of this Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies."*

*"Article 78. Function of Council. The Council may suggest to contracting States concerned that they form joint organizations to operate air services on any routes or in any regions."*

*"Article 79. Participating in Operating Organizations. A State may participate in joint operating organizations or in pooling arrangements, either through its government or through an airline company or companies designated by its government. The companies may, at the sole discretion of the State concerned, be State-owned or partly State-owned or privately owned."*

15/ Article 77, supra, footnote 13.

16/ Ibid.

17/ Ibid.

airline company designated by its government.[18] Of the three forms of the cooperative agreements and arrangements envisaged by the Chicago Convention, the first two forms do not raise any problem in connection with the principle of nationality and registration of aircraft under the Convention. The real problem is raised by the third form, namely, "international operating agencies", when the draftsmen of the Chicago Convention, 1944, left it to the Council of ICAO *"to determine in what manner the provisions /of the Convention/ relating to nationality of aircraft shall apply to aircraft operated by international operating agencies".*[19]

*C. WITHIN ICAO*

Some of the objectives of the International Civil Aviation Organization (ICAO), as set forth in the Chicago Convention, 1944, under which it was established, are to foster the planning and development of international air transport so as *"to ensure the safe and orderly growth of international civil aviation through out the world",*[20] and *"to prevent economic waste caused by unreasonable competition".*[21]

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18/ Article 79, supra, footnote 13.

19/ Last sentence of Article 77, supra, footnote 13. Emphasis added.

20/ Article 44(a) of the Chicago Convention, 1944.

21/ Article 44(c), ibid.

In furtherance of these objectives, ICAO has shown great interest in agreements and arrangements relating to joint operating organizations and pooled services dealt with under Chapter XVI of the Chicago Convention. In this connection mention should be made to the circulation by ICAO of a study prepared by the Institut Français du Transport Aérien (IFTA) on "Existing Forms of Commercial and Technical Co-operation between European Airlines in Regional Air Service".[22/] Reference should also be made to the "Summary of Material Collected on Co-operative Agreement and Arrangement",[23/] which has been prepared by the secretariat of ICAO in response to Resolution A15-21 adopted by the Assembly of the International Civil Aviation Organization at its Fifteenth Session in July, 1965. The objective of this resolution was to provide contracting states with as much information as possible on co-operative agreements and arrangements concluded in the field of air transport between governments or international airlines.

On the other hand, the subject of co-operative agreements and arrangements has always been kept alive within the framework of ICAO. The Council of ICAO has been requested three times to make a determination within the meaning of the last sentence of Article 77. We shall now turn to examine these requests.

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22/ ICAO-Circular 28 - AT/4 (1952).

23/ ICAO-Circular 84 - AT/14 (1967).

*1. Request from the Assembly of ICAO*

The Assembly of ICAO at its second session in 1948 requested the Council *"to formulate and circulate the contracting states its views on the legal, economic and administrative problems involved in determining the manner in which the provisions of the Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies".*[24/] Pursuant to this resolution, the Council referred the matter to the Air Transport Committee.[25/]

The Air Transport Committee, after considerable discussion, concluded, inter alia,[26/]

> *" (i) That an international operating agency cannot itself be charged with the responsibility of a contracting state, under the Convention, in reference to its operations, and could not, therefore, become the registration authority for its own aircraft,*[27/]

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24/ Resolution-A2-13.

25/ The Council of ICAO is entrusted with the permissive function of studying *"any matter affecting the organization and operation of international air transport including the international ownership and operation of international air services on trunk routes and submit to the Assembly plans in relation thereto".*
Article 55(d) of the Chicago Convention, 1944.

26/ C-WP/2284

27/ Paragraph 16.

*(ii) That for similar reasons the International Air Transport Association (IATA) could not be charged with the registration of aircraft,* 28/

*(iii) That neither ICAO, nor any other existing organization could appropriately be charged with the responsibilities falling on contracting states as states of registry."* 29/

Furthermore, the Committee was of the view that if any form of international registration were to be established, it should be joint registration *"with corresponding joint nationality marks and joint nationality status".* 30/ In the view of the Committee, joint registration will not raise any problems as far as the rights and privileges exchanged under the Convention are concerned. 31/ As regards the obligations which are imposed on contracting states under the Convention 32/, the Committee stated that:

> *"The practical difficulty on compliance with them would be such that those obligations would have to be undertaken by one or more*

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28/ Ibid.

29/ Ibid.

30/ Ibid.

31/ Paragraph 10.

32/ Supra, Part III, section II of this study, p. 51.

> *of the contracting states constituting the international operating agency and through the medium of their own national legal administration and technical machinery."*
> The Committee's final conclusion was that:
> *"since the intervention of national agencies would be required for the full implementation of the Convention, there would be no practical purpose in attempting to provide for international /or in the opinion of the Committee/ joint registration."*

The Council of the International Civil Aviation Organization (ICAO) considered the report of the Air Transport Committee and took no action other than referring the study, in accordance with the Committee's recommendations, to the Legal Committee of the Organization for certain advice. In the Legal Committee, the subject not being urgent, it was placed in part B of the work program of the Legal Committee.[33/]

2. *Request from the League of Arab States*

In this era of the Arab nationalist movement, Pan Arabism, in its extreme manifestations, has touched upon the politics, finance and economics of the Arab world. In the field of air transport, the idea of the Pan-Arab Airline was conceived. The members of the Arab League planned to establish a Pan-Arab Airline. It was contemplated that the membership of the airline would be open to all Arab countries whether or not they were members of the Arab League or ICAO. At that time (1960), Saudi Arabia and

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33/ ICAO-DOC 7921-LC/143-1 Legal Committee, 11th Session, vol. 1 Minutes (ix), 145.

Yemen were not parties to the Chicago Convention, 1944, but have since become parties to it. Saudi Arabia adhered to the Chicago Convention, on February 19, 1962 and Yemen on April 17, 1964.

In order to surmount some of the technicalities that faced the establishment of the Pan-Arab Airline, the League of the Arab States by letters dated December 13, 1959,[34] and January 18, 1960,[35] requested the Council of ICAO, inter alia, *"to determine in what manner the provisions of the Convention relating to nationality of aircraft shall apply to aircraft operated,"* by the Pan-Arab Airline. It was envisaged that, the aircraft of the airline would be registered either with the airline's head office or with the Arab League.

The Council appointed a panel of experts on March 16, 1960,[36] with the following terms of reference:

> *"1. To advise the Council on the interpretation and application of the last sentence of Article 77 of the Chicago Convention, indicating and suggesting*

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34/ ICAO-DOC. C-WP/3091 (24.2.60) Appendix 1.

35/ Ibid., Appendix 3.

36/ The panel was composed as follows: Dr. T.F. Reis (Brazil), Mr. Finn Hjalsted (Denmark), Mr. M. Pascal (France), Dr. E.U. Schmidt - OH (Germany E.R.G.), Mr. I. Narahashi (Japan), Prof. D. Goedhius (Netherlands), Mr. T.D. Salmon (United Kingdom), Mr. R.P. Boyle (United States). Prof. Goedhius was elected chairman of the panel. ICAO-DOC. PE/77. Report of the panel of experts (30.6.60).

*solutions for the problems involved.*

2. *To prepare a draft "determination" by the Council pursuant to the last sentence of Article 77 of the Convention.*

3. *To advise as to the extent of obligations of states participating in an international operating agency towards other states into whose territory the aircraft of that agency will operate.*

4. *To make any other observations or recommendations the panel might consider appropriate."* 37/

The panel met in Montreal from June 23 to 30, 1960. On June 30, 1960, it reported to the Council.38/

The panel first observed that the expression "international operating agencies" is not defined in the Chicago Convention, 1944. However, the panel was of the view that "international operating agency" within the meaning of the last sentence of Article 77 is one *"which has an international character and is not constituted under the national law of any particular state."* 39/

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37/ Ibid.

38/ Ibid., p. 1.

39/ Ibid., PE 77/Report Paragraph 7.

A majority of the panel rejected the registration of aircraft with an international operating agency itself or with an international organization, authorized by its constituent instrument to register aircraft because this would be *"tantamount to substituting the obligations and undertakings of an international operating agency or an international registering authority for those of a sovereign contracting state"*.40/

The panel also rejected a solution of *"joint registration"*, whereby *"the contracting states composing the international operating agency would arrange that the aircraft, jointly owned by them, and to be operated by the agency will be registered on a register jointly established by them, and that one of the states will extend its legislation so that all its aeronautical laws will apply to those aircraft in the same manner as they would apply to an aircraft having the nationality of that state."* Although this solution is reasonable in the sense that the "international operating agency" would not have a legal personality to act as the registering authority, so that there would be no question of *"substituting the obligations of the international operating agency for those of sovereign states under the Chicago Convention"*, the majority of the panel rejected this solution on the ground that, *"the aircraft in question would have no nationality"*.41/

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40/ Ibid., paragraph 12.

41/ Ibid., paragraph 13.

After rejecting both international registration and joint registration, the majority of the panel concluded that, *"the only lawful manner in which an aircraft operated by an international operating agency may be registered is by registering it in a contracting state"*,[42/] with the result that a determination by the Council under Article 77 of the Convention would not of course be required.

As to the obligations of the participating states in an international operating agency towards other states into whose territory the aircraft of such agency will operate, the panel's opinion was that, *"only the state"* in which the aircraft of the international operating agency is registered will shoulder the obligations imposed on contracting states under the Chicago Convention, 1944, and these obligations will not be different from the conventional obligations of that state with respect to aircraft registered in it.[43/] The Council considered the report of the panel at its 41st session (1960) and transmitted to the Arab League [44/] a reworded version of the conclusions of the panel as follows:

> *"(a) a determination made by the council pursuant to Article 77 of the Chicago Convention will be binding on all contracting states, ...,*

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42/ Ibid., paragraph 14.

43/ Ibid., paragraph 15.

44/ ICAO-DOC. 8124 C/928.

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

*(c) an "international operating agency" if Article 77 of the Chicago Convention is to apply to it, must be an agency constituted only by states parties to the Convention, ...,*

*(d) if the aircraft of an "international operating agency" were registered in a contracting state, there would, in all probability, be no problems arising with respect to application of the provisions of the Convention relating to nationality of aircraft,*

*(e) as regards the extent of obligations of states participating in an"international operating agency" towards other states into whose territory the aircraft of the agency will operate, only the contracting state, referred to in (d) above, in which the aircraft of the agency is registered will have obligations under the Chicago Convention and these will be no different from the obligations of that state with respect to aircraft operated by its national airline ..., in view of the fact that, at that time, Saudi Arabia and Yemen were not parties to the Chicago Convention, but are eligible to participate in the Pan-Arab Airline. The Council stated that even if the Pan-Arab Airline were established, the Council would not be competent to make a determination under Article 77 of the Chicago Convention, 1944."*

However, in submitting these views to the Arab League, the Council made a reservation by describing these views as only its *"present views"*.

*3. Request from the Union Africaine et Malgache and the UAR*

The question of cooperative agreements and arrangements of aircraft is one of growing importance in international civil aviation. The International Civil Aviation Organization (ICAO) has shown great interest in the degree of collaboration that exists between contracting states, such collaboration as the Convention recognizes may extend as far as the formation of *"joint air transport operating organizations"* or *"international operating agencies"*. However, the problems arising from the various types of cooperative agreements and arrangements remained unsolved.

In 1962, the Legal Commission of the Fourteenth Session of the Assembly of ICAO recommended that the subject of the problems relating to nationality and registration of aircraft operated by international operating agencies should be placed in Part A of the work programme of the Legal Committee.45/ It also stated in its report that, if the Council received any request relating to the interpretation of Article 77 of the Convention, the Council should transmit the request to the Chairman of the Legal Committee, who should appoint a sub-committee to study the matter and report thereon to the Legal Committee.46/

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45/ ICAO-DOC. 8279-A14 LE/11 Assembly 14th session.

46/ Ibid.

On November 11, 1964, the Union Africaine et Malgache de Coopération Economique [47/] requested the Council of ICAO on behalf of Air Afrique,[48/] to study the question of nationality and registration of aircraft operated by international operating agencies. In the same year, the representative of the United Arab Republic of the Council of ICAO made a similar request.[49/] As a result of these requests, the Council of ICAO on December 11, 1964, decided that the documentation which had been submitted to the panel of experts, as well as the minutes of the discussions in the council on the report of the panel of experts, should be made available to the Legal Committee. A sub-committee was formed

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47/ *"Union Africaine et Malgache de Coopération Economique is an intergovernmental organization established by the Conference of Heads of States of twelve French-speaking African states held at Dakar in March 1963."* See Bin Cheng, Nationality of Aircraft Operated by Joint or International Agencies, McGill Yearbook of Air and Space Law (1966), p. 9.

48/ Air Afrique was established on March 28, 1961, when Cameroon, Central African Republic, Congo, Brazzaville, Ivory Coast, Dahomey, Gabon, Upper Volta, Mauritania, Niger, Senegal, Chad, and subsequently Togo concluded at Yaoundé the treaty Relating to Air Transport in Africa for the Creation of a Joint Air Transport Corporation. This Corporation was to be registered in each of the contracting states under the name Air Afrique for the purpose of exercising their rights with respect to air traffic between their territories and beyond. See Bin Cheng, ibid., and see also ICAO-Circular 98-AT/19, "Treaty on Air Transport in Africa Establishment of Air Afrique (Yaoundé, 1961)", 1970.

49/ ICAO-DOC. C-WP/4115-1/12/64.

to *"give advice to the Council through the Legal Committee, as to the manner in which, in pursuance of the last sentence of Article 77 of the Chicago Convention, the provisions of that Convention relating to nationality of aircraft should apply to aircraft operated by international operating agencies."* 50/

The sub-committee held two sessions. The first in July, 1965 51/ and the second in January, 1967. 52/ In these two sessions the sub-committee adopted a view which is opposite to the view adopted by the panel of experts in 1960. However, before considering the views of the legal sub-committee, we should refer to some developments in air law, which have since taken place, and possibly influenced the sub-committee.

In 1963, the Tokyo Conference on Air Law included in the Convention on *"offences and certain other acts committed on board aircraft,"* 53/ a provision concerning aircraft not registered in any one state and operated by joint air transport operating organizations or international operating agencies. Article 18 of this Convention provides:

> *"If contracting states establish joint air transport operating organizations or international operating agencies, which operate aircraft not registered in any one state, these states shall, according*

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50/ ICAO-DOC. LC/SC. Article 77/Report 24/7/65.

51/ Ibid.

52/ ICAO-DOC. LC/SC. Article 77/Report 7/2/67.

53/ ICAO-DOC 8364. "Convention on Offences and Certain Acts Committed on Board Aircraft", (Tokyo, September 14, 1963)

> *to the circumstances of the case designate the state among them which, for the purposes of this Convention, shall be considered as the state of registration and shall give notice thereof to the International Civil Aviation Organization which shall communicate the notice to all states parties to this Convention."* 54/

Thus, the Tokyo Convention acknowledged that aircraft could be registered other than on a national basis. A similar provision was also included in a draft Convention on aerial collisions prepared by the Legal Committee in 1964.55/

At the end of its first session, the Legal sub-committee, adopted a resolution 56/ whereby it advised the Council of ICAO that:

> *"(1) The provisions of the Chicago Convention without it being necessary to amend them - are not an obstacle to the principle of joint international registration;*
>
> *(2) That the determination made by the Council under Article 77 has sufficient effect for the international registration in question to be recognized by the other contracting states and for the aircraft*

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54/ Emphasis added.

55/ ICAO-DOC. 2582-LC/153-1 - Legal Committee, 15th Session, Montreal, September, 1-19 (1964), Vol. 1 - Minutes (XXVII) - (XXXIII). See also Gerald, Fitzgerald, "Nationality and Registration of Aircraft Operated by International Operating Agnecies and Article 77 of the Convention on International Civil Aviation, 1944," The Canadian Yearbook of International Law, 1967, p.193 and p.199.

56/ ICAO-DOC. LC/SC/Articles 77 Report 7/2/67 for consideration of the proposed solutions. See infra, Part V, section III of this study, p. 158.

*so registered to have the benefit of rights and privileges equivalent to those granted by national registration."* The Committee also advised,

*"(a) that the states that have constituted the international operating agency shall be jointly and severally bound to assume the obligations which under the Convention attach to a state of registry.*

*(b) that the operation of the aircraft concerned shall not give rise to any discrimination against the aircraft registered in other contracting states."*

At its second session, which was held at Montreal from 4 to 13 January, 1967, the Committee considered: *"(a) the methods of applications of the principle of joint registration and, (b) the composition of the international operating agency."* 57/ In addition to these main subjects, the sub-committee considered during the second session several related questions, namely:

*"(i) whether the Council will be obliged to recognize certain kinds of registration of aircraft on a non-national basis;*

*(ii) the essential criteria for such recognition;*

*(iii) some specific plans for non-national registration of aircraft;*

*(iv) the importance of uniformity of aeronautical laws and regulations in the case where the aircraft are not registered in any one state;*

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57/ Ibid.

(v) *whether any amendment to the Convention would be necessary for non-national registration; and*

(vi) *whether the Council should seek the views of contracting states in certain cases."*[58/]

However, the important thing is that, during the course of the second session, the members of the sub-committee were able to arrive at a consensus relating to cases *"in which an aircraft of an operating agency is not registered in any one state,"*, when they unanimously adopted a proposal containing a basic criteria to guide the Council in making a determination in accordance with Article 77 of the Chicago Convention, 1944.[59/] The sub-committee then reported to the Legal Committee.

At its sixteenth session held at Paris in September, 1967, the Legal Committee considered the report of the sub-committee and submitted its own report to the Council of ICAO.

In its report to the Council of the International Civil Aviation Organization (ICAO) the Legal Committee concluded, inter alia, that; *"without any amendment to the Chicago Convention, the provisions of the Convention can be made applicable by a determination of the Council to aircraft which are not registered on a national basis such as aircraft jointly registered or*

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58/ Ibid.

59/ ICAO-DOC. 8704-LC/155 22/9/67 Annex C.

*internationally registered,"* subject, however, to the fulfilment of certain criteria, which in the case of joint registration is the following:

> *"A. The states constituting the international operating agency shall be joint and severally bound to assume the obligations which, under the Chicago Convention, attach to a state of registry.*
>
> *B. The states constituting the international operating agency shall indentify for each aircraft an appropriate state from among themselves which shall be entrusted with the duty of receiving and replying to representations which might be made by other contracting states of the Chicago Convention concerning the aircraft. This identification shall be only for practical purposes without prejudice to the joint and several responsibility of the states participating in the agency, and the duties assumed by the states so identified shall be exercised on its own behalf and on behalf of all the other participating states.*
>
> *C. The operation of the aircraft concerned shall not give rise to any discrimination against aircraft registered in other contracting states with respect to the provisions of the Chicago Convention.*
>
> *D. The states constituting the international operating agency shall ensure that their laws, regulations and procedures as they relate to the operation of the aircraft of the international operating agency shall meet in a uniform manner the obligations under the Chicago Convention and the Annexes thereto."* 60/

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60/ Ibid.

And in the case of international registration, the criterion is that, *"the states constituting the international operating agency may devise such a system of registration, as shall satisfy the Council that the other member states of ICAO have sufficient guarantees that the provisions of the Chicago Convention are complied with. In this connection the criteria mentioned in A, C, and D above shall be applicable."* 61/

Finally, the Legal Committee advised the Council to adopt a resolution within the terms of Article 77 of the Chicago Convention, and have indicated to the Council the manner in which the provisions of the Chicago Convention, 1944, relating to nationality of aircraft shall apply to aircraft *"operated by international operating agencies"*.62/

Accordingly, on December 14, 1967 the Council, having considered the subject, unanimously adopted a resolution (with 26 states representatives present) on *"Nationality and Registration of Aircraft Operated by International Operating Agencies"*,63/ which more or less reaffirmed the conclusions reached by the Legal Committee in its report to the Council on September 22, 1967.64/

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61/ Ibid.

62/ Ibid., see infra ICAO-DOC 8722-C/976 20/2/68, "Resolution adopted by the Council on Nationality and Registration of Aircraft Operated by International Operating Agencies."

63/ ICAO-DOC 8722-C/976 20/2/68

64/ Supra, footnote 58.

The Council agreed that, *"without any amendment to the Convention on International Civil Aviation, the provisions of the Convention can be made applicable by a determination of the Council under Article 77 of the Convention to aircraft which are not registered on a national basis,"* such as: (i) aircraft jointly registered. Appendix 1 to the resolution defines the expression *"joint registration"*, as indicating *"that system of registration of aircraft, according to which the states constituting an international operating agency would establish a register other than the national register for the joint registration of aircraft to be operated by the agency"* 65/, or (ii) aircraft internationally registered. In appendix 1 to the resolution, the expression *"international registration"*, *"denotes the cases where the aircraft to be operated by an international operating agency would be registered not on a national basis, but with an international organization having legal personality, whether or not such international organization is composed of the same states as have constituted the international operating agency"*.66/ This, however, is subject to fulfilment of certain basic criteria, which have been established by the Council. For the sake of avoiding repetition, the criteria which have been established by the Council are almost identical to what the Legal

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65/ Supra, footnote 62 at p. 5.

66/ Ibid.

Committee has suggested in its report to the Council. However, the Council in its report added two important notes to the established criteria. Firstly, in connection with the criteria pertaining to the duty of the states constituting the international operating agency, the states shall *"identify for each aircraft an appropriate state among themselves to be entrusted with the duty of receiving and replying to representations which might be made by other contracting states of the Chicago Convention concerning that aircraft."* The Council added that in the case of joint registration, *"the functions of the state of registration under the Convention"* shall be performed by the state which maintains the register or relevant part of the joint register pertaining to a particular aircraft.[67/] Secondly, in connection with the criteria relating to non-discriminatory practices against aircraft registered in other contracting states, the Council, in its resolution, explained that [68/]: *"the mere fact of joint or international registration under Article 77 would not operate to constitute the geographical area of the multinational group as a cabotage area,"* and that, *"the mere fact of joint or international registration under Article 77 will not affect the application of Article 9 (on prohibited areas), and Article 15 (on airport and similar charges)"*; and finally, *"the mere fact of joint or international*

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67/ Ibid., Note 1 at p. 6.

68/ Ibid., Note 2 at p. 7.

*registration under Article 77 will not protect all the states constituting the international operating agency under Article 27 of the Chicago Convention (on patent claims) for under this Article, a state in order to be protected should also be 'a party to the International Convention for the Protection of Industrial Property'."*

Furthermore, the Council held that, *"a determination /made by it/, pursuant to, and within the scope of Article 77, will be binding on all contracting states and that, accordingly, in the case of aircraft which are jointly registered or internationally registered and in respect of which the basic criteria which have been established by the Council are fulfilled. The rights and obligations under the Chicago Convention would be applicable as in the case of nationality registered aircraft of a contracting state."* 69/

In addition, the Council decided that the manner of application of the provisions of the Convention relating to nationality of aircraft shall be that;

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

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69/ Ibid., p. 3

(ii) such aircraft shall be deemed for the purposes of the Convention, to have the nationality of each of the states of the agency, without prejudice to the rights of other contracting states, (i.e. not to give rise to any discriminatory practices against aircraft registered in other contracting states with respect to the application of the provisions of the Chicago Convention);

(iii) for the purposes of application of Article 25 (aircraft in distress) and Article 26 (investigation of accidents) of the Convention, the state maintaining the joint register or the relevant part of it pertaining to a particular aircraft shall be considered to be the state in which the aircraft is registered.

The Council also declared that; *"the Resolution applies only when all the states constituting the international operating agency are and remain parties to the Chicago Convention,"* and that the Resolution does not apply to aircraft which are registered on a national basis even though they are operated by an international operating agency.70/

Finally, in Appendix 3 to the Resolution, the Council presented the following scheme of joint registration, noting at the same time *"that other schemes might also be possible"*:

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

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70/ Ibid., p. 4.

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

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

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

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

*(f) Notwithstanding (e) above, the responsibilities of a state of registration with respect to the various provisions of the Chicago Convention shall be the joint and several responsibility of all the states which constitute the international operating agency. Any complaint by other contracting states will be accepted by each or all of the states mentioned."* 71/

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71/ Ibid., p. 8.

To bring Annex 7 to the Chicago Convention on "Aircraft Nationality and Registration Marks" into line with the Council's Resolution, the Council declared that consideration will soon be given to the question of amending Annex 7 and that information on this point will be issued as a supplement to the Resolution.

On January 23, 1969, the Council adopted the promised Amendment of Annex 7.[72/] The resolution adopting this Amendment states that such parts of the Amendment as have not been disapproved by more than half of the total number of contracting states on or before May 23, 1969 would become effective on that date and would become applicable on September 18, 1969. In a covering letter to contracting states of the Chicago Convention, enclosing the Amendment,[73/] the Secretary-General of the International Civil Aviation Organization described the scope of the Amendment as the introduction in Annex 7 to the Convention appropriate provisions to enable the aircraft of international operating agencies to be registered on other than a national basis; the determining principles of these provisions being that the "Common Mark Registering Authority" of each international operating agency will be assigned a distinctive common mark by the International Civil Aviation Organization, which will be selected from the series of symbols included in the radio call signs allocated to the organization by the International Tele-Communication Union.

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72/ The Amendment was adopted by the Council at the second meeting of its sixty-sixth session.

73/ Letter No. AN-3/1-69/31 (512/1969).

Accordingly, definitions of the expressions "common mark", "Common Mark Registering Authority" and "International Operating Agency" have been introduced to the Annex.[74/]

In conclusion, it should be mentioned that the subject of cooperative agreements and arrangements of aircraft is one of growing importance in international civil aviation for reasons which have already been mentioned. The Council by introducing into Air Law the new concept of international registration in contrast to national registration has not only met the needs of many states who wish to participate in various forms of cooperative arrangements, in order to solve their problems, but has also encouraged others to collaborate in international air transport. Such collaboration, as we shall see in the following pages, is either envisaged by the Chicago Convention, 1944, or not envisaged at all by the Convention.

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74/ A "common mark" is defined in the Amendment as *"A mark assigned by the International Civil Aviation Organization to the Common Mark Registering Authority registering aircraft of an international operating agency on other than a national basis"*; and the "Common Mark Registering Authority" is defined as *"the authority maintaining the non-national register or, where appropriate the part thereof, in which aircraft of an international operating agency are registered"*, and finally, "International Operating Agency" is defined as *"an agency of the kind contemplated in Article 77 of the Convention."*

## II. INTERNATIONAL OPERATING AGENCIES

### *A. DEFINITION*

It should be recalled that the Chicago Convention on International Civil Aviation, 1944, expressly permits (Article 77) contracting states to participate in any of the three forms of the cooperative agreements and arrangements envisaged by the Convention.

Thus, a contracting state may participate in:

(i) joint operating organizations,[75/] or

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75/ Article 77 of the Chicago Convention, 1944. *"Joint operating organizations"*, are organizations established by states through their governments or their airlines for the purpose of operating air services (Article 79) and they may be formed of *"state-owned, or partly state-owned or even privately owned airlines (Article 79)"*. To date there have been two clear cases of advanced cooperation in ownership and operation of a single airline by several states: the SAS Consortium and Air Afrique. The establishment of similar air transport enterprises has been under discussion amongst states in Europe, the Middle East, Latin America, and more recently Africa, but not concrete results have yet been achieved. For further information on joint operating organizations, see infra, p. 104 of this study.

(ii) pooled international air services[76], or

(iii) international operating agencies.[77]

The first two forms of the cooperative agreements and arrangements envisaged by the Chicago Convention, 1944, do not raise any problem in connection with the Conventional principle of nationality and registration of aircraft, unless, of course, the participating states desire to register the aircraft involved in the cooperative arrangements in other than a national register.

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76/ Short of airlines integration, the most important form of cooperative arrangements in international air transport is pooling. A pooling agreement has been defined as *"an agreement between air carriers for the operation by them of one service or one group of services including the allocation of revenue derived from such operation"*. Professor Lemoine, author of this definition and Secretary-General of Air France, has also commented:

> *"A pool does not constitute a merger, since strictly speaking, it does not mean merging operations; moreover, one of its purposes is, if not to allocate profits, at least to allocate revenue. Neither is it in any way a partnership, since there is no joint contribution of capital, and each of the parties work for his own account, bearing the leases and keeping the profits severally. Thus, it is evident that a pool is a commercial agreement, without special legal status and that, as such, it is governed by the general law of contracts."*

"Les pools dans l'aviation commerciale", Espaces (April, 1946). Also in ICAO Circular 28 - AT/4 (June, 1952), "Existing Forms of Commercial and Technical Cooperation Between European Airlines in Regional Air Services", p. 87. An example of a standard pool agreement is provided in Appendix E at p. 211, infra.

77/ Article 77 of the Chicago Convention, 1944.

However, since the present practice of states relating to the first two forms of cooperative arrangements envisaged by the Convention is in conformity with the structure of the Chicago Convention, 1944, we shall not deal with them in this study.

The real problem is placed by the third form, namely, "international operating agencies". When the draftsmen of the Chicago Convention, 1944, left it to the Council of ICAO, *"to determine in what manner the provisions (of the Convention) relating to nationality shall apply to aircraft operated by international agencies"*.

In the preceding section we have traced the history of the legal status of aircraft registered other than on a national basis, until we arrived at the new concepts of international registration, and joint registration which has been introduced by the Council in its resolution on "Nationality and Registration of Aircraft Operated by International Operating Agencies",[78/] which is supposed to remove the stigma from the third form of the cooperative arrangements, which is envisaged by the Chicago Convention, 1944, i.e. *"the international operating agencies"*. What then are these international operating agencies?

The panel of experts which was established by the Council of ICAO on March 16, 1960 to advise the Council on the interpretation and application of Article 77 of the Convention, while noting

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78/ ICAO-DOC. 8722-C/976 (20/2/68)

that the expression "international operating agency" is not defined in the Convention, defined 79/ it, for the purpose of Article 77, as an organization which is

(i) composed only of contracting states to the Chicago Convention,

(ii) has an international character, and

(iii) is not constituted under the national law of any particular state.

It follows from this definition that "international operating agencies", within the meaning of Article 77 of the Convention, are not yet in existence, although they are contemplated by the Convention.80/ For at present there is no air transport operating organization which has all the characteristics of an "international operating agency" as defined by the panel of experts.

However, this should not be confused with the existing "joint operating organizations" which are established by states through their governments or their airlines for the purpose of operating air services (Article 79). In as much as they may be

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79/ ICAO-DOC. PE-77 Report (30/6/1960).

80/ Article 77 of the Chicago Convention, 1944.

formed of *"state-owned, or partly state-owned or even privately owned airlines"*,[81/] they would not have the international legal personality, which is required in the definition of an "international operating agency". Examples include SAS [81-A/],

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81 - Article 79 of the Chicago Convention, 1944.

81-A/ To date the most notable example towards integration in international air transport is the Scandinavian Airlines System (SAS). SAS is formed of three scandinavian airlines; the Swedish AKTIEBOLAGET AEROTRANSPORT (ABA), the Danish DET DANSKE LUFTFARSELSKAB ALS(DDL), and the Norwegian DETNORSKE LUFTFARTSELSKAB ALS(DNL). The agreement establishing SAS was first signed on July 31, 1946, but was subsequently amended on July 4, 1947, and June 25, 1949 by agreements known, respectively, as the (OSAS) and the (ESAS) Agreements. The present Consortium Agreement came into force on October 1, 1950. Aircraft belonging to the Consortium are registered by the three constituent airlines in the three Scandinavian countries in the proportion of 3:2:2 with respect to each type of aircraft owned by the Consortium (56, of the Consortium Agreement). Thus, the SAS Consortium Agreement succeeds in obtaining the substance of ownership but renouncing the form thereof. This avoids the need for dual or multiple registration of aircraft prohibited by Article 18 of the Chicago Convention, 1944, without raising the problem of a determination by the ICAO Council under Article 77 of the Chicago Convention, 1944 of the manner in which the Provisions of the Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies. For the text of the Agreement see ICAO Circular 99-AT/20 (1970). "Scandinavian Airlines System Consortium Agreement and Related Acts".

Air Afrique 81-B/,

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81-B/ Air Afrique was established on March 28, 1961 when Cameroon, Central African Republic, Congo (Brazzaville) Ivory Coast, Dahomey, Gabon, Upper Volta, Mauritania, Niger, Senegal, Chad and Togo (which subsequently joined) concluded at Yaoundé the treaty relating to air transport in Africa for the creation of a joint Air Transport Corporation to be registered in each of the contracting States under the name Air Afrique for the purpose of exercising their rights with respect to air traffic between their territories and with outside territories. This new Air Afrique jointly established by Air France and UAT in September, 1960, with headquarters in Paris, was also registered under the name Air Afrique. In part, under a protocol annexed to the treaty, which sets out an agreement between the contracting States to the treaty and the Société de Transports Aériens en Afrique, the latter, inter alia, gave up the name Air Afrique in favour of the new corporation, acquired 34% of its stock, and undertook to provide it with technical advice and operational assistance, including staff training, supply of equipment, and flying crews on a temporary basis. The treaty contemplated joint registration in one of the contracting States (Article 7 of the treaty of Yaoundé). Failing joint registration, the treaty explicitly provides for a system of registration of aircraft similar to that followed by SAS (Supra, footnote 7). Air Afrique however, is not a mere Consortium like SAS, but a multi-national company registered in each of the contracting States. The joint corporation will be able to register the aircraft in its own name in any of the countries concerned. See further ICAO Circular 98-AT/19 (1970), "Treaty on Air Transport in Africa. Establishment of Air Afrique (Yaoundé, 1961)".

Central African Airways Corporation 81-C/; and now defunct East African Airways Corporation 81-D/.

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81-C/ Central African Airways (C.A.A.) was created by legislation enacted at Salisbury on June 1, 1946. It was owned jointly by the governments of Southern Rhodesia (50%), Northern Rhodesia (35%) and Nyasaland (15%). C.A.A. absorbed the wartime functions of Southern Rhodesia Air Services (S.R.A.S.). On February 1, the ownership of C.A.A. was transferred from the separate governments to the Central African Airways Corporation Act of 1960. See further R.E.G. Davies, "A History of the World's Airlines", London, 1967, p. 416. This is now being disolved.

81-D/ Development in East Africa took a course almost parallel to that of C.A.A. in 1943. A committee was appointed by a conference of governers of the British Territories of Kenya, Uganda, Zanzibar and Tanganyika to prepare a scheme for post-war airline services. On November 1, 1945, B.O.A.C. began operations with four D.H. 89s on behalf of East African Airways Corporation (E.A.A.C.), which was formally incorporated on January 1, 1946. Ownership was divided between Kenya (68%), Uganda (23%), Tanganyika (9%) and Zanzibar (0.7%). The East African Airways Corporation is reconstituted by the Treaty for East African Cooperation signed on June 6, 1976 by the governments of Tanzania, Uganda and Kenya, referred to in the treaty as the partner States. The treaty establishes the East African Community which comprises, inter alia, the East African Airways Corporations. However, during the last two years, relations between the three nations which own EAA have deteriorated steadily, and the airline ran into a financial crisis which came to a head in December 1976 when the governments of Uganda and Tanzania failed to pay a promised 3.7 million towards operational costs. Most of the EAA fleet is grounded at Nairobi but a Boeing 707 freighter is still at London Heathrow Airport and a DC9 and two Friendships remain in Tanzania.

It has been reported (Flight International, p. 509, March 5, 1977) that Kenya announced the formation of its own independent airline; Kenya Airways on February 2, 1977 and operations began two days later with two leased British Midland Airways Boeing 707s. Services were initially flown to London and Mombasa. Malindi and

Apart from these structural differences between "international operating agencies" and "joint operating organizations", it is submitted 82/ that there is also a substantive difference which corresponds to the difference between "internationalism" on the one hand, and "multinationalism" on the other hand. In the field of air transport, "internationalism" as entertained by some countries at the Chicago Conference in 1944 has given way to "multinationalism", as we shall see.

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81-D/ Kisumu were added at the end of last month, and services to Bombay and the Seychelles are proposed for later this month. Kenya is now using a third British Midland Airways Boeing 707 for supplementary European flights. For further information, see R.E.G. Davies, "A History of the World's Airlines", p. 416, London 1967, and ICAO Circular 100-AT/21, 1970, "Report on the East African Corporation".

82/ By Dr. Ben Cheng in his article on "Nationality of Aircraft Operated by Joint or International Agencies", McGill Yearbook of Air and Space Law, 1966, p. 21.

*B. TYPES: INTERNATIONALISM AND MULTINATIONALISM*

A close study of the history of the Chicago Convention, 1944, will reveal that the Chicago Conference, 1944, envisaged two different types of "international operating agencies". One is international in character, in the sense that it is established by a public international organization such as ICAO and is open for participation by all contracting states. The other is "multinational" in character, in the sense that it is composed only by a limited number (two or more, Article 77) of contracting states to the Chicago Convention, 1944.

As to the first type, it should be recalled that when Article 77 was introduced, it was proposed at the same time that ICAO should be empowered upon the request of the security council to *"constitute, supervise, and control one or more operation organizations to operate air services or routes in regions designated from time to time by the international security organization, provided that such operating organization shall not engage in domestic air transport within the territory of any state without the permission of that state ..."* 83/ Although, this proposal was rejected, the reference to it will shed some light on the intentions of the draftsmen of the Chicago Convention. In my

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83/ Canadian revised preliminary draft, Chicago Conference. DOC. 50 Article IX (3), 1 proceedings p. 570 at p. 581. Article X of the Canadian Draft became with minor modifications Chapter XVI of the Chicago Convention, 1944.

opinion, the intentions of the draftsmen of the Chicago Convention, when they included, in Article 77, provisions relating to "international operating agencies", was to permit any public international organization to establish an organization to operate air services, if its constitution permits such activity.

However, the establishment of an "international operating agency" of the type referred to above is unlikely. Firstly, because the world today has moved from the "internationalism" of the peacetimes (1944) to "multinationalism" of the present era (cooperative agreements and arrangements among various groups of states). Secondly, within ICAO the Air Transport Committee, which was entrusted by the Council upon the Resolution of the Second Assembly of ICAO to study the problems relating to nationality of aircraft operated by "international operating agencies", has ruled out 84/ the possibility of registration of aircraft with IATA, with ICAO or with any other organization. This is so because, in its reasoning, none *"could appropriately be charged with the responsibilities falling on contracting states as states of registry"*. Although the difficulties experienced by the Air Transport Committee in its reasoning has become surmountable after the Council's Resolution on Nationality and Registration of Aircraft Operated by International Operating Agencies of

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84/ ICAO-DOC. C-WP/2284 - (15/11/1950).

December 14, 1967, still the trend towards "multinationalism" as opposed to "internationalism" has not been abandoned. This will bring us to the second type of international operating agencies which are envisaged by Article 77 of the Chicago Convention, 1944.

In contrast to the first type of "international operating agencies", which are open for participation by all states, the first sentence of Article 77 envisages another type of international operating agency, which is open for participation only by a limited number of contracting states, namely, "two or more" (Article 77).

Similarly, this type of international operating agencies should not be confused with the existing "joint operating organizations". It is true that both of them are multinational in character, being the result of treaties between states, and have legal personality in the municipal laws of the constituent states. However, there is a basic structural difference between them. "Joint operating organizations" may be formed by privately-owned airlines (Article 79); yet they would not have an international legal personality. International operating agencies are endowed with a separate international legal personality.

Both types of international operating agencies, referred to above, come under the last sentence of Article 77, and we shall now turn to see how the provisions of the Chicago Convention relating to nationality of aircraft *"shall apply to aircraft operated by international operating agencies"*.

### *C. JOINT REGISTRATION AND INTERNATIONAL REGISTRATION*

#### *1. Joint Registration*

It should be recalled that the Council of ICAO, in its Resolution of December 14, 1967 on *"nationality and registration of aircraft operated by international operating agencies"*, has concluded that the provisions of the Chicago Convention, 1944, without amendment can be made applicable to aircraft which are not registered on a national basis, such as aircraft jointly registered or aircraft internationally registered.

The expression "joint registration" means the system under which the states constituting the international operating agency would establish a joint register, other than the national register, in which they would enter aircraft to be operated by the international operating agency.[85/] In this way, "joint registration" and dual or multiple registration have the effect of conferring upon aircraft so registered more than one nationality,[86/] which is prohibited by Article 18 of the Chicago Convention, 1944. The panel of experts rejected "joint registration" on the ground that, *"the aircraft in question would have no nationality"*.[87/] It is clear that the panel's reason is not correct and what probably the panel meant to say is that, aircraft which are jointly registered

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85/ ICAO-DOC. 8722-C/976 (20/2/68) Appendix 1, p. 5.

86/ Article 17 of the Chicago Convention, 1944, provides that, *"aircraft have the nationality of the state in which they are registered"*.

87/ ICAO-DOC PE 77 Report (30/6/1960) paragraph 13.

would have more than one nationality, contrary to the provisions of Article 18 of the Chicago Convention, the major obstacle to joint registration.

Apart from the legal difficulty encountered by Article 18 of the Chicago Convention, the Air Transport Committee in its report of 1956 88/ was of the view that joint registration would give rise to practical difficulties in the implementation of the provisions of the Chicago Convention, which impose obligations on the state of registry.89/ But the Air Transport Committee did not rule out the possibility of surmounting these difficulties. In fact it envisaged a solution similar to that adopted by the Council in its Resolution of December 14, 1967, whereby the implementation of the Conventional obligations would have to be undertaken by one or more than one of the contracting state constituting the international operating agency. However, the Committee's overall conclusion was that since the intervention of a contracting state would be required for the full implementation of the Convention, joint registration, then, would have no practical purpose.

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88/ ICAO-DOC. C/WP/2284-(15/11/1956).

89/ Arts. 10, 11, 12, 21, 29, 30, 31, 32, 38, 67, 73. See PE-77/working draft No. 5 (31-5-1960) and Addendum (4-7-1960), which list the following provisions *"relating to nationality of aircraft"* and imposing obligations and functions on the state of registry Arts. 5, 7-16, 22-26, 27, 29-35, 37-40, 68. As regards Annexes to the state of registry see PE-77/working draft No. 10 (23-6-1960). For general discussion of the Articles of the Chicago Convention imposing obligations on contracting states see Part three, section III of this study, supra, p. 51.

Professor Mankiewicz also recognized that certain difficulties might arise out of joint registration, in particular, under Article 26 (on investigation of accidents and Articles 30-33 (on the question of issuance or validation of certificates and licences) of the Chicago Convention. However, he also suggested that these difficulties might be overcome by a determination of the Council under the last sentence of Article 77.90/ But the learned author arrived at the same conclusion as the Air Transport Committee, in that, in spite of the peculiar status of the "joint registry", each aircraft will have the nationality of the state keeping the joint register, with the result that no determination will be required from the Council of ICAO under Article 77.91/

In view of this logical argument, it is doubtful whether "a determination" by the Council of ICAO could remove the difficulties relating to aircraft, registered other than on a national basis. At least in connection with the legal questions involved

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90/ "Aircraft operated by international operating agencies", (1965) 31 J.A.L.C. 304, at p. 309-310.

91/ Ibid, at p. 309.

outside the framework of the Chicago Convention, such as jurisdiction,[92] the Council of ICAO cannot intervene by a determination. For under Article 77 of the Convention, the Council is empowered to decide only on the application of the provisions of the Chicago Convention to such aircraft.[93]

However, the Council of ICAO has been asked three times to make a determination in accordance with the last sentence of Article 77 of the Convention. In connection with the last request, the Council on December 14, 1967 adopted its famous resolution on nationality and registration of aircraft operated by international operating agencies. Whether the Resolution has succeeded in surmounting the difficulties of aircraft which is "jointly registered" or "internationally registered", remains to be examined.

It should be mentioned that, without the principle of nationality and registration of aircraft, the Chicago Convention, 1944 cannot be administered, because most of the rights and

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92/ Incidentally, Article 18 of the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft, provides that, in the case of aircraft operated by international operating agencies and not registered nationally, the member states of such agencies *"shall, according to the circumstances of the case designate the state among them which, for the purpose of this Convention, shall be considered as the state of registration and shall give notice thereof to the International Civil Aviation Organization which shall communicate the notice to all states parties to this Convention."* ICAO-DOC. 8364.

93/ Article 77 of the Chicago Convention, 1944.

obligations, which are exchanged between the states parties to the Chicago Convention, are in regard to aircraft registered in a contracting state. Consequently, any attempt to dispense with the legal nexus between aircraft and a contracting state is doomed to failure. This is true despite the latest resolution by the Council of ICAO to permit registration of aircraft operated by international operating agencies on a non-national basis. For, the Council itself has recognized in its resolution the importance of the legal nexus between aircraft and a contracting state.

Thus, in the case of "joint registration" the resolution provides that the rights and obligations which are established under the Chicago Convention, *"would be applicable as in the case of nationally registered aircraft of a contracting state"*.[94/] and that the states constituting the international operating agency, shall identify for each aircraft a state from among themselves, which shall be entrusted with the duty of implementing the provisions of the Chicago Convention,[95/] and such state would normally be the state, which maintains the joint register or the relevant part of the joint register.[96/]

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94/ ICAO-DOC. 8722-C/976 (20/2/68) p. 3.

95/ Ibid., Appendix 2, paragraph (B) at p. 6.

96/ Ibid., note 1 at p. 6.

In fact the resolution did not add any thing new to the principle of nationality and registration of aircraft. It maintained the status quo which requires the intervention of a contracting state to implement the provisions of the Chicago Convention, 1944.

However, the resolution by permitting aircraft to have more than one nationality, namely, the nationality of each of the states constituting the international operating agency,[97] has created new problems which are not contemplated by the Chicago Convention, 1944.

Although, under the Chicago Convention, every aircraft, in order to engage in international air navigation, must be registered in a contracting state, which provides it with a nationality [98], dual or multiple registration of an aircraft in "more than one state", with the result that the aircraft would have more than one nationality, is, however, forbidden by Article 18 for the simple reason that most of the rights and obligations, which are exchanged between the contracting states, are in regard to aircraft having one nationality. If an aircraft happened to have more than one nationality, such as aircraft which is registered in more than one state, or in a joint register which is

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97/ Ibid., The Resolution para. (2) at p. 4.

98/ Article 17 of the Chicago Convention, 1944.

established by more than one state [99], serious problems would follow. Examples of these problems include questions of conflicts of jurisdiction and question of application of the provisions of the Chicago Convention, 1944.

However, the Council is not empowered to resolve questions of conflicts of jurisdiction. For, under Article 77 of the Convention, the Council's power is limited to determine only the questions of application of the provisions of the Chicago Convention to aircraft which are not registered on a national basis.[100]

As to the question of the application of the provisions of the Chicago Convention, the main problem is in connection with the implementation of the obligations which are placed by the Convention on Contracting States. These obligations might be summarized as follows:

> (a) obligations to ensure that aircraft of its registry comply with the various laws of the state into the territory of which it may enter (Articles 8, 10, 11, 12, 13, 14, 29, 30, 35, 40, and 68), and comply with the regulations relating to flight and manoeuvre of aircraft over the high seas which may have been promulgated by ICAO,

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99/ ICAO-DOC. 8722-C/976 (20/2/68).

100/ Article 77, Chicago Convention, 1944.

(b) obligations to issue radio operating licences (Article 30), certificates of airworthiness (Article 31), licences of personnel (Article 32), certificates or registration of the aircraft (implicit in Chapter III on nationality of aircraft, particularly Article 20, and in Article 29), and

(c) obligations to promulgate and enforce such laws governing the aircraft and its personnel to the greatest extent practicable, in accordance with the standards and recommended practices of ICAO (Article 37 and 38).

The resolution tried to implement these obligations in two ways; first it provided that, states establishing the "joint register" in which the aircraft of the international operating agency is registered *"shall be jointly and severally bound to assume the obligations which under the Chicago Convention, 1944, attach to a state of registry."* 101/ Second, the functions of the state of registration under the Convention, (in particular, the issue and validation of certificates of airworthiness and of licences for the operating crew) shall be performed by the state which maintains the joint register.102/ This, however, is

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101/ ICAO-DOC. 8722-C/976 Appendix 2, para. A, p. 6.

102/ Ibid.,Note 1, p. 6.

done on behalf of all the states concerned and without prejudice to the joint and several responsibility of the states establishing the joint registry.103/

However, the Resolution, as we have seen, in the case of "joint registration", did not add anything new to the old regime which requires the intervention of a contracting state to implement the provisions of the Chicago Convention, 1944.

2. *International Registration*

In contra-distinction to "joint registration", which requires the intervention of a contracting state to implement the provisions of the Chicago Convention, 1944, "international registration" does not require such intervention. It denotes the registration of aircraft to be operated by an international operating agency *"with an international organization having legal personality"*, irrespective of whether or not such international organization is composed of the same states which have constituted the international operating agency.104/

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103/ Ibid., Para. B, p. 6

104/ ICAO-DOC. 8722-C/976 Appendix 1, p. 5.

International registration was first rejected by the Air Transport Committee in its report of 1956 [105/], and by the majority of the 1960 panel of experts, [106/] mainly on the ground that it would be tantamount to substituting the international organization in place of a sovereign state, in so far as the obligations which are imposed by the Convention on Contracting States are concerned.

While admitting the cogency of the reasoning of the Air Transport Committee and the panel of experts, it is submitted that the idea of registering aircraft, to be operated by an international operating agency, with an "international registering organization", is feasible, for the traditional concept of nationality and registration of aircraft has restrained states from cooperation in the air, with the result that many developing countries are not able to have efficient and strong carriers. However, the introduction of the new concept ofiinternational registration of aircraft with an "international registering authority" will involve certain difficulties.[107/] Among these

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105/ ICAO-DOC. C-WP/2284 - (15/11/1956).

106/ ICAO-DOC. PE-77 Report (30/6/1960).

107/ See the Memorandum, submitted by Mr. R.H.E. Austin to the 52nd Conference of the International Law Association (Helsinki) ...

... Annex D at p. 283.

problems would be how to enforce the provisions of the Chicago Convention on Aircraft, with respect to aircraft which are not operated by an international operating agency, but which are not registered in any state. Similarly, there will be the problem of determining the civil and criminal law applicable to internationally registered aircraft.

These problems, however, are not insurmountable. An ICAO working paper 108/ has shown that there would be no problem implementing the obligations which are imposed on a contracting state by the Chicago Convention, 1944, provided that the aircraft, to be operated by an international operating agency, is registered with an intergovernmental organization constituted for the purpose of exercising functions of governmental character, and not only a commercial concern for the purpose of operating international air services, such as the international operating agency itself. The paper contemplated, inter alia, that the functions and obligations which are placed by the Convention on the state of registration would be discharged by the international registering organization either by itself or through the states considering it.

As to the problem of which civil and criminal law would be applicable to internationally registered aircraft, it is submitted 109/ that the solution adopted by the Tokyo Convention

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108/ ICAO-DOC. PE-77 Working draft No. 6 (31/5/1960).

109/ Supra, footnote 106 at p. 286.

on "Offences and Certain Other Acts Committed on Board Aircraft", whereby parties to joint operation designate the law of a particular member as being applicable, has been considered a practical solution in cases where aircraft operated by joint operating agencies are nationally registered. In cases where aircraft are internationally registered, this solution would be more suitable because there would be no possibility of conflict between the law of the state of registration and the designated state's law, since there would be no state of registration.110/

These cogent arguments seemed to have influenced the Council of ICAO when it decided that the provisions of the Chicago Convention, without amending them, can be made applicable to aircraft which are not registered on a national basis such as aircraft jointly registered, or aircraft internationally registered.111/

However, in the case of "international registration", the resolution was not clear on how the "international registering organization" is going to discharge the functions and obligations which are placed by the convention on the state of registry.

There seems to be three different methods by which an international registering organization can discharge the functions

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110/ Ibid.

111/ ICAO-DOC. 8722-C/976 (20/2/68), p. 3.

and obligations which are placed on a contracting state by the Chicago Convention, 1944:

> (i) Either through the international registering organization itself, or
>
> (ii) through a contracting state which would agree to extend its rules and regulations to aircraft registered with the international registering organization, or
>
> (iii) through the joint and several obligations of the states constituting the joint registering organization to assume the functions which are placed by the Convention on the state of registry.112/

As to the first method, in as much as the international registering organization cannot prosecute, it will not be able to discharge the obligation which is imposed by Article 12 of the Chicago Convention, 1944. Nor will it be able to exercise civil and criminal jurisdiction over aircraft registered with it. But, this is not a serious difficulty and can be surmounted by adopting a solution similar to the one adopted by the Tokyo Convention on "Offences and Certain Acts Committed on Board Aircraft", whereby the states, constituting the international operating organization,

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112/ Ibid.

will designate a particular state to extend its legislation to apply to aircraft registered with the international registering organization.

However, if this solution is adopted, it would not be different from the second and the third alternative methods mentioned here, whereby the intervention of a contracting state is sought to implement the provisions of the Chicago Convention, 1944.

In conclusion, it should be mentioned that, the concept of international registration of aircraft is very useful indeed, and may be utilized to find a solution to some of the problems airsing out of the lease, charter and interchange of aircraft when an aircraft registered in one state is operated by an operator belonging to another state. But, on the other hand, the concept of international registration contradicts the principle of nationality and registration of aircraft which is essential for the administration of the Chicago Convention, 1944. However, if international registration of aircraft is to become lawful, certain provisions of the Chicago Convention would have to be amended.

*PART FIVE*

## COOPERATIVE ARRANGEMENTS NOT ENVISAGED BY THE CHICAGO CONVENTION, 1944

### I. LEASE, CHARTER AND INTERCHANGE OF AIRCRAFT

It should be recalled that the Chicago Convention on International Civil Aviation, 1944, expressly permits (Article 79), and even encourages (Article 78) contracting states to participate in any of the three forms of the cooperative agreements and arrangements, which are envisaged by the Convention, such as joint operating organizations,[1/] pooled international air services [2/] and international operating agencies.[3/]

However, modern technological developments and economic pressures, have forced states and airlines to enter into new forms of cooperative agreements and arrangements which are not expressly permitted by the Chicago Convention, 1944, but which fit into the general aims and objectives of the International Civil Aviation Organization (ICAO), which are, inter alia, to ensure, *"the safe and orderly growth of international civil aviation throughout the world"*,[4/] and *"to prevent economic waste caused by unreasonable competition"*.[5/]

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1/ Supra, part four, section II, footnote No. 75 at p. 96.

2/ Ibid., footnote No. 76 at p. 97.

3/ Ibid., footnote No. 77 at p. 97.

4/ Article 44(a) of the Chicago Convention, 1944.

5/ Article 44(e), ibid.

Such new forms of cooperative agreements and arrangements include [6]: (i) commercial agency agreement,[7]

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6/ In this connection, mention should be made to the circulation by ICAO of a study prepared by the Institut Français au Transport Aérien (IFTA) on "Existing Forms of Commercial and Technical Cooperation Between European Airlines in Regional Air Services", ICAO-Circular 28-AT/4 (1952), and to the summary of materials on Cooperative Agreements and Arrangements which has been prepared by the Secretariat of ICAO in response to Resolution A15-21, which was adopted by the Assembly of ICAO at its fifteenth session. The aim of this resolution was to provide states with as much information as possible on Cooperative Agreements and Arrangements concluded in the field of air transport between governments or international airlines. ICAO-Circular 84-AT/14 (1967).

7/ *"Under the general heading of commercial agency agreements are included all agreements under which the airlines conduct on each other's behalf, the various operations relating to traffic promotion, ticket sale, and handling of traffic on their connecting routes. These agreements include both bilateral agency agreements and standard agreements drawn up by IATA, the parties to which undertake to honour each other's transportation documents in order to facilitate movement of traffic to its destination."* ICAO-Circular 28-AT/4 (1952) p. 23. A standard form of general agency agreement used between British European Airways and British Overseas Airways Corporation, and a passenger sales agency agreement used by Canadian Pacific Airlines are provided respectively in (Appendix 2) and (Appendix 3) to the ICAO-Circular on "Summary of Material Collected on Cooperative Agreements and Arrangements". ICAO-Circular 84-AT/14 (1967).

(ii) interline traffic agreements,[8/] (iii) ground handling agreements,[9/] (iv) technical cooperation agreements [10/], and

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8/ The International Air Transport Association (IATA) has developed certain standard practices to facilitate the handling of interline passengers, baggage and cargo. These standard practices are known in the field of air transport as interline traffic agreements, and they are adopted by a large number of IATA's member airlines. Interlines traffic agreements are also made by bilateral agreements in cases when one of the participating airlines is not a party to a multilateral traffic arrangement. The interline traffic arrangements are useful to both users and operators, since they simplify formalities and reduce the number of documents required. See further, ICAO-Circulars 28-AT/4 (1952), and 84-AT/14 (1967).

9/ In most cases ground handling agreements are concluded bilaterally but some involve the participation of more than two airlines. The types of services provided by the bilateral ground handling agreements include: (i) traffic and ramp handling at the airport, (ii) traffic facility at the city terminal, (iii) collection of passenger service charge or tax, (iv) surface transportation of passenger and crew, (v) customs clearance, and (vi) storage in bond and related facilities to assist the operating airline in carrying out inspection and normal ground maintenance of aircraft. The International Air Transport Association (IATA) has prepared a standard ground handling agreement to guide its members when concluding bilateral agreements in this field, and this has been immediately adopted by its members, especially in Europe and the near East.
See, ICAO-Circular 84-AT/14 p. 4 (1967).

10/ States as well as airlines have entered into various forms of agreements for technical cooperation. In the field of telecommunications, it took the form of the establishment of the Société Internationale de Télécommunications Aéronautiques (SITA), the purpose of which was to assist the airlines in transmitting messages essential for their operations. In the field of capital investment, the main European airlines have agreed to facilitate the purchase of certain items of aeronautical equipment from their joint supplies, the American manufacturers, or, in certain

(v) lease, charter and interchange of flight equipments.

The first four types of cooperative agreements and arrangements mentioned here, are beyond the scope of this study, mainly because they do not raise any practical difficulties in connection with the application of the provisions of the Chicago Convention, 1944. However, serious difficulties are posed by the lease, charter, and interchange of aircraft, when an aircraft registered in one state is operated by an operator belonging to another state. Before dealing with these problems, it is essential to touch upon the meanings of these terms.

*A. MEANING*

The terms "lease", "charter", and "interchange" of aircraft are not defined in the Chicago Convention, for the Convention was developed prior to the widespread application of international lease, charter, and interchange of aircraft. However, the terms are not aviation terms. They have been borrowed from maritime law

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cases, from each other. Thus, they established the Committee for Purchases of Aviation Materials (CPAM); for this purpose the "Beneswiss Agreement" was concluded between Sabena, Swissair and KLM to establish joint stocks of spare parts at a certain number of airports which they used. Finally, various bilateral agreements were made between airlines to provide for aircraft maintenance and overhaul facilities. The important thing, however, is that, in the field of technical cooperation, airlines are not hampered by the secrecy and competition which dominate their commercial activities. So they willingly cooperate for their mutual benefit. See further, ICAO-Circular 28-AT/4 (1967) p. 60-82.

to indicate specific contractual transactions which have the common factor of an aircraft registered in one state and is operated by an operator belonging to another state.[11/]

Charter: The term "charter", has acquired special meaning in the air transport field. It indicates, *"the purchase of the whole capacity of an aircraft for a special flight or flights for the use of the purchaser (individual or group)."* [12/] However, there are different types of charter. If the aircraft is supplied with crew it is called "gross charter",[13/] and if it is supplied without crew, it is called "bare hull charter".[14/] The fundamental difference between a "bare hull charter" and a "gross charter" is that in the case of a "bare hull charter" the contract usually related to the aircraft itself, while in the case of a "gross charter", the contract does not relate to the aircraft itself but to the space therein.[15/]

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11/ See ICAO-DOC. PE/CHA Report (15/10/1976).

12/ ICAO Definition of a Scheduled International Air Service, ICAO-DOC. 7278-C841 (May, 10, 1952) pp. 3-6. Another ICAO-DOC. defines "charter" as a private law term pertaining to the contract between an air carrier and a charterer. See further ICAO-DOC. SATC/Information paper No. 2 (1977) at p. 16.

13/ ICAO-DOC. LC/SC/CHA WD. No. 13 (18/4/1956).

14/ Ibid.

15/ According to ICAO Definition of a Scheduled International Air Service, the term "charter" has acquired a special meaning in the field of air transport. It indicates, *"the purchase of the whole capacity of an aircraft for specific flight or flights for the use of the purchaser*

However, we are concerned here with the former type of charter (which relates to the aircraft itself), for it is frequently used by airlines when, for instance, their equipment is undergoing repairs or overhaul. This type of "charter" is usually made between airlines by a special agreement 16/ which spells out the technical, operational and the insurance conditions. When actual chartering is made, an appendix would be included in the agreement to deal with the economical and commercial aspects of the charter.

Lease: When the charter contract relates to the aircraft itself, rather than to the space therein, it is better known as a lease. A leasing agreement involves the use by a carrier of an aircraft owned by somebody else. There are two types of leases, a dry lease 17/ and a wet lease.

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*(individual or group). The term thus covers a wide variety of specialized air transport operations from the taxi flight where one or two passengers may be carried to a large-scale operation carrying passengers or freight over a long period on a private or governmental contract."* ICAO Definition of a Scheduled International Air Service, ICAO-DOC. 7278-C841 (May 10, 1952) pp. 3-6.

16/ See Appendix 7 on Charter Arrangements in the "Summary of Material Collected on Co-operative Agreements and Arrangements", ICAO-Circular 84-AT/14 (1967) p. 67.

17/ In maritime phraseology, a dry lease would be referred to as a "bare hull-charter" or a "bare-boat charter", meaning a contract for the use of a ship without crew. See further, Kean, A.W.G., "Interchange", (1963) 67 J.R.A.S. p. 514.

Under a dry lease agreement, the aircraft is handed over by one party (the lessor) to another (the lessee). The lessee takes possession of the aircraft, supplies his own crew and fuel, and exercises full operational control over the aircraft in his possession.18/ An air carrier may enter into a dry lease, for example, to meet an unforeseen emergency, such as loss of one of his own aircraft or to help out a new subsidiary or associate.19/

A wet lease agreement, on the other hand, provides for the delivery of the leased aircraft complete with crew to the lessee to perform services as specified in the agreement and for redelivery of the aircraft to the lessor after performance of the service.20/ The fact that the aircraft is leased complete with crew vests the lessor with the ultimate control and safety responsibility of the aircraft. The lessor is usually responsible for maintenance and servicing of the aircraft except for technical inspection and maintenance enroute when the aircraft is in the possession of the lessee. The lessor is responsible for the airworthiness of the aircraft and for having the aircraft conform to government regulations. Lessor is also responsible for the

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18/ See further, Burton A. Landy, "Cooperative Agreements, Involving Foreign Airlines: A Review of the Policy of the United States Civil Aeronautics Board", (1969) 35 J.A.L&C., 575.

19/ Both examples are given by Kean, supra, footnote 17, p. 515.

20/ H.A. Wassenbergh, "Aspects of Air Law and Civil Air Policy in the Seventies", (The Hague, 1970) p. 113.

licences of the crew, and for taking care of the hull insurance. Lessor also holds lessee free and harmless for liability and indemnity connected with aircraft and crew, namely, loss or damage to aircraft and death or injury to crew.

On the other hand, the lessee is responsible for technical inspection and maintenance enroute when the aircraft is in his possession. Lessee is also responsible for the ground services, documentation, flight operations and communications. Lessee holds lessor free and harmless for lessee's personnel during the time that the aircraft is in the possession of the lessee and he also holds lessor free and harmless for traffic carried.

Wet lease agreements usually stipulate that the aircraft is operated on the permits of lessee as the aircraft is commercially operated under the exclusive control of lessee. However, some countries 21/ require a permit from the lessor mainly, because the aircraft remains under his operational control and safety responsibility.

Interchange: An interchange agreement involves the use of the same aircraft over the routes of two carriers to provide a one

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21/ In the United States, the CAB considers a wet lease as a charter or rather a series of charters for which the lessor requires special permission. This is mainly because in the case of a wet lease, the aircraft remains under the operational control and safety responsibility of the lessor. See further, H.A. Wassenbergh, supra, footnote 20, at p. 124.

plane through service.[22/] Thus, under an interchange agreement, the aircraft leaves the operational control of one carrier and enters the operational control of another carrier.

In this respect, an interchange agreement is almost similar to a dry lease agreement, where the aircraft leaves the operational control of the lessor and enters the operational control of the lessee.[23/] However, there is a fundamental difference between them. Whereas scheduled and non-scheduled carriers may enter into dry lease agreements, only scheduled route carriers can enter into interchange agreements. The main characteristic of an interchange agreement is the use of the same aircraft over the routes of two different scheduled carriers.

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22/ For example, the interchange agreement between Northwest and Pan Am, whereby they agreed to interchange aircraft on their routes Minneapolis/St. Paul-Detroit (Northwest) and Detroit/London (Pan Am). The agreement was approved by the (CAB) under sections 408, 412, and 102 of the Civil Aeronautics Act. Docket 1947s, order 69-2-126 of February 25, 1969. See further Wassenberg, supra, footnote 20 at p. 108.

23/ In the opinion of Mr. Kean, there is no difference between "interchange" and "dry lease". Interchange is an American term and dry lease is a British term. Kean, A.W.G., supra, footnote 17, at p. 514. See further Kean on "Nationality and Registration of Aircraft" in "The Freedom of the Air", ed. by Edward McWhinney and Martin A. Bradley, (Leyden, 1968), p. 190.

Interchange agreements are becoming increasingly popular among airlines.[24/] Through interchange of aircraft, airlines are able to obtain the maximum utilization of costly aircraft without having to worry about traffic rights,[25/] in addition to the advantage of enabling passengers to travel through to their destination without change of aircraft. This in turn saves a great deal of money and time spent in reticketing and transfer of passengers.[26/]

Interchange agreements are usually drawn up by the carriers concerned and set forth [27/]:

(i) the purpose of the agreement,

(ii) provisions for the leasing of aircraft and use of through aircraft,

(iii) method of control of flights,

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24/ *"All but two of the certificated trunkline carriers in the United States had interchange agreements as of October 1956. In addition, interchange agreements participated in by Pan American Airways, Pan American Grace Airways and Braniff Airways provide through service to many points in South America"*, Robert J. Keefer, "Airline Interchange Agreements" 25. J.A.L.C. (1958) p. 55. In Europe, interchange arrangements are made between SAS and Swissair on the Zurich/Dusseldorf route; and between BEA and Olympic Airways. Other arrangements may exist but these are few examples, mentioned by Henry Marking in his lecture to the Air Law Group of the Royal Aeronautical Society on 6, February 1963. See (1963) 67 J.R.A.S. 514, at p. 520.

25/ Kean, A.W.G., supra, footnote 17, at p. 515.

26/ Ibid.

27/ See "Equipment Interchange Agreement between Eastern Airlines, Inc. and Seabord World Airlines, Inc. (12 May 1973) in Diersch, W. "International Non-Scheduled Air Transportation" LLM thesis, Institute of Air & Space Law (July 1976) Attachment 1-B-2.

(iv) provisions as to crews and their competency,

(v) manner of dividing revenues,

(vi) method of reservation, billing and ticketing,

(vii) provisions for the responsibility for operation and services,

(viii) provisions for ground services and maintenance,

(ix) methods of computing and assessing charges,

(x) numerous provisions relating to damage to aircraft, hull insurance, liability and property damage, and

(xi) in addition, the miscellaneous provisions dealing with advertising, taxes, access to books and records, and compliance with the laws.

In the United States, where the law requires the filing of all equipment interchange agreements with the CAB, the interchange agreements usually provide for joint applications to obtain the necessary permits. However, it should be stressed that there is no standard equipment interchange agreement.

*B. ADVANTAGES OF LEASE, CHARTER AND INTERCHANGE OF AIRCRAFT*

Since agreements for the lease, charter and interchange of aircraft have the common factor of an aircraft handed over by one operator to be operated by another operator, it is generally recognized that agreements for lease, charter and interchange of aircraft have a number of advantages, namely:

(i) better utilization of aircraft,

(ii) reduction of operating costs,

(iii) savings in capital investment, and

(iv) greater opportunity for air carriers to extend their traffic markets.

With the increasing capital cost of aircraft, it has become important to improve aircraft utilization. Increased aircraft utilization will have a considerable effect on the economics of airlines' operations.[28/] Mr. Kean has shown us how the device of lease, charter and interchange of aircraft may be used to improve the utilization of aircraft.[29/] In the interchange

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28/ In a New Year's message published by the former "BEA Magazine" in January 1950, Mr. Peter Masefield wrote: *"our rate of utilization of aircraft is still pretty poor - an average of only four hours a day is really not enough ... There is still a good deal we can do to get more hours ... we must have a crack at it and we will. Every extra hour we can fly, above the 140,000 planned will mean about £26 off our deficit. ... Even half an hour a day's extra flying at the same load factor on every aeroplane would give us another million pounds in the year. That's the way to wipe off the deficit."*

29/ Arnold Kean, "Nationality and Interchange of Aircraft" in "The Freedom of the Air", ed. by Edward McWhinney and Martin A. Bradley (Leyden, 1968), at p. 192.

agreement which has existed between British European Airways and Olympic Airways, Olympic Airways was able to fly its aircraft for maintenance in England as part of BEA's fleet. Similarly, BEA was able to fly Greek registered aircraft as part of its fleet in its Mediterranean routes, with the result that both airlines are able to obtain the maximum use of aircraft in connection with their scheduled services.

Aircraft might well be exchanged (and in fact they have been)[30/], between operators in the northern hemisphere, to meet the demand of the seasonal swing in traffic. Aircraft utilization can be improved by chartering or leasing aircraft to carriers who want to meet an unforseen emergency such as loss of one of their own aircraft, or to cope with a special demand of traffic such as the Haj in the Moslem world.[31/]

On the other hand, interchange agreements, while permitting more efficient utilization of the aircraft flown over the joint route interchange, reduce ticketing, baggage and cargo handling costs, as well as damage to perishable cargo through excessive handling. The usual reduction in flight time through interchange works both to the benefit of the passenger and to the air carrier. An interchange agreement usually reduces the

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30/ Ibid., p. 192

31/ Ibid., p. 192

operating costs of the carrier - it extends the route of an air carrier without the necessity of establishing maintenance and terminal facilities as would be necessary under a normal scheduled operation.32/

However, while lease, charter and interchange of aircraft reduce the operating cost of one operator, they also reduce the capital investment of the operator, namely, the charterer or the lessee.

In this connection, it should be mentioned that co-operative arrangements of this type are often used to promote the sale of aircraft. At one time Swissair wanted to purchase a British made aircraft for domestic flights to skiing resorts in Switzerland. It was arranged that a British registered aircraft owned by the manufacturer, should be handed to Swissair to operate it for a trial period of some months.33/ Furthermore, this device provides favourable possibilities for aircraft financing 34/ in the United States. Leasing companies and institutions have become interested in leasing aircraft equipment to airlines. First National City Bank, for instance, has leased a large number of aircraft to United States airlines 35/ and to a large number of foreign airlines.

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32/ See further, Robert J. Keefer, "Airline Interchange Agreements", (1958) 25 J.A.L.C. 55, at p. 64.

33/ Kean, supra, footnote 29 at p. 193.

34/ H.A. Wassenbergh, supra, footnote 20 at p. 115.

35/ Ibid., p. 115

However, these are not the only advantages of cooperative arrangements of aircraft. By lease, charter and interchange of aircraft, an operator having the nationality of a state not a party to Chicago Convention, 1944, might obtain the benefits of Article 5 of the Chicago Convention by operating an aircraft registered in a contracting state.36/

Furthermore, the conclusion of agreements for the lease, charter and interchange of aircraft, may enable airlines to gain access to national or regional markets - which would otherwise remain closed to them - by exercising (indirectly) traffic rights obtained by others. But, the resort to cooperative arrangements as a device to surmount the economic and governmental control of airlines operations may lead to the restriction 37/ or even

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36/ ECAC/ECO-1/1-WP 6 (12/11/68) paragraph 3.

37/ Already the national regulations of some states adopt a restrictive attitude towards chartering and leasing of aircraft from foreign carriers. For example, the Danish charter rules provide that charter flights may not be performed with aircraft not owned by the contracting charter company, unless special permission has been obtained; Danish Charter Rules, Nov. 1, 1967 paragraph D(c). Similarly, in the United States, the CAB adopts a restrictive attitude towards cooperative arrangements of aircraft by imposing a number of conditions. And in the case of a wet lease agreement, the fact that the aircraft remains under the operational control and ultimate safety responsibility of the lessor, caused the CAB to consider such lease as a charter or rather a series of charters for which the lessor requires a specific permission. Thus, airlines and leasing institutions would not be able to reap the benefits of traffic rights obtained by others. See further, H.A. Wessenbergh, supra, footnote 20, at p. 124.

rejection 38/ of the cooperative arrangement in question.

Having seen the advantages of lease, charter and interchange of aircraft in international operations, we shall now turn to examine the problems arising out of them.

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38/ At least in one instance, an interchange agreement was rejected on the ground that the owner of the aircraft does not possess the traffic rights to be exercised under the interchange agreement by the user (PAL/KLM interchange arrangement with regard to PAL's route Manila - Hong Kong - Bankok - the intended operation via Hong Kong was refused by the British Government on the ground that KLM has no traffic rights on this route). See further, H.A. Wassenbergh, "Interchange of Aircraft on International Routes and the Phillipines-UK Conflict", 1963 Netherlands International Law Review 275, at p. 277.

## II. PROBLEMS ARISING OUT OF LEASE, CHARTER AND INTERCHANGE OF AIRCRAFT IN INTERNATIONAL OPERATIONS.

### *A. THE BASIC PROBLEM*

Cooperative agreements and arrangements for the lease, charter and interchange of aircraft, have become increasingly frequent 39/, and in the coming years, they are expected to grow in as much as the introduction of larger and costly aircraft such as the Airbus, the Jumbo Jet and the Concorde will render cooperative agreements and arrangements more frequent than in the case of the present generation of aircraft.40/ Moreover, cooperative agreements and arrangements for the lease, charter and interchange of aircraft are of value and in consonance with the spirit of the Chicago Convention on International Civil Aviation, 1944, particularly Chapter XVI.

However, these arrangements give rise to serious practical problems,41/ (particularly under the Chicago Convention),

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39/ In a survey made by the U.S. government (June, 1976), there are about 315 aircraft leased out. More than half of them (190) are leased out to developing countries. The rest (125) are leased out to developed countries. See further, U.S. government survey in ICAO's "Panel of experts on lease, charter, and interchange of aircraft. Montreal, 11 to 15 October, 1976", Doc. PE/CHA - (August 25, 1976) Attachment.

40/ See further Kean, A., supra, footnote 29, at p. 206.

41/ The problems which are placed by the lease, charter and

... continued

when an aircraft registered in one state is operated by an operator belonging to another state.

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and interchange of aircraft, concern either public law or private law. The problems concerning public law include: (1) the question of the enforcement of the provision of the Chicago Convention, 1944, which is placed on the state of registry. In case of lease, charter, and interchange of aircraft, the state of registry might be unable to discharge its obligations since it no longer controls the aircraft in question, (2) problems relating to bilateral agreements, namely, whether an operator of a leased, chartered or interchanged aircraft can exercise traffic rights granted to him, but not to the state of registry of the leased, chartered or interchanged aircraft, and (3) problems relating to the exercise of criminal jurisdiction over events on board aircraft. In this connection, it should be mentioned that (i) The Hague Convention for the Suppression of Unlawful Seizure of Aircraft (1970) has already resolved this problem. Article 4, paragraph 1, clause (c) specifically requires the state of the lessee of an aircraft leased without crew to establish its jurisdiction over an offence committed on board such aircraft, and (ii) The Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Montreal, 1971) also contains (in Article 5 paragraph 1(d)) a provision similar to that of the Hague Convention mentioned above. However, The Tokyo Convention on Offence and Certain Other Acts Committed on Board Aircraft (1963) does not include such a provision. On the other hand, the problems concerning private law include: (1) the question of whether The Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air (1929), as amended by The Hague Protocol (1955), when it referred to "the carrier" in an aircraft which is chartered or hired with crew, meant the owner, or the charterer or the lessee of the aircraft? However, this problem is solved by the Guadalajara Convention, supplementary to, the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contraction Carrier (1961), and (2) the problem of liability for damage caused to third parties on the surface. In this connection, it should be mentioned that the Rome Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface (1952) applies to damage arising on the territory of one contracting state and caused by an aircraft registered in another contracting state (Article 23).

... continued

It should be recalled that the Chicago Convention, 1944, places on the state of registration of aircraft certain obligations and functions which it might be unable to fulfil when an aircraft registered in it is leased, chartered or interchanged (particularly without crew) by an operator belonging to another state. These obligations may be summarized as follows: 42/

(1) *Primary obligations to ensure that aircraft of its registry comply with the various laws of the state into the territory of which it may enter, namely:*

(i) to control the flight of pilotless aircraft (Article 8),

(ii) to ensure that aircraft land at customs airports unless they are exempted (Article 10),

(iii) to ensure compliance with the air regulations (Article 11),

(iv) (a) to ensure that aircraft comply with the rules and regulations relating to flight and manoeuvre of aircraft in force whenever such aircraft may be flying, (b) to ensure that over the high seas aircraft of its

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If an aircraft registered in one state, but leased, chartered or interchanged to an operator having the nationality of another state, happened to cause damage to third parties on the territory of the state of registration, the provisions of the Rome Convention could be amended to extend its benefit to the operator in such cases.

42/ These obligations are discussed in greater detail in Part Three of this study, supra, p. 51.

registry comply with the rules established under the Chicago Convention, 1944, (c) and to ensure the prosecution of all persons violating the regulations applicable (Article 12),

(v) to ensure compliance with entry and clearance regulations (Article 13),

(vi) to prevent the spread of disease by means of aircraft (Article 14),

(vii) to ensure the carriage by aircraft of certificates of registration, certificates of airworthiness, licences of crew, journey log books and, as applicable aircraft, radio station licences, passenger lists and cargo manifests (Article 29),

(viii) to issue the requisite licences for aircraft radio equipment and the crew concerned and to ensure compliance with the regulations of the state flown over (Article 30),

(ix) to ensure the observance of laws restricting cargo (Article 35),

(x) to ensure that aircraft and personnel do not participate in international navigation without the permission of the foreign state concerned in order to ensure the validity of endorsed certificates and licences (Article 68),

(xi) to ensure that aircraft use only designated route or airport (Article 68).

2. *Secondary obligations affecting the enforcement of conditions to be fulfilled with respect to aircraft, namely:*

(i) to issue radio operating licences (Article 30),

(ii) to issue certificates of airworthiness (Article 31),

(iii) to provide licences for personnel (Article 32), and

(iv) to provide certificates of registration of aircraft (implicit in Article 20 and Article 29).

On the other hand, an operator of a foreign registered aircraft may not be able to enjoy the privileges secured in the Convention (even though he operates the aircraft for a long time), since these privileges are not conferred upon aircraft in general, but are granted exclusively to the *"aircraft of contracting states"*.

Thus, an operator of a foreign registered aircraft may be denied by the state of registry the right to fly into, or across or to make a final stop for non-traffic purposes (Article 5) in its territory on the grounds that these rights are granted only to foreign and not nationally registered aircraft.

Similarly, a state may discriminate against aircraft entered in its own register and operated by a foreign operator:

(i) in the establishment of prohibited areas (Article 9(b)),

(ii) in the application of air regulations (Article 11),

(iii) in the conditions governing the use of airports and all air navigation facilities (Article 15),

(iv) in facilitation of formalities (Article 22),

(v) in exemption from certain customs duty (Article 24), and

(vi) in the regulation or prohibition of the carriage of dangerous articles by aircraft over its territory (Article 35(b)), on the grounds that the Chicago Convention, 1944, does not prohibit discrimination by a state against aircraft on its own register even though that aircraft was operated by a national of another state under an arrangement for lease, charter or interchange.

Furthermore, in the event of an accident occuring to a leased, chartered or interchanged aircraft, the state of the operator of the aircraft will not have the opportunity to appoint observers to be present at the inquiry into the circumstances of the accident, for this is the privilege of the state of registry (Article 26).

These are examples of the problems which are likely to be experienced by states when an aircraft registered in one state is leased, chartered or interchanged (particularly without crew) by an operator belonging to another state. It is now necessary to examine what has been done so far by the International Civil Aviation Organization (ICAO) to resolve these problems.

*B. ACTIONS BY ICAO*

The Diplomatic Conference which met in Guadalajara, in 1961, to resolve the problems which are caused by the lease, charter and interchange of aircraft, in respect of the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air (1929),[43/] adopted in its Final Act Resolution B. This resolution noted that the Guadalajara Convention supplementary to the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier (1961), deals with certain aspects of the charter and hire of aircraft. Additionally, it noted that the necessity arises also to deal with the legal problems affecting the regulation and enforcement of air safety, which have been experienced by certain states, when an aircraft registered in one state is operated by an operator of another state.

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43/ Supra, footnote 41. See further, R.H. Mankiewicz, "Charter and Interchange of Aircraft and the Warsaw Convention - A Study of Problems Arising from the National Application of Conventions for the Unification of Private Law", 10. I.C.L.Q. 1961, pp. 707-725.

In conformity with Resolution B of the Guadalajara Conference, the Legal Committee at its 14th session decided to establish a sub-committee to study the subject. The sub-committee, in exploring possible solutions to the problem, examined various provisions of the Chicago Convention, particularly those provisions which place on the state of registration of aircraft certain obligations. The sub-committee considered three possible solutions to the problem, namely, amendment of the Chicago Convention, delegation of functions of the state of registration to the state of the operator, or inclusion in Annex 13 (an aircraft accident injury) a standard providing for representation of the state of the operator at accident inquires. However, in its report to the Legal Committee,44/ the sub-committee did not endorse any of these solutions. But, the Legal Committee at its 14th session held in Montreal in 1964 decided that the best way of solving the problems indicated in the sub-committee's report would be by delegation of functions of the state of registry to the states of the operator of the aircraft concerned.

Meanwhile, the Assembly of the International Civil Aviation Organization at its 18th session, held in Vienna in

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44/ ICAO-DOC. PE/CHA-WD/1 (30/7/76).

1971, adopted a resolution 45/ in which it directed the Council of ICAO:

(i) to examine the Annexes to the Convention on International Civil Aviation with a view to making recommendations for their amendment as soon as practicable,

(ii) to examine the Convention on International Civil Aviation as well as any other relevant Convention, through the appropriate bodies of the organization, or through a committee of experts in the technical, legal and economic fields established for that purpose, and to submit a report on the subject to the Technical Commission at the next session of the Assembly, and

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45/ Resolution A18-16 reads as follows:

*"Problems arising out of the lease, charter and interchange of aircraft in international operations*

*WHEREAS it is in the general interest of international civil aviation that arrangements for lease, charter and interchange of aircraft, particularly aircraft without crew, be facilitated;*

*WHEREAS the international provisions in force contain no absolute impediment to the implementation of such arrangements;*

*WHEREAS , inter alia, Annex 6 to the Convention on international Civil Aviation does not prevent the State of Registry from delegating to another state the authority to exercise the functions incumbent upon it pursuant to that Annex;*

... continued

(iii) to obtain and distribute to contracting states information concerning national laws and regulations pertaining to the lease, charter and interchange of aircraft.

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*WHEREAS such delegation may facilitate the implementation of arrangements for lease, charter and interchange of aircraft, particularly aircraft without crew;*

*WHEREAS such delegation may only be made without prejudice to the rights of third states;*

*WHEREAS the Convention on International Civil Aviation was developed prior to the widespread application of international lease, charter and interchange of aircraft, particularly aircraft without crew;*

*WHEREAS the Convention on International Civil Aviation places on a State of Registry responsibilities that it may be unable to fulfil adequately in instances where an aircraft registered in that state is leased, chartered or interchanged, in particular without crew, by an operator of another state;*

*WHEREAS the Convention on International Civil Aviation may not adequately specify the rights and obligations of the state of an operator of the aircraft leased, chartered or interchanged, in particular without crew; and*

*WHEREAS the safety and economics of international air transportation may be adversely affected by the lack of clearly defined responsibilities for aircraft leased, chartered and interchanged, in particular without crew, under the existing provisions of the Convention on International Civil Aviation;*

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In accordance with the directives of the Assembly in Resolution A18-16, the Council of ICAO requested the Air Navigation

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- *A* -

*Lease, Charter and Interchange of Aircraft - Annex 6 to the Convention on International Civil Aviation*

*THE ASSEMBLY URGES STATES:*

(1) *that, where arrangements for the lease, charter and interchange of aircraft - particularly aircraft without crew - would be facilitated, the State of Registry of such an aircraft, to the extent considered necessary, delegate to the state of the operator its functions under Annex 6 to the Convention on International Civil Aviation; and*

(2) *that in such cases, the state of the operator change, if necessary, its national regulations to the extent required to empower it both to accept such delegation of functions and to oblige the operator to fulfil the obligations imposed by Annex 6.*

- *B* -

*Lease, Charter and Interchange of Aircraft - Convention on International Civil Aviation, its Annexes and other Conventions*

*THE ASSEMBLY DIRECTS THE COUNCIL, in order to take into account the present practices relating to international lease, charter and interchange of aircraft, particularly aircraft without crew:*

(1) *to examine the Annexes to the Convention on International Civil Aviation with a view to making recommendations for their amendment as soon as practicable;*

(2) *to examine expeditiously the Convention on International Civil Aviation, as well as any other relevant convention, through the appropriate bodies of the Organization or, where deemed*

... continued

Commission on July 8, 1971, to examine the Resolution and to report back to the Council on the matter. When considering the report of the Air Navigation Commission at its 78th session, the ICAO Council noted that the Chicago Convention, 1944 places on the state of registry certain functions and obligations which it might be unable to fulfil, when aircrafts are leased, chartered, or interchanged - in particular without crew - by an operator of another state, and that the Convention may not adequately specify the rights and obligations of the state of an operator in such instances. In consequence, the Council agreed to incorporate an amendment in form of a note 46/ to Annex 1 (Personnel Licensing), Annex 2 (Rules of the Air), Annex 3 (Meteorology), Annex 5 (Units of Measurement to be used in Air-Ground Communications), Annex 6 (operations of aircraft: both Part I "International

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*appropriate and submit a report on the subject at the next session of the Assembly at which a Technical Commission is established and;*

*(3) to obtain and distribute to contracting states information concerning national laws and regulations pertaining to the lease, charter and interchange of aircraft, taking into account the financial consequences of this directive."*

46/ *"Note 1. - Although the Convention on International Civil Aviation allocates to the State of Registry certain functions which that state is entitled to discharge, or obliged to discharge, as the case may be, the Assembly recognized, in Resolution A18-16, that the State of Registry may be unable to fulfil its responsibilities adequately in instances where aircraft are leased, chartered or interchanged - in particular without crew - by an operator of another state and that the Convention may not adequately specify the rights and obligations of the state of an operator in such instances.*

... continued

Commercial Air Transport" and Part II "International General Aviation"), Annex 7 (Aircraft Nationality and Registration Marks), Annex 8 (Airworthiness of Aircraft), Annex 10 (Aeronautical Telecommunications Vol. 11 "Communications Procedures"), Annex 12 (Search and Rescue), Annex 13 (Aircraft Accident Inquiry), and Annex 16 (Aircraft Noise), to enable the state of registry to delegate its functions to the state of the operator, subject to the acceptance by the latter state. The Council, however, noted that the foregoing action will only be *"a matter of practical convenience"*, and will not affect the provisions of the Chicago Convention, *"prescribing the duties of the state of registry or any third state."*

In taking this action, it was concluded by the Council that the technical aspects of the problem had thus been resolved as well as they could be without amending the Chicago Convention.

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*Accordingly, the Council, without prejudice to the question of whether the Convention may require amendment with respect to the allocation of functions to states, urged that if, in the above-mentioned instances, the State of Registry finds itself unable to discharge adequately the functions allocated to it by the Convention, it delegate to the state of the operator, subject to acceptance by the latter state, those functions of the State of Registry that can more adequately be discharged by the state of the operator. It is understood that the foregoing action will only be a matter of practical convenience and will not affect either the provisions of the Chicago Convention prescribing the duties of the State of Registry or any third state."*

However, although the amendment of the Annexes is a substantial improvement, it is submitted [47/] that the amendment still leaves open two problems.

The first problem is that, in the absence of an amendment to the Chicago Convention, 1944, the note cannot enable the state of registry to divest itself of its responsibility by transferring it to the state of the operator.[48/]

The second problem, which is not solved by the amendment note in the Annexes, is that in order to be able to accept the delegation the state of the operator must *"put its domestic law into a position to do so"*.[49/] There would be no problem for the state of the operator to accept delegation and apply its domestic law to foreign registered aircraft while within its territory. But, the difficulty is to accept delegation to apply its domestic law to foreign registered aircraft outside its territory. For normally the law of a state does not apply extra-territorially to foreign registered aircraft.[50/]

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47/ By Mr. Arnold Kean the Rapporteur on Resolution B of the Guadalajara Conference 1961. In his report on the subject to the Council of ICAO-DOC. C-WP/6310 Appendix B.

48/ Ibid., p. B-2.

49/ Ibid., p. B-3.

50/ Ibid.

No further action was taken by the Council. But, the 21st session of the Assembly of the International Civil Aviation Organization considered, under agenda item 19, the subject of lease, charter and interchange of aircraft in international operations and adopted Resolution A21-22 in which it directed the Council, *"to further explore on and expedite basis solutions to the still unresolved problems, including if necessary, the possibility of appropriate amendment of the Chicago Convention, and to report thereon to the next session of the Assembly at which there is a Technical Commission".*[51/]

In response to the directives of the Assembly, the Council of ICAO at its 83rd session on 21 December 1974 decided to consult states with the object of identifying and defining precisely all *"the serious problems"* referred to in Clause (2) of the Resolution.[52/] Further, the Council decided to have a study of the technical problems undertaken by the Air Navigation Commission, and of the legal problems by the Rapporteur on Resolution B of Guadalajara Conference appointed by the Chairman of the Legal Committee in 1967, and presentation of the results of these studies to the Council for consideration and a decision on further action to be taken, if any.[53/]

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51/ The Third Resolving Clause of Resolution A21-22 ICAO-DOC. LC/SC-LCI-WD/4 (April, 1977).

52/ Clause (2) of Resolution A21-22 reads: The Assembly ... *"Declares that, nevertheless, the ...".*

53/ See ICAO-DOC. LC/SC. LC/-WD35 (April, 1977).

Consequently, state letter AN 11/24-75/16 was sent to contracting states on 22 January 1975 asking them to identify and define precisely all such serious problems which states have encountered in the matter of lease, charter and interchange of aircraft in international operations in order that further study might be pursued by ICAO on an expedited basis. By January 12, 1976, 28 states had replied to the above mentioned letter.[54/] The replies of 16 states [55/] were to the effect that they had not encountered serious problems, but without indicating whether the reason for this was that they had not had the experience of lease, charter and interchange in international air navigation, or, alternatively, that they had such experience, and had some problems which were not serious, or had no problems at all. The replies of the 12 other states [56/] have indicated that they had experienced some serious problems over licensing and airworthiness aspects which required a solution. They considered that ICAO should proceed to find a satisfactory division of responsibilities to be assumed by the state of registry and the state of the operator either by amending the Chicago Convention,

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54/ For summary of replies to state letter AN 11/24-75/16 see ICAO-DOC. C-WP/6310 Appendix A (27/2/76).

55/ *"Barbados, Chile, Columbia, El Salvador, Ethiopia, Finland, Ghana, Greece, Norway, Pakistan, Peru, Singapore, Sir Lanka, Sweden, Switzerland, Syrian Arab Republic"*, Ibid., p. A-4.

56/ *"Argentina, Australia, Denmark, France, Federal Republic of Germany, Japan, Republic of Korea, Lebanon, Netherlands, Senegal, United Kingdom and United States"*; Ibid.

1944, or upgrading the note in Annex 2 (Rules of the Air), Annex 6 (Operation of Aircraft) and Annex 8 (Airworthiness of Aircraft) to make it binding. The replies were made available to the Air Navigation Commission and to the Rapporteur on Resolution B of the Guadalajara Conference.

Meanwhile, the Council, on the recommendation of the Air Navigation Commission, adopted on December 18, 1975, amendment 5 to Annex 13 (Aircraft Accident Inquiry) to grant to the state of the operator for purpose of accident investigation, the same rights and obligations normally conferred on the state of registry. Thus, in adopting this amendment, the Council provided an adequate solution to the problems which arise out of the charter, lease, and interchange of aircraft which are the subject of an accident investigation.

At its 87th session in 1976, the Council had for consideration a report on the technical problems arising out of lease, charter and interchange of aircraft presented by the President of the Air Navigation Commission 57/ and a report on the legal problems submitted by the Rapporteur on Resolution B of the Guadalajara Conference.58/ According to the Report of the Air

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57/ ICAO-DOC. C-WP/6318-(18/2/76).

58/ ICAO-DOC. C-WP/6310 Appendix B (27/2/76).

Navigation Commission, no serious technical problems have been identified by states, *"and the reported technical difficulties are likely to disappear once the legal aspects have been satisfactorily resolved"*.[59/]

On the other hand, the Rapporteur's Report to the Council indicates that, many real problems exist in connection with lease, charter and interchange of aircraft in international operations, particularly aircraft without crew. In exploring possible solutions to the problems,[60/] the Report suggests:

(i) the amendment of the Chicago Convention, 1944, or

(ii) the adopting of a new multilateral convention independent of the Chicago Convention, or

(iii) by bilateral agreements, or

(iv) by amendments to the Annexes of the Chicago Convention whereby the state of registry could delegate its functions to the state of the operator.

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59/ Supra, footnote 57 at p. 3.

60/ For an evaluation of the proposed solutions to the problems arising out of lease, charter and interchange of aircraft in international operations see infra p. 158 of this study.

However, in view of the mixed legal and technical problems the report suggests that ICAO should form a joint committee of both legal and technical experts to establish a check list of the matter to be considered by the states of registry and the state of the operator as potential subjects of delegation.

On the basis of the suggestions made in the Rapporteur's Report, the ICAO Council at its 87th session decided to establish a panel of experts in airline operation and legal experts conversant with the problems raised by lease, charter and interchange of aircraft in international operations, to prepare a list of the problems arising out of the lease, charter and interchange of aircraft in international operation, to study alternative solutions to the problems, and to advise the Council on the order of preference among them and on the further course of action to be taken.

The panel met in Montreal from October 11 to 15, 1976,[61/] and in accordance with its terms of reference, it considered most of the problems arising out of lease, charter and interchange of aircraft in international operations, particularly the problems placed by the Chicago Convention on International Civil Aviation,

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61/ The President of the Council, being authorized by the Council appointed to the panel members nominated by Australia, Brazil, Canada, France, Italy, Kenya, Sweden, United Kingdom, United States of America and Yugoslavia with IATA as observer.
ICAO-DOC. PE/CHA-Report (15/10/76).

1944, the Rome Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface (1952),[62/] and the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963).[63/] The Panel also considered possible solutions to the problems by amending the Annexes to the Chicago Convention, the Chicago Convention itself, or by adopting a new multilateral convention. However, the Panel was unable to express a preference for an amendment to the Chicago Convention, or a separate multilateral convention, or any other solution, and by the usual way of reference back, adopted in ICAO meetings, the Panel recommended to the Council to take the following action:

(1) to request the appropriate bodies to study the specific amendments which could be made to Annex 9 (Facilitation), Annex 12 (Search and Rescue), and Annex 13 (Aircraft Accident Inquiry), in order to cover the situation of an aircraft operated by a foreign operator not presently provided for in Article 25 (Aircraft in Distress), and Article 26 (Investigation of Accidents) of the Chicago Convention,

(2) to refer to the Legal Committee the study of the problems raised by Article 12 (Rules of the Air), Article 31 (Certificates of Airworthiness), and Article 32 (Licences of Personnel), when

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62/ Supra, footnote 41.

63/ Ibid.

an aircraft registered in one state is operated by an operator belonging to another state. In this regard the Panel recommended that the task of the Legal Committee should be:

(i) to examine the potential conflicts between the Chicago Convention and a separate multilateral convention, (ii) to examine whether preference should be given to an amendment to the Chicago Convention or to having a separate multilateral convention, and (iii) it should prepare a draft amendment to the Chicago Convention, 1944 or a draft multilateral convention, depending on its preference, in order to solve the problems raised by lease, charter and interchange of aircraft in international operations. The Panel also recommended that the Legal Committee should formulate a draft protocol to amend the Rome Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface (1952), and the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963), in order to solve the problems raised when an aircraft registered in one state is operated by an operator belonging to another state.

Having considered the conclusion and recommendations of the Report of the Panel of Experts,64/ the ICAO Council at its 87th session, on November 25, 1976, decided to request the Chair-

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64/ ICAO-DOC. PE/CHA-Report (15/10/76).

man of the Legal Committee to establish a special sub-committee of the Legal Committee to study the problems raised, when an aircraft registered in one state is operated by an operator belonging to another state.

The special Sub-Committee on lease, charter and interchange of aircraft in international operations met in Montreal from March 23 - April 7, 1977.[65/] The Sub-Committee, after considerable discussion of the problems, has recommended the amendment of the Chicago Convention, 1944, without excluding the possibility of adopting a new multilateral convention. However, its report has to wait for further action by the forthcoming meeting of the Assembly of ICAO in September, 1977.

## III. EVALUATION OF THE PROPOSED SOLUTIONS

It should be recalled that cooperative agreements and arrangements for the lease, charter and interchange of aircraft give rise to serious practical problems which concern both public and private law,[66/] when an aircraft registered in one state is operated by an operator belonging to another state.

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65/ On December 21, 1976, the Chairman of the Legal Committee, established the special Sub-Committee and decided to invite, in addition to the ex officio members, i.e. Chairman and Vice-Chairmen of the Legal Committee the following states: Australia, Barbados, Brazil, Canada, People's Republic of China, France, Federal Republic of Germany, Italy, Kenya, Mexico, Poland, Senegal, Spain, Sweden, Union of Soviet Socialist Republic, United Kingdom and United States of America - ICAO-DOC. LC/SC-LC1-WD/1 (March, 1977).

66/ For a summary of these problems see supra, footnote 41.

However, these problems are not insurmountable. A number of solutions have been proposed at various ICAO meetings, which may be summarized as follows:

(i) by amendments to the Annexes to the Chicago Convention, 1944;

(ii) by amendment of the Chicago Convention, 1944,

(iii) by bilateral agreements, and

(iv) by preparation by ICAO of a draft Convention, independent of the Chicago Convention, for submission to a Diplomatic Conference.

But, ICAO has shown considerable reluctance to express preference for one solution to another. It is now necessary to touch upon the proposed solutions.

*A. AMENDMENTS TO THE ANNEXES*

The Council of ICAO at its 78th session, noted that the Chicago Convention, 1944 places on the state of registry certain functions and obligations which it might be unable to fulfil when aircraft are leased, chartered or interchanged (particularly aircraft without crew) by an operator of another state, and that the Convention may not adequately specify the rights and obligations of the state of an operator in such instances. Consequently,

in February, 1975, the Council agreed to amend the Annexes, and amended notes 67/ appear in Annex 2 (Rules of the Air), Annex 6 (Operation of Aircraft), and Annex 8 (Airworthiness of Aircraft), in order to enable the state of registry to delegate its functions to the state of the operator, subject to the acceptance by the state of the operator. The Council, however, noted that the foregoing action will only be, *"a matter of practical convenience"*, and will not affect the provisions of the Chicago Convention, 1944, *"prescribing the duties of the state of registry or any third state"*. Similarly, the Council on the recommendations of the Air Navigation Commission adopted on December 18, 1975, amendment 5 to Annex 13 (Aircraft Accident Inquiry) to grant to the state of the operator for purpose of accident investigation, the same rights and obligations normally conferred on the state of registry. In taking these actions, it was concluded by the Council that the technical aspects of the problem had been resolved as well as they could be without amending the Chicago Convention, 1944.

However, although the amendment of the Annexes is a substantial improvement, they are not binding. Even if the provisions contained in the existing Note could be made binding by upgrading them to a status of a standard, it is unlikely that all the difficulties would disappear. At least, two problems will still remain unsolved.

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67/ Supra, footnote 46.

The first problem is that, in the absence of an amendment to the Chicago Convention, 1944, an amendment to the Annexes cannot enable the state of registry to divest itself of its obligations by transferring them to the state of the operator.

The second problem, which is not solved by the amendment note in the Annexes, is that in order to enable acceptance of the delegation, the state of the operator must *"put its domestic law into a position to do so"*.[68/] There would be no problem for the state of the operator to accept delegation and apply its domestic law to foreign registered aircraft while within its territory. But, the difficulty is to accept delegation to apply its domestic law to foreign registered aircraft while outside its territory.[69/] For, normally the law of a state does not apply extra-territorially to foreign registered aircraft. Otherwise, serious conflicts of jurisdiction may occur. It is perhaps for these reasons that some states [70/] have expressed a

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68/ Supra, footnote 49.

69/ Eg. The United Kingdom in its reply to state letter AN 11/24-75/16 has indicated that: *"... in this connection difficulty has been experienced by U.K. because it has been proved that the state of the operator has been unable under its own national law to exercise jurisdiction over a foreign registered aircraft except when it is within its territory ..."*, ICAO-DOC. C-WP/6310 Appendix A, "Summary of Replies to State Letter AN 11/24-75/16", p. A-3 (27/2/76).

70/ E.g. The United States, ibid., p. A-4.

preference for proceeding immediately with the amendment of the Chicago Convention, 1944. But, the amendments to the Chicago Convention are not without problems either as we shall see.

*B. AMENDMENTS TO THE CHICAGO CONVENTION, 1944*

It should be recalled that various ICAO meetings had considered the possibility of amending the Chicago Convention, 1944, so as to provide for the transfer of responsibilities from the state of registry to the state of the operator, in order to solve the problems arising under the Chicago Convention, when an aircraft registered in one state is leased, chartered or interchanged by an operator belonging to another state. However, no positive action was taken to amend the Convention. For the amendment procedure of the Chicago Convention is a lengthy process and after all it may not achieve the desired result.

Under Article 94(a),[71/] any proposed amendment to the Chicago Convention must be approved by a two-thirds vote of the Assembly; and, for the amendment to come into force, it must be ratified by at least two-thirds of the total number of contracting states.

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71/ Article 94(a) of the Chicago Convention, 1944, reads: *"(a) Any proposed 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 when ratified by the number of contracting states specified by the Assembly. The number so specified shall not be less than two-thirds of the total number of contracting states."*

Even if the amendment comes into force under the procedure laid down in paragraph (a) of Article 94 of the Chicago Convention, 1944, it will be binding only on those member states which have ratified it.[72/] Between those states which have ratified it and those which have not done so, the unamended Convention continues to apply with the result that there will in fact be two separate Conventions, one with and the other without the newly adopted amendment, which is very peculiar indeed.[73/]

Moreover, an amendment to the Chicago Convention, 1944, in addition to being lengthy and ineffective as we have seen above, is incapable of solving the problems arising under the Rome Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface (1952); and the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963).[74/] For these reasons, it was considered necessary to prepare a draft convention independent of the Chicago Convention 1944 for submission to a diplomatic conference,[75/] as we shall see below.

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72/ Ibid.

73/ See further, Bin Cheng, "The Law of International Air Transport", (London, 1962), p. 117.

74/ Supra, footnote 41.

75/ ICAO-DOC. C-WP/6310 Appendix B, "Report of the Rapporteur on Resolution B of the Guadalajara Conference", p. B-3, (27/2/76).

*C. A SEPARATE MULTILATERAL CONVENTION*

The preparation by ICAO of a separate multilateral Convention for submission to a diplomatic conference would have the advantage of being capable of coming into force between those states which ratify it without waiting for the large number of ratifications required for an amendment to the Chicago Convention, 1944.[76/] The purpose of the new convention would be to enable the state of registry to delegate its functions to the state of the operator. The new instrument, if desired, could also deal with the problems which arise under the Rome Convention on Damage Caused to Third Parties on the Surface (1952), and the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963), in a "package deal" insofar as those Conventions confer rights or impose obligations on the state of registry which, if the respective Conventions are to be effective, ought to be assumed by the state of the operator in the case of a lease, charter or interchange of aircraft.

However, the objection to a new multilateral convention, is that it will be inconsistent with the provisions of the Chicago Convention 1944. Under Articles 82 and 83 of

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76/ Ibid.

the Chicago Convention,[77/] contracting states have agreed ~~not to make~~ arrangements inconsistent with the provisions of the Chicago Convention which attempt to constitute a set of rules to be applied as widely and uniformly as possible. Although Article 30 of the

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77/ Article 82 provides: *"The contracting states accept Convention as abrogating all obligations and undertakings between them which are inconsistent with its terms, and undertake not to enter into any such obligations and understandings. A contracting state which, before becoming a member of the organization has undertaken any obligations toward a non-contracting state or a national of a contracting state or of a non-contracting state inconsistent with the terms of this Convention, shall take immediate steps to procure its release from the obligations. If an airline of any contracting state has entered into any such inconsistent obligations, the state of which it is a national shall use its best efforts to secure their termination forthwith and shall in any event cause them to be terminated as soon as such action can lawfully be taken after the coming into force of this Convention."* Emphasis added, Article 83 provides: *"Subject to the provisions of the preceding Article, 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"*. Emphasis added.

Vienna Convention on the Law of Treaties,[78/] contemplates the case in which some states parties to a treaty become parties to another

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78/ Article 30 of Vienna Convention on the Law of Treaties (1969) reads:

*"Application of successive treaties relating to the same subject-matter*

*1. Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs.*

*2. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.*

*3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under Article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.*

*4. When the parties to the later treaty do not include all the parties to the earlier one:*

*(a) as between states parties to both treaties the same rule applies as in paragraph 3;*

*(b) as between a state party to both treaties and a state party to only one of the treaties, the treaty to which both states are parties governs their mutual rights and obligations.*

*5. Paragraph 4 is without prejudice to Article 41, or to any question of the termination or suspension of the operation of a treaty under Article 60 or to any question of responsibility which may arise for a state from the conclusion or application of a treaty the provisions of which are incompatible with its obligations toward another state under another treaty."*

treaty dealing with the same subject. It could not be said that such a provision rendered ineffective a provision, such as the one contained in Article 82 and 83 of the Chicago Convention 1944.79/

Another objection to a new multilateral Convention, is that the same states may not be parties to the Chicago Convention 1944, the Rome Convention, 1952, and the Tokyo Convention, 1963, and any attempt to deal with the problems arising under the three Conventions, in a single "package deal" instrument, would mean that each state would become involved in matters relating to Conventions to which it may not be a party and which it may have no intention of ever signing or ratifying. Moreover, even if a state was a party to all three Conventions, it might only wish to accept the proposed changes with respect to one or two of them. A "package deal" instrument might therefore tend to prevent or delay ratification. Having objected to a new multilateral Convention, to the amendment of the Chicago Convention, or its Annexes to solve the problems arising out of lease, charter and interchange of aircraft, it would be possible for a solution to be found by bilateral agreements which would be binding only upon the states party to those agreements, as we shall see below.

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79/ These views were expressed by the Director of the Legal Bureau of ICAO to the Panel of Experts on Lease Charter and Interchange of Aircraft in International Operations. ICAO-DOC. PE/CHA-Report (15/10/76)., p. 10.

*D. BILATERAL AGREEMENTS*

When an aircraft registered in one state is operated by an operator belonging to another state, and the state of registry finds itself unable to discharge adequately the functions allocated to it by the Convention, the state of registry may take one of two course of actions in order to fulfil its obligations under the Chicago Convention, 1944:

(i) it may enter into a bilateral agreement with the state of the operator to provide for the enforcement of its laws and regulations by the state of the operator during the period of the lease, charter or interchange of aircraft, or

(ii) it may agree with the state of the operator to provide for the temporary transfer of the aircraft to the registry of the state of the operator so that the aircraft will acquire the nationality of that state for the duration of the lease, charter or interchange of aircraft and so become subject to its laws.

However, the objection to the first course of action is that it is contrary to all international precedent for one state to enforce the laws of another state, particularly the penal laws, and it is likely to be contrary to the constitutional law or practice of most states.

On the other hand, the second course of action is advantageous in the sense that it is in consonance with the letter and spirit of the Chicago Convention on International Civil Aviation, 1944, particularly Article 19 which left it to the discretion of each state to determine the accordance with its municipal laws to what persons and under what conditions it would accord the right of registration.[80/] The only difficulty is that some states would not accord the right of registration to the non-national.[81/] But, this difficulty can be avoided by amending the domestic law to provide temporary registration of aircraft by foreigners in the case of lease, charter or interchange of aircraft.

Moreover, this scheme would also have the advantage of obviating the difficulties relating to aircraft financing. For a bank or a financing institution would be able to register the aircraft in the state of the operator, and the operator would not have to worry about compliance with the

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80/ Article 19 of the Chicago Convention, 1944, provides *"The registration on transfer of registration of aircraft in any contracting state shall be made in accordance with its laws and regulations."*

81/ Among those states are Argentina, Belgium, Bolivia, Burma, Canada, Chile, Dominican Republic, Ecuador, Egypt, India, Lebanon and Switzerland. ICAO-Document prepared by Sub-Committee on the Hire, Charter and Interchange of Aircraft. Caracas, June, 1956, "Extracts from National Legislations Concerning Registration of Aircraft", LC/SC/CHA-WD No. 20.

law of the bank's state with respect to the airworthiness and maintenance of the aircraft, the licensing of the crew and so forth. Compliance with the requirements of foreign state proves difficult or impossible and may therefore have prevented the use of "long term" lease or charters as methods of financing the capital cost of aircraft.

But, it may be argued that this scheme is not practicable for the "short term" transactions such as interchange of aircraft. For, it would be inconvenient to effect a special registration for a few hours or days since no state will agree to shoulder the responsibility for the airworthiness and maintenance of aircraft for a few hours or days.

However, it is suggested that this scheme is designed to deal with the problems arising under lease, charter and interchange of aircraft for a considerable duration and not for "short term" transactions. For, in a "short term" transaction, the aircraft would not completely leave the operational control of the state of registry, and the state of registry would still be able to discharge adequately the functions allocated to it by the Chicago Convention, 1944.

APPENDIX A

INTERLINE TRAFFIC AGREEMENT

(used by Air Canada)

THIS AGREEMENT made this ..... day of ..... One Thousand Nine Hundred and ..... by and between TRANS-CANADA AIR LINES with Head Office located at Place Ville Marie, Montreal 2, P.Q., and ..... with Head Office located at .....

WHEREAS the parties hereto operate air transportation services and desire to enter into arrangements under which each may sell transportation over the routes of the other.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

I. Definitions

1. "Ticket" means the form issued to passenger(s) by a party hereto for transportation for hire of the passenger(s) and his (their) baggage over the routes of either or both parties.

2. "Exchange Order" (which is equivalent to the term Exchange Voucher) means the form issued by a party which provides for the issuance of ticket(s) in exchange for such exchange order.

3. "Consignment Note" (which is equivalent to the term Air Waybill) means the form completed by a party hereto which evidences the contract between a consignor and a carrying airline(s) for the transportation of cargo over the routes of either or both the parties.

4. "Issuing Airline" means the party hereto which issues a ticket or exchange order or completes a consignment note for transportation over the routes of the other party to this agreement.

5. Carrying Airline" means the party hereto over whose routes a passenger, baggage or cargo is transported or is to be transported pursuant to a ticket actually issued or to be issued in exchange for an exchange order or pursuant to a consignment note.

6. "Transferring Airline" means a Carrying Airline over whose routes a passenger, baggage or cargo is to be transported from the point of origin, or a stopover or transfer point, to the point of transfer to the next carrying airline.

7. "Cargo" means any property transported for hire, other than mail, baggage or property retained in the custody of a passenger.

8. "Baggage" means the property of a passenger carried in connection with the trip for which the passenger has purchased a ticket and checked in accordance with applicable tariffs.

9. "Tariffs" means the fares, rates, charges, rules, regulations, conditions of carriage and instructions pertaining to transportation duly published by either of the parties hereto.

10. "Sale" means the issuance of a ticket or exchange order or the completion of a consignment note or other transportation document as authorized herein.

II. Issuance of Tickets and Exchange Orders & Completion of Consignment Notes

1. Each party hereto is hereby authorized to issue or complete:

   (a) tickets, or exchange orders for transportation over the routes of the other party hereto, provided that, unless otherwise agreed as between the parties, baggage shall be checked by the carrying airline only for its respective portion of the transportation;

   (b) consignment notes for transportation of goods over the routes of the other party hereto, and

(c) all other documents necessary or appropriate for such transportation; all in the form approved by, and in accordance with the tariffs and the terms, provisions, and conditions of the tickets, exchange orders, consignment notes, and other documents of the party over whose routes the passenger, baggage, or cargo is to be carried. No ticket, exchange order or consignment note will be issued or completed providing for space on a particular flight unless an advance reservation (booking) shall have been made for the transportation, and the issuing airline shall have received payment of the total charges payable therefor in accordance with such tariffs or shall have made arrangements satisfactory to the carrying airline for the collection of such charges. The issuing airline will not, directly or indirectly, or through any agent or broker, or otherwise, rebate or remit any portion of the charges specified in said tariffs.

2. Each party agrees to accept each such ticket, consignment note, or other transportation document and to honour each exchange order issued by the other party hereto and to transport passengers, baggage or cargo as specified therein, subject to its applicable tariffs. Such consignment note may provide for turning over to other transportation agencies for onward carriage by them of goods destined beyond points served by the carrying airline, and in such event it is agreed that the carrying airlines will act in accordance with the terms of such provision.

3. Each party shall furnish to the other party the tariffs and other information necessary for the sale, as contemplated hereunder, of the transportation services currently being offered by it. In case any schedule, tariff, form of ticket or exchange order or consignment note of either party hereto relating to transportation over its lines, shall be modified or amended at any time, or in case any service of either such party shall be suspended, modified or cancelled, such party will notify the other party as far in advance as practicable, of the effective date of any such modification, amendment, suspension or cancellation.

III. Claims and Indemnities

1. The carrying airline, as principal, indemnifies the issuing airline, including its officers, employees, agents and servants, as agent, against all claims, demands, costs, expenses, and liability arising from the issue, completion or acceptance of any ticket, exchange order or consignment note or from the carriage effected in pursuance thereof; provided that such indemnification shall not cover claims caused solely by the negligence or wilful misconduct of the issuing airline; and provided further, that, in respect of claims resulting from tickets, exchange orders and consignment notes improperly issued, completed or delivered by an issuing airline, such issuing airline indemnifies the carrying airline, including its officers, employees, agents and servants.

2. Upon the transfer of baggage and/or cargo hereunder, the transferring or onward-carrying airline indemnifies the onward-carrying or transferring airlines, including its officers, employees, agents and servants respectively against all claims, demands, and liability arising from such transferring or onward-carrying airline(s) failure to discharge its obligation or responsibility as provided hereinafter in Article V, Paragraph 7.

3. In the event that any claim is made or suit is commenced against a party hereto, indemnified as above, such party shall give prompt written notice to the other party hereto and shall furnish as requested all available communications, legal processes, data, papers, records and other information, material to the resistance or defence of such claims or suit.

4. Subject to the provisos of Paragraph 1, Article III, each party agrees to hold harmless and indemnify the other party hereto from all claims, demands, costs, expenses and liability arising from or in connection with the death or injury to passengers, or loss, damage or delay of baggage or cargo incurred while such passengers, baggage or cargo are, pursuant to this agreement under the control or in the custody of, or being transported by, such party.

5. Amounts paid in settlement for loss or damage to baggage or cargo not detected and recorded at the time of transfer between the carriers shall be prorated between the parties concerned on the basis of transportation fares and charges received by each from such transportation.

IV. Commissions

1. On Sale of transportation effected pursuant to this Agreement the carrying airline shall pay to the issuing airline such commissions in respect of sums received for transportation over the routes of the carrying airline, as are detailed in Appendix A to this Agreement.

2. If the carrying airline, the passenger or consignor (or purchaser of a ticket, or exchange order) for any reason cancels any booking or does not use all or any portion of the transportation specified, neither the issuing airline nor its agent shall claim or withhold any commission for the sale of transportation so cancelled or unused.

3. No commission or other compensation shall be payable to the issuing airline in respect of sums not actually collected and paid over by it to the carrying airline, as evidenced by exchange orders, tickets, consignment notes or other authorized transportation documents issued by the issuing airline or with respect to sums which shall be refunded, except as otherwise specifically authorized by the carrying airline.

V. General

1. In issuing or completing tickets, exchange orders and consignment notes for transportation over the routes of the other party hereto, the issuing airline shall be deemed to act only as an agent of the carrying airline.

2. Any act which a party is authorized or permitted by this Agreement to take may be taken through an agent of that party; provided, however, that whenever transportation is sold by either party through an agent, such party, if so required by the carrying airline, will notify the carrying airline concerned of the name and location of the agent.

3. Each party hereto agrees not to make any representations with regard to the tickets, exchange orders, consignment notes, or other transportation documents of the other party hereto, or of the flight or journey for which the same shall be sold or issued, except those representations specifically authorized by the other party.

4. Nothing herein contained shall be deemed to require either party hereto to initiate or maintain service between any particular points.

5. Whenever a sale by the issuing airline is made in the territory of a General Agent or General Sales Agent of the carrying airline, the reservation and sale shall be handled in accordance with arrangements made between the parties hereto. Each party will advise the other party from time to time of the names and addresses of all General Agents or General Sales Agents of such party located in the area where such other party has an office(s) for the sale of transportation and of the territory for which each General Agent or General Sales Agent holds the General Agency/General Sales Agency.

6. In transferring interline baggage, accompanied or unaccompanied, and cargo, it shall be the responsibility of the transferring airline, but without incurring any liability for loss of revenue in cases of missed connections, to deliver such baggage or cargo to the next carrying airline, at such location and hours to be agreed upon in writing by the parties hereto.

7. Whenever baggage or cargo is to be transferred for onward transportation hereunder and completion of such transportation necessitates compliance with the laws and regulations pertaining to importation and transit or exportation and transit of the country of point of transfer, it shall be made the responsibility of the transferring airline to comply with such laws and regulations and to deliver, where necessary, to the onward-carrying airline, prior to or simultaneously with the transfer, proper evidence of compliance with that country's laws and regulations pertaining to such importation and transit or exportation and transit; provided, however, that in any case where compliance with such laws and regulations can be made only by the onward-carrying airline, it shall be the onward-carrying airline's responsibility to comply therewith.

VI. Interline Settlement

The interline accounting and settlement procedures are contained in Appendix B attached hereto and made part of this Agreement.

VII. Arbitration

1. Any dispute or claim concerning the scope, meaning, construction or effect of this Agreement or arising therefrom shall be referred to and finally settled by arbitration.

VIII. Termination of Prior Agreements

This Agreement supersedes all previous interline traffic agreements pertaining to transportation of passengers, baggage and/or cargo between the parties hereto which are in conflict herewith.

IX. Withdrawal from Agreement

Either party hereto may withdraw from this Agreement, by giving thirty (30) days written notice of withdrawal to the other party. Such withdrawal shall not relieve either party from obligations or liabilities incurred hereunder prior to the effective date of such withdrawal.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized officers as of the day and year first above written.

Date .....

Witness .....

TRANS-CANADA AIR LINES

By .....

Title .....

AND

.....

(Name of Airline)

Witness .....

By .....

Title .....

RATE OF COMMISSION

1 The rate of commission for sale of international first or tourist class passenger transportation shall be 7% of the applicable published fares:

a) except for transportation sold, commenced and wholly performed within the following area:

Angola
Basutoland
Bechunaland
Belgian Congo and Ruanda Urundi
British and French Cameroons
Eritrea
Ethiopia (Abyssinia)
Federation of Rhodesia and Nyassaland
French Equatorial Africa
French West Africa
Gambia
Gold Coast
Kenya
Liberia
Between Canada and the United States
Madagascar
Mauritius
Mozambique
Nigeria
Portuguese Guinea
Seycholles
Sierra Leone
British, French and Italian Somaliland
Spanish Guinea
Swaziland
Tanganyika
Uganda
Union of South Africa and South West Africa
Zanzibar
Canada

where the rate of commission shall be 5% of the applicable published fares; and

b) except for first or tourist class transportation sold, commenced and wholly performed within the following areas:

| | |
|---|---|
| Albania | Belgium |
| Austria | Bulgaria |
| Azores | Canary Islands |
| Czechoslovakia | Malta |
| Denmark | Monaco |
| Finland | Norway |
| France (including French North Africa) | Poland |
| Germany | Portugal |
| Gibraltar | Roumania |
| Greece | San Marino |
| Holland | Spain (including Spanish Morocco) |
| Hungary | Sweden |
| Iceland | Switzerland |
| Ireland | Tangiers |
| Italy | Turkey (in Europe and Asia) |
| Lichtenstein | United Kingdom |
| Luxembourg | USSR (west of the Urals) |
| Madeira | Yugoslavia |

where the rate of commission shall be 7-1/2% of the applicable published fares.

c) except for the sale of inclusive tours, where the rate of commission or fare discount, as the case may be, shall be as provided in the applicable IATA resolution;

d) and except for transportation wholly within the area comprised of the Federation of Malaya, Sarawak, Brunei, North Borneo and Singapore where the rate of commission shall be 5% of the applicable published fares.

2 the rate of commission for the sale of passenger transportation which is wholly domestic, shall, regardless of where the sale is made, be the same rate of commission as that applicable for international transportation within the area concerned or as may be authorized by the carrier, provided that:

a) for transportation wholly within any of the following areas the rate shall be 5% of the applicable tariff fare:

i Union of South Africa and Southwest Africa
ii Belgium Congo
iii Australia
iv New Zealand
v Singapore, Federation of Malaya, Sarawak, North Borneo, Brunei
vi within Northern Rhodesia, Southern Rhodesia and Nyassaland between these territories and British East Africa.
vii within or between the territories of New Guinea, (excluding Dutch New Guinea) Papua and New Britain, or between these territories and Australia

b) for transportation wholly within Argentina, British East Africa (Kenya, Uganda, Tanganyika, Zanzibar), Canada, Columbia, India, Philippines, Spain, United Kingdom or the United States the rate shall be as may be authorized by the Carrier.

c) for all transportation on the following sectors:

- internal lines within metropolitan France,
- lines between Metropolitan France and overseas territories and possessions, countries under Protectorate or under Mandate as well as countries associated with the French Union and vice versa;
- and internal lines of these territories or lines connecting these territories,

the amount of commission shall be that established by the Agreements concluded between the Carrier and the Agent.

3 a) The rate of commission for sale of international cargo transportation shall be 5% of the Carrier's charge for air cargo transportation applicable to the consignment delivered by the Agent to a Member, except for transportation wholly between points in Canada and between Canada and the United States for which no commission shall be paid.

b) The rate of commission for sale of cargo transportation which is wholly domestic shall, regardless of where the sale is made, be 5% of the Carrier's charge for air cargo transportation applicable to the consignment delivered by the Agent to a Member except that:

i for transportation wholly within Argentina, British East Africa (Kenya, Uganda and Tanganyika), Belgian Congo (including the territories of Ruanda and Urundi), Canada, Columbia, India, Philippines, Spain, United Kingdom or the U.S., the rate of commission shall be as may be authorized by the carrier.

ii For all transportation on the following sectors:

- internal lines within Metropolitan France;
- lines between Metropolitan France and overseas territories and possessions, countries under Protectorate or under Mandate as well as countries associated with the French Union and vice versa;
- and internal lines of these territories or lines connecting these territories;

the amount of commission shall be that established by the Agreements concluded between the Carrier and the Agent.

## BILLING AND SETTLEMENT

1. The issuing airline agrees to pay to the carrying airline the transportation charges applicable to the transportation performed by the carrying airline and any additional transportation or non-transportation charges collectible by the issuing airline for the payment of which the carrying airline is responsible.

2. Invoices shall be exchanged between the parties and substantiated by the exchange of statements of account which shall be exchanged as promptly as practicable after the end of each month. The mailing addresses of the parties hereto are as follows:

| | |
|---|---|
| Auditor of Revenues | ..... |
| Trans-Canada Air Lines | ..... |
| P.O. Box 768 | ..... |
| Winnipeg, Canada. | ..... |

3. Settlements of amounts payable pursuant to this Agreement shall be made in Dollars within 30 days after receipt of a statement from the other party. Settlement of the total statement shall be made by each party unless otherwise agreed.

4. Should the settlement of statements as indicated in Paragraph 3 necessitate a conversion of foreign exchange, except as provided in Paragraph 5 hereunder, this conversion shall be effected at the official rate of exchange in effect on the last day of the month in which the charges accrued.

5. If, before settlement of any amounts, the currency of one of the parties alters in value, vis-à-vis the currency of the other, by 10% or more, a special settlement shall be made in which all items relative to any date preceding such alteration shall be settled at the rate of exchange which was in effect on the day prior to such alteration. The items relative to any date subsequent to such alteration shall be settled at the official rate of exchange in effect on the last day of the month in which the charges accrued.

6. All amounts due to
under this Agreement shall be transmitted to the following account

7. All amounts due to Trans-Canada Air Lines shall be transmitted to

Trans-Canada Air Lines
Bank of Nova Scotia
Winnipeg, Canada

# APPENDIX B

## MODEL GROUND HANDLING AGREEMENT

(generally used by KLM Royal Dutch Airlines)

between:

and:

The present agreement is constituted by the following documents:

1. Main Agreement
2. Annex A (description facilities)
3. Annex(es) B (location(s), agreed facilities and charges).

Contents of Main Agreement



Date of effectiveness:

Termination period:

MAIN AGREEMENT

An agreement made this
between
having its principal office at
and
having its principal office at

WHEREBY THE PARTIES AGREE AS FOLLOWS:

Article 1

Provision of handling facilities

1.1 General

The facilities will be made available within the limits of possibilities of the Handling Company and in accordance with the current IATA rules and regulations.

It is not considered necessary or possible to specify every detail of handling facilities, it being generally understood among IATA carriers what such facilities comprise and standards to be attained in their performance.

1.2 Documents for Traffic Handling

Documents used for traffic handling will be the Handling Company's own documents, if applicable, and provided that these documents are IATA standard.

1.3 Scheduled Flights

The Handling Company without advance request agrees to provide to aircraft operated by the Carrier on scheduled flights at the location(s) mentioned in the Annex(es) (including designated diversion airports, as indicated in Annex(es) D) the facilities specified in the Annex(es) (hereinafter referred to as the facilities).

The Carrier agrees to inform the Handling Company as soon as possible about any changes of schedules and/or frequencies and/or changes in types of aircraft, operating into the station(s) concerned.

1.4 Special flights

The Handling Company will also provide the facilities to aircraft on other than scheduled flights operated by or on behalf of the Carrier, at the same locations, provided that reasonable prior notice is given and the provision of such additional facilities will not prejudice commitments already undertaken.

1.5 Priority

In case of multiple handling, priority shall, as far as possible, be given to aircraft operating on schedule.

1.6 Special assistance (emergency cases)

In case of emergency (forced landings or accidents) the Handling Company shall without delay and without waiting for instructions from the Carrier take all reasonable and possible steps to assist passengers and crew and to safeguard and protect baggage, cargo and mail, carried in the aircraft from loss or damage.

The Carrier shall reimburse the Handling Company for any extra expenses incurred by the Handling Company in rendering such assistance at cost.

1.7 Additional facilities

The Handling Company will, on request, provide to the Carrier, as far as possible, additional facilities other than those prescribed in the Annex(es) to this agreement.

The conditions for such facilities have to be agreed upon separately.

1.8 Other airports

In case of occasional calls of the Carrier's aircraft at airports not being locations designated in the present agreement, where the Handling Company maintains a ground handling organization, the Handling Company shall, on request, make every effort, subject to the means locally available, to furnish necessary facilities.

Article 2

Fair practices

2.1 The Handling Company will take all practicable measures to ensure that sales information contained in the Carrier's flight documents is made available for the purposes of the Carrier only.

Article 3

Transfer of obligations

3.1 The Handling Company is entitled to delegate any of the agreed facilities to sub-contractors with Carrier's consent, which consent shall not be unreasonably withheld, it being understood that, in this case, the Handling Company shall nevertheless be responsible to the Carrier for the proper rendering of such facilities as if they had been performed by the Handling Company's own personnel.

3.2 The Carrier shall not appoint any other person, company or organization to provide the facilities which the Handling Company has agreed to provide by virtue of this agreement, except in such special cases as shall be mutually agreed between the parties.

Article 4

Carrier's own organization

4.1 The Carrier may maintain at its own costs its own representative(s) at the location(s) designated in said Annex(es). Such representative(s) and, by prior arrangement, representative(s) of the Carrier's Head Office may inspect the facilities furnished to the Carrier by the Handling Company pursuant to this Agreement, advise and assist the Handling Company and render to the Carrier's clients such assistance as shall not interfere with the furnishing of facilities by the Handling Company to this agreement.

4.2 Such assistance, when performed by the Carrier's representative(s) pursuant to Paragraph 4.1. of this article will be for the sole responsibility of the Carrier, unless requested by the Handling Company.

4.3 The office equipment and premises, which may be made available by the Handling Company to the Carrier to enable the Carrier's personnel to perform the above-mentioned activities, shall be the subject of separate agreement.

Article 5

Standard of work

5.1 The Handling Company shall carry out all technical and flight operations services in accordance with the Carrier's instructions, receipt of which must be confirmed in writing to the Carrier by the Handling Company.

In case of absence of instructions by the Carrier, the Handling Company shall follow its own standard practices and procedures.

5.2 All other facilities shall be provided in accordance with standard practices and procedures usually followed by the Handling Company. Nevertheless, the Handling Company will comply with reasonable requests of the Carrier as long as these do not conflict with the applicable orders and regulations of the appropriate authorities or of the Handling Company.

5.3 The Handling Company agrees to take all possible steps to ensure that the Carrier's aircraft, crew, passengers and cargo receive treatment not less favourable than that given by the Handling Company to its own comparable operations.

5.4 The Handling Company agrees to ensure that authorizations of specialized personnel performing services for the Carrier are kept up-to-date.

In the case of occasional or continuous inability of the Handling Company to provide authorized personnel as requested by the Carrier, the Handling Company shall inform the Carrier immediately.

5.5 The Carrier shall supply the Handling Company with sufficient information about the Carrier's internal instructions to enable the Handling Company to perform its handling properly.

5.6 In the provision of the facilities as a whole, due regard shall be paid to safety, local and international regulations, the relevant resolutions of IATA and the aforementioned request(s) of the Carrier in such a manner, that delays to the aircraft are avoided and the general public is given the best impression of air transport.

Article 6

Remuneration

6.1 In consideration of the Handling Company providing the facilities, the Carrier agrees to pay to the Handling Company the charges set out in the respective Annex(es) B. The Carrier further agrees to pay the proper charges of the Handling Company and to discharge all additional expenditure incurred for providing the facilities referred to in Article 1.4, 1.6, 1.7 and 1.8.

6.2 The charges set out in Annex(es)B do not include:

- permit, landing or departure fees;
- charges for parking and picketing;
- charges for transmitting messages;
- any other charges, fees or taxes imposed or levied by the airport, customs or other authorities against either the Carrier or the Handling Company in connection with the Carrier's flights and such charges, fees or taxes shall be borne ultimately by the Carrier;
- expenses incurred in connection with stopover and transfer passengers and with the handling of passengers for interrupted, delayed or cancelled flights.

Article 7

Accounting and transfer

7.1 The Handling Company shall debit the Carrier monthly with the charges arising from the provision of the handling facilities listed in Annex A at the rates of charges described in Annex(es) B.

7.2* Settlement of account shall be effected through the IATA Clearing House unless otherwise agreed in Annex B.

Article 9

Arbitration and jurisdiction

9.1 Unless otherwise agreed, any difference or dispute arising from the interpretation or the implementation of the present agreement or relating to any rights or obligations herein contained shall be referred to arbitration in accordance with the IATA Arbitration Clause, in force at the time of appeal, said clause being considered part hereof. The decision of such arbitration shall be final and enforceable on the parties hereto.

9.2 In case of above disputes the applicable law shall be the law of the country where the Head Office of the Handling Company actually involved as handling party to this agreement is registered.

Article 10

Stamp duties, registration fees

10.1 All stamp duties and registration fees in connection with this agreement, which may be prescribed under the national law of either party to this agreement, are payable by that party.

10.2 All stamp duties and registration fees in connection with this agreement, which may be prescribed under the national law of the location(s), as mentioned in the Annex(es) will be shared by each party.

Article 11

Duration, modification and termination

11.1 This agreement shall be effective from and shall supersede any previous arrangements between the parties governing the provision of facilities.

11.2 Modification of, or additions to this agreement or its Annexes must be approved in writing by the parties.

11.3 This agreement shall continue in force until terminated by either party giving sixty days previous notice to the other party.

11.4 Termination of all assistance furnished at a specific location shall be notified by either party upon sixty days previous notice unless otherwise agreed in the Annex B concerned.

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* Secretariat Note: As the whole of Article [illegible] not available from the text received, article [illegible], para. 7.2. is followed herein by article 8.

11.5 Any notice of termination given by one party under this agreement shall be deemed properly given if sent by registered letter to the respective head office of the other party.

11.6 In the event of the Carrier's or the Handling Company's permit(s) or other authorization(s) to conduct its air transportation services, or to furnish the facilities provided for in the Annex(es) A, wholly or in part, being revoked, cancelled or suspended, that party may terminate the agreement or the relevant Annex(es) at the effective date of such revocation, cancellation or suspension by giving to the other party notice thereof within twenty-four hours after such event.

11.7 Either party may terminate this agreement and its Annexes at any time if the other party becomes insolvent, makes a general assignment for the benefit of creditors, or commits an act of bankruptcy or if a petition in bankruptcy or for its reorganization or the readjustment of its indebtedness be filed by or against it, provided the petition is found justified by the appropriate authority, or if a receiver, trustee or liquidator of all or substantially all of its property be appointed or applied for.

11.8 Both the Handling Company and the Carrier shall be exempt from obligation if prompt notification is given by either party in respect of any failure to perform their obligations under this agreement arising from any of the following causes:

- labour disputes involving complete or partial stoppage of work or delay in the performance of work;
- force majeure or any other cause beyond the control of either party.

11.9 In the event of the agreement or part thereof being terminated by notice or otherwise, such termination shall be without prejudice to the accrued rights and liabilities of either party prior to termination.

11.10 The Handling Company shall have the right at any time to vary the charges set out in the Annex(es) B upon giving to the Carrier not less than thirty days previous notice in writing of its intention to do so, accompanied by full details of the charges which the Handling Company proposes to introduce, together with the date (not earlier than the expiration of such notices) on which the new charges are to be brought into effect.

## Article 12

Marginal notes

12.1 The notes appearing in the margin of this agreement are for reference purposes only and form no part of the agreement.

| | |
|---|---|
| Signed the | Signed the |
| on behalf of | on behalf of |
| by | by |
| by | by |

ANNEX A - GROUND HANDLING FACILITIES

to the Standard Ground Handling Agreement

effective from:

between

and:

valid as from:

replacing:

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Section 12 Cargo Facilities

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INTRODUCTION

For clearness' sake, terms used in this annex are defined hereunder:

(a) Passengers shall include Carrier's service and free passengers.

(b) Cargo shall include Carrier's service cargo.

(c) Airport Terminal shall mean all buildings used for arrival and departure handling of aircraft.

(d) Loads shall mean baggage, cargo, mail and any aircraft supplies including ballast.

(e) Facilities marked "R" are facilities which are to be performed on Request and against additional charges.

Section 1 - Representational Facilities

1.1 General

1.1.1 If required, arrange bond to facilitate the Carrier's activities. Cost of provision of such bond may be recharged to the Carrier.

1.1.2 Liaison with local authorities.

1.1.3 Indicate that the Handling Company is acting as handling agent for the Carrier.

1.1.4 Inform all interested parties concerning movements of the Carrier's aircraft.

1.1.5 Upon request supervise facilities performed by other organization(s).

1.2 Disbursements

1.2.1 Upon request, payment on behalf of the Carrier of all airport, customs, police and other charges relating to the facilities performed.

1.2.2 Upon request, payment of all out-of-pocket expenses such as accommodation, transport and catering charges.

Section 2 - Communications

2.1 Compile, despatch and receive all messages in connection with the facilities performed by the Handling Company. Inform the Carrier's representative of the contents of such messages.

2.2 Maintain a message file containing all above-mentioned messages pertaining to each flight for 90 days.

Section 3 - Traffic Facilities

3.1 Documentation

3.1.1 Convey and deliver document pouch(es) between the aircraft and appropriate airport buildings.

3.1.2 Prepare and distribute all documents relating to facilities listed in this section (such as load-sheets, balance charts, manifests, etc.) and in accordance with local or international regulations or reasonably required by the Carrier.

3.1.3 Compile and despatch statistics, returns and reports as mutually agreed.

3.2 Passenger and baggage handling at the airport

3.2.1 Inform passengers and/or public about time of arrival and/or departure of Carrier's aircraft and surface transport.

3.2.2 Guide passengers from aircraft through controls to surface transport and vice versa.

3.2.3 Deliver baggage in accordance with the local procedures.

3.2.4 Arrange porterage facilities for passengers' baggage.

3.2.5 Make arrangements for stopover, transfer and transit passengers and their baggage and inform them about facilities available at the airport during transit.

3.2.6 If admissible, storage of baggage in the customs bonded store if required (any storage fees to be paid cash by the passenger).

3.2.7 Assist passengers requiring special attention, e.g. disabled passengers, unaccompanied children, etc.

3.2.8 Ensure that open tickets are valid for the flight for which they are presented and complete them accordingly.

3.2.9 By mutual agreement check travel documents (passports, visa, vaccination and other certificates) for certain points on the flight concerned, but without liability for the Handling Company.

3.2.10 Weigh and tag checked and unchecked baggage.

3.2.11 Enter baggage figures on passengers' tickets and detach flight coupons.

3.2.12 Make out excess baggage tickets, collect excess baggage charges and detach baggage coupons.

3.2.13 Take care of passengers, when flights are interrupted, delayed or cancelled, according to instructions given by the Carrier. If instructions do not exist, deal with such cases according to the customs of the Handling Company.

3.2.14 Deal with lost, found and damaged property and report such irregularities to the Carrier.

3.2.15 Notify the Carrier of complaints and claims made by the Carrier's client.

3.2.16 Head check of passengers upon embarkation (count to be compared with aircraft documents).

3.2.17 Where applicable the Handling Company will collect Airport Service Charges from departing passengers accounting therefor to the appropriate authorities.

3.3 Cargo handling facilities

3.3.1 Check all embarking/disembarking cargo against relative documents.

3.3.2 Put import cargo under customs control.

3.3.3 Deal with transfer shipments.

3.3.4 Obtain release of export from customs.

3.3.5 Assemble cargo for departure and prepare manifest(s).

3.3.6 Arrange and/or provide appropriate storage and stow all cargo under the Handling Company's control.

3.3.7 Render appropriate handling to special cargo as mutually agreed.

3.3.8 Notify the Carrier of complaints and claims made by the Carrier's clients.

3.3.9 Deal with lost, found and damaged cargo within the limits of the facilities provided under this section and report such irregularities to the Carrier.

Note: It is agreed that all departing cargo shall be available at the airport cargo unit, together with all prescribed documents at a time in advance of departure to be locally determined by the Handling Company.

3.4 Mail handling facilities

3.4.1 Distribute incoming/outgoing AV-7.

3.4.2 Checking incoming mail against AV-7.

3.4.3 Deliver mail to postal authorities against AV-7 for receipt.

3.4.4 Accept and check outgoing mail from the postal authorities against AV-7 receipt.

3.4.5 Deal with transfer despatches.

3.4.6 Handle Carrier's service mail in accordance with local practice.

3.4.7 Handle diplomatic mail as mutually agreed.

3.4.8 Deal with lost, found and damaged mail and report such irregularities to the Carrier.

3.5 Traffic facilities - town terminal

3.5.1 Receive passengers ex airport coach.

3.5.2 Deliver baggage to passengers in accordance with local procedures.

3.5.3 Arrange porterage facilities for passengers' baggage.

3.5.4 Inform passengers/public about time of arrival/departure, and as far as possible, the reason for delay.

3.5.5 Receive embarking passengers and baggage.

3.5.6 Carry out ticket and baggage handling as described in paragraph 3.2 sub. 3.2.7 to 3.2.15 inclusive.

3.5.7 Make arrangements for stopover and transfer passengers.

Section 4 - Loading/Unloading

4.1 a) provide
b) position/remove

adequate passenger steps.

4.2 a) provide
b) operate

suitable loading/unloading equipment.

4.3 a) provide
b) operate

suitable equipment for transport of loads between aircraft and appropriate airport terminal.

4.4 a) unload loads
b) deliver/receive loads
c) load, stow and secure loads in accordance with the Carrier's instructions and procedures.

(Lashing materials may be charged for at costs).

4.5 Report immediately all damage to loads in accordance with Carrier's instructions.

4.6 Re-distribute loads in cargo holds according to Carrier's instructions.

4.7 Secure and lock cargo hold doors and hatches when loading is complete.

R 4.8 Provide a) passenger
b) crew

transport between aircraft and airport terminal where required by Carrier or local authorities.

R 4.9 Refill the Carrier's ballast bags with ballast approved by the carrier.

R 4.10 Provide filled ballast bags.

R 4.11 Arrange for safeguarding of all loads with special attention to valuables and vulnerable cargo during loading, unloading and during transport between aircraft and airport terminal.

Section 5 - Catering facilities

5.1 Unload/load and stow pantry equipment and catering supplies from/on aircraft.

5.2 Convey removable pantry equipment and catering supplies between aircraft and catering department at the airport.

5.3 Liaison with the Carrier's supplier and handling of requisitions made by the Carrier's authorised representative.

R 5.4 Empty, wash, clean and install removable pantry equipment items.

R 5.5 Refill removable galley containers with hot and/or cold drinking water.

R 5.6 Provide, according to Carrier's requirements:

a) bonded )
b) unbonded ) storage accommodation
c) air conditioned )
d) deep freeze )

R 5.7 Store Carrier's:

a) spare catering equipment
b) consumable material
c) food stock
d) bar stocks

R 5.8 Arrange for laundering cabin linen (head rest covers, pillow cases, sheets).

R 5.9 Supervise preparation and set up of meals and refreshments.

R 5.10 Prepare food trays.

R 5.11 Prepare meals and supply unprocessed articles as defined in special agreement.

R 5.12 Maintain stocks at levels laid down by the Carrier, replenishing as necessary by demand on the Carrier or by local purchase as instructed.

R 5.13 Pack and despatch serviceable and unserviceable items as required.

R 5.14 Complete stock returns and other documentation.

R 5.15 Maintain equipment and room in clean condition.

Section 6 - Aircraft Cleaning

6.1 Exterior cleaning (upon request)

6.1.1 Exterior cleaning of cockpit windows.

6.1.2 Reasonable cleaning of aircraft integral steps.

6.1.3 Wipe excess oil from engine nacelles and landing gear.

R 6.1.4 Clean wings, controls, engine nacelles and landing gear extensively.

R 6.1.5 Clean cabin windows.

6.2 Interior cleaning

6.2.1 Clean and tidy cockpit according to the Carrier's instructions and in the presence of a supervisor authorised by the Carrier.

6.2.2 Clean and tidy:

a) crew compartment
b) lounge
c) bar
d) cabin
e) toilet interior
f) cloakroom

6.2.3 Fold and rack blankets.

6.2.4 Clean and tidy pantry, pantry fixtures and empty and clean refuse bins.

6.2.5 Clean cargo hold interior (upon request)

R 6.2.6 Clean floor and floor covers extensively.

R 6.2.7 Clean cabin fixtures and fittings.

R 6.2.8 Disinfect and/or deodorize aircraft (materials may be supplied by the Carrier).

R 6.2.9 Make up berths.

R 6.2.10 Change head and pillow covers (covers to be supplied by the Carrier).

R 6.2.11 Clean cabin windows.

R 6.2.12 Distribute in cabin and toilet items provided by the Carrier.

6.3 Toilet service

6.3.1 a) provide
b) position and remove

toilet cart

c) empty, clean flush toilets and replenish fluids.
(Materials may be supplied by the Carrier).

6.4. Water service

6.4.1 a) provide
b) position and remove

water cart

c) replenish water tanks with drinking water
(upon request superchlorinated water).

Section 7 - Aircraft handling

7.1 Attendance

7.1.1 Standby before arrival and after departure.

7.1.2 General supervision of aircraft handling activities.

7.2 Marshalling

7.2.1 Provide marshalling equipment

7.2.2 Provide or arrange for marshalling at arrival/departure.

7.3 Parking

7.3.1 a) provide
b) position/remove

wheelchocks.

7.3.2 Position/remove landing gear locks, engine blanking covers, pilot-covers, surface control locks, tailstands.

7.3.3 Provide headsets.

7.3.4 Perform ground to cockpit communication.

7.3.5 a) provide
b) position and remove
c) operate

suitable ground power unit for supply of necessary electrical power, during a time limit to be agreed upon between the Handling Company and the Carrier.

R 7.3.6 Ground power unit in excess of 7.3.5

7.3.7 a) provide
b) position and remove

cockpit steps.

R 7.3.8 a) provide
b) arrange for

suitable parking/hangar space.

7.4 Starting

7.4.1 a) provide
b) position and remove
c) operate

suitable unit for normal engine starting at departure.

R 7.4.2 Starting unit in excess of 7.4.1

7.5 Safety measures

7.5.1 Report immediately to the Carrier's authorised representative all damage noticed at or inside the aircraft irrespective of cause or time of occurrence.

7.5.2
a) provide
b) position and remove
c) operate

suitable fire fighting equipment and other protective equipment as required.

R 7.5.3
a) provide
b) arrange

for security personnel to guard the aircraft.

7.6 Moving of aircraft

R 7.6.1
a) provide
b) position and remove

suitable towing equipment.

c) tow aircraft on the designated handling area according to the Carrier's instructions and in accordance with the local regulations.

R 7.6.2 Tow aircraft in excess of 7.6.1 c).

R 7.6.3 Move aircraft under its own power according to the Carrier's instructions.

Section 8 - Aircraft Servicing

8.1 Fuelling and de-fuelling

8.1.1 Liaison with fuel suppliers.

8.1.2 Inspect fuel appliances for contamination of fuel.

8.1.3 Prepare aircraft for fuelling/de-fuelling.

8.1.4 Supervise fuelling/de-fuelling operations.

8.1.5 Check the delivered fuel quantity.

8.1.6 Drain water from aircraft fuel tanks.

8.2 Replenishing of oil and other fluids

8.2.1 Liaison with suppliers.

8.2.2 Supervise replenishing operation.

8.2.3
a) provide
b) operate

special replenishing equipment.

R 8.3 Cooling and heating

R 8.3.1
a) provide
b) position and remove
c) operate

cooling unit.

R 8.3.2 a) provide
b) position and remove
c) operate

heating unit.

R 8.4 Snow and ice removal

R 8.4.1 Remove snow from the aircraft without de-icing.

R 8.4.2 a) provide
b) position and remove
c) operate

de-icing unit.

R 8.5 Re-arrange cabin by removing/installing seats and other cabin equipment.

Section 9 - Aircraft Maintenance

9.1 Routine services

9.1.1 Perform line inspections in accordance with the Carrier's current instructions.

9.1.2 Enter in the aircraft log and sign for the performance of the line inspection.

9.1.3 Enter remarks in the aircraft log regarding defects observed during the inspection.

9.1.4 Perform pre-flight check immediately before aircraft departure.

9.1.5 Provide skilled personnel to assist the flight crew or ground staff in the performance of the inspection.

R 9.2 Non-routine services

R 9.2.1 Rectify defects written up in the aircraft log as reported by the crew or revealed during the inspection to the extent requested by the Carrier.

However, major repairs must be especially agreed upon between the Carrier and the Handling Company.

R 9.2.2 Enter in the aircraft log and sign for the action taken.

R 9.2.3 Report technical irregularities and actions taken to the Carrier's maintenance base in accordance with the Carrier's instructions.

R 9.2.4 Maintain the Carrier's technical manuals, handbooks, catalogues, etc.

R 9.2.5 Provide engineering facilities, tools and special equipment to the extent available.

Section 10 - Accommodation and Material

R 10.1 Accommodation

R 10.1.1 Provide office space for accommodation of the Carrier's technical representative.

R 10.1.2 Provide suitable storage space for accommodation of the Carrier's spare parts and/or special equipment.

R 10.1.3 Provide suitable storage space for accommodation of the Carrier's spare power plant.

R 10.2 Material handling

R 10.2.1 Obtain customs' clearance and administer the Carrier's spare parts, power plants and/or equipment.

R 10.2.2 Provide periodic inspection of the Carrier's spare parts and/or spare power plant in accordance with the Carrier's current instructions.

Section 11 - Flight Operations

11.1 General

11.1.1 Check that the instructions laid down by the Carrier do not conflict with those of the local governmental authorities and advise the Carrier of any discrepancies.

11.1.2 Report to the departments indicated by the Carrier any incident relating to the application of the rules and procedures established by the Carrier or governmental authorities.

11.1.3 Inform the Carrier of any known project affecting the operational facilities made available to its aircraft in the areas of responsibility specified in Annex(es) B.

11.1.4 Keep up-to-date all manuals and instructions received by the Carrier and ensure that all prescribed forms are available.

11.1.5 Suggest appropriate action to pilot-in-command in case of delays or diversions, taking into account the meteorological conditions, the ground facilities available, the technical and commercial possibilities and the overall operational requirements.

11.1.6 Take immediate and appropriate action in case of an in-flight irregularity, an emergency or an accident.

11.1.7 Maintain a trip file by collecting all documents specified by the Carrier, all messages received or originated in connection with each flight and dispose of this file as instructed by the Carrier.

11.2 Flight preparation

11.2.1 Follow up the provision of the meteorological documentation for each flight.

11.2.2 Analyse the operational conditions and provide the pilot-in-command with a preliminary flight briefing.

11.2.3 Prepare and sign.

a) company flight plan
b) fuel order
c) ATS flight plan

and obtain signature of pilot-in-command where applicable.

11.2.4 Liaison with the appropriate local traffic handling unit on weight and fuel data.

11.2.5 Furnish the crew with an adequate briefing and hand out copies of latest obtainable Notams.

11.2.6 File ATS flight plan for clearance and cover other local procedures pertaining to the clearance of flights as necessary.

11.2.7 Check that Carrier's crew is alerted.

11.2.8 Check that crew transportation is provided.

11.3 Flight watch and in-flight assistance

11.3.1 Follow up the progress of the flight against flight movement messages, flight plan messages and position reports received.

11.3.2 Disseminate pertinent information on flight progress to the Carrier's representative responsible for ground handling and to the locally designated functions depending on such information for their services.

11.3.3 Assist the flight as necessary to facilitate their safe and efficient conduct.

11.3.4 Monitor movement of flight within VHF range and provide assistance as necessary.

11.3.5 Continue flight watch and in-flight assistance until the adjacent area is able to accept responsibility if, for reasons of communications failure, weather phenomena, safety of aircraft or emergency it is undesirable to stop these services at the area boundary specified in Annex(es) B. Similar conditions may make it desirable to transfer services to the next area before the area boundary is crossed.

11.3.6 Log and report as specified by the Carrier any incident of an operational nature (delays, diversions, engine trouble, etc.).

R 11.4 Obtain a debriefing of incoming crews, disseminating reports or completed forms to offices concerned, whether governmental or Carrier.

Section 12 - Cargo facilities

12.1 Notify arrival of import cargo to the consignee or his approved agent.

12.2 Arrange accommodation and facilities for acceptance, delivery, reforwarding and clearance of cargo.

12.3 In accordance with the instructions of the Carrier's clients and in concurrence with local regulations, clear through customs, deliver and forward cargo.

12.4 Collect, if applicable, CC and/or COD amounts in accordance with IATA regulations, customs and other charges from either consignor or consignee in accordance with the instructions received.

12.5 Delivery to the consignee's address to be made only when normally provided for the Handling Company's customers.

12.6 Deal with cargo awaiting customs clearance or which is refused by the consignee.

12.7 Transport cargo between Town Reception Office other mutually agreed collection and delivery localities and the airport and vice versa.

Note: Charges arising from the facilities mentioned in Section 12 are to be recovered from the consignor/consignee at identical rates to those of the Handling Company or its agents to its own clients.

Section 13 - Surface Transport

13.1 Make all necessary arrangements for passengers/crew transport together with their baggage between airport and town terminal or other agreed point(s).

13.2 Make all necessary arrangements for special transport within the limit of local possibilities.

| | |
|---|---|
| Signed the | Signed the |
| on behalf of | on behalf of |
| by | by |
| by | by |

## ANNEX B - LOCATION, CHARGES AND FORM OF SETTLEMENT

| | | |
|---|---|---|
| between | : | ABC airlines<br>(hereinafter referred to as "The Carrier") |
| and | : | XYZ airlines<br>(hereinafter referred to as "The Handling Company") |
| for the location | : | |
| valid as from | : | |
| replacing | : | |

Section 1 - Charges

1.1 The Handling Company shall charge the Carrier for the performance of the facilities enumerated in Annex A for a single ground handling consisting of the arrival and subsequent departure of the same aircraft at the following rates:

1.1.1 For the facilities enumerated in Sections 1, 2, 3, 4 and 5.

US $ 000.00 per Convair
US $ 000.00 per Viscount 800

1.1.2 For the facilities enumerated in Section 6, paras 6.1., 6.2 and 6.3.

US $ 000.00 per Convair
US $ 000.00 per Viscount 800

1.1.3 For the facilities . . . . . .
(The number of these clauses can be extended as far as necessary and desirable.)

1.2 (optional) Handling in case of technical landing for other than commercial purposes will be charged at 50% (fifty per cent) of the above rates, provided that a change of dead load is not involved.

1.3 (optional) Handling in case of return from take-off point to ramp will not be charged extra, provided that a change of dead load is not involved.

1.4 (optional) Handling in case of return from take-off point to ramp involving a change of dead load will be charged as for handling in case of technical landing in accordance with para 1.2 of this Annex.

1.5 (optional) No extra charges will be made for providing the facilities at night, on Sundays and legal holidays, for cargo aircraft, turnarounds or overnight stops.

Section 2 - Additional Facilities

2.1 Facilities designated in Annex A as "rechargeable" and all other additional facilities will be charged for at current local rates.

Section 3 - Disbursements

3.1 The handling charge(s) agreed upon do not include disbursements which may arise to the Handling Company in connection with the facilities provided for the Carrier. The Carrier will reimburse such expenses to the Handling Company at cost price (at cost price plus accounting surcharge of .....%).

| | |
|---|---|
| Signed the | Signed the |
| on behalf of | on behalf of |
| "The Handling Company" | "The Carrier" |
| by | by |
| by | by |

## APPENDIX C

### CHARTER ARRANGEMENT

("Main" agreement used for charter arrangements
by the Scandinavian Airlines System)

On this ..... day of ....., 196..., Scandinavian Airlines System, Denmark-Norway-Sweden, SAS, having its principal office at Bromma Airport, Sweden (hereinafter referred to as "SAS") and ..... having its principal office at .....(hereinafter referred to as "the Company"),
HAVE AGREED AS FOLLOWS:

1.

In connection with the flights, which at the request of SAS, from time to time are to be performed by the Company, the conditions stipulated in this agreement shall apply, unless other conditions have been mutually agreed between the parties hereto.

2.

The Company shall be responsible for the operational performance of the flight(s), and shall accept no other traffic documents than those supplied, completed and issued by SAS or which SAS elects to supply, complete and issue, and on all such documents SAS shall be shown as the carrier including the proper identification of SAS flight number(s). SAS shall apply for all operating and other authorizations relating to the flight(s) and the company shall after request provide SAS with all information needed for this purpose.

3.

The Company shall be responsible for and assure that all flights are operated in accordance with all regulations, including but not limited to safety requirements, established by all governmental authorities concerned.

In addition to the above provisions, the following conditions shall apply in regard to passenger flights:

The aircraft shall be equipped with not less than two (2) engines and shall be fully approved for Instrument Meteorological Conditions.

The captain (in command) of the aircraft shall be in possession of a valid "D" certificate.

SAS shall be entitled to inspect the companies' technical and operational functions to an extent requested by SAS and justified by the companies' performance of this agreement.

4.

The Company shall be liable for any delay, injury or death of any person or any loss, damage, destruction or delay of or to any cargo, baggage or mail caused by an occurrence arising out of the operation of the Aircraft under this Agreement and shall hold SAS harmless accordingly.

The Company shall be liable for any loss of or damage to property or any injury or death of any person not carried by the Company's aircraft, including SAS servants employees and agents, caused by an occurrence arising out of the operation of the Aircraft under this Agreement and shall hold SAS harmless accordingly.

The Company shall at its own cost and expense cause to be carried and maintained in full force and effect in responsible companies, insurances satisfactory to SAS and covering all liability assumed by the Company under this Agreement.

SAS and its agents shall be named as additional insured on the insurance policies.

The Company shall before the commencement of the first flight cause the underwriters to issue to SAS a certificate which confirms that the Company is insured as provided in this Agreement and that the underwriters shall inform SAS about any changes in the insurance policies.

To the extent that any such insurance shall not be kept in full force and effect or shall be invalidated, the Company shall indemnify and hold SAS harmless to the same extent as if SAS had been fully covered by the said insurance.

5.

SAS shall pay to the Company the price agreed upon between the parties in an annex to this Agreement. Payment shall be made in the manner therein indicated.

If not otherwise expressly stated, said payment shall represent SAS full compensation to the Company for the flight(s) and consequently shall include all such items as aircraft depreciation and interest, insurance, overhaul and maintenance (including line maintenance), all airport fees, parking and hangar fees, all crew costs as well as fuel and oil. No additional charges shall be levied against SAS.

SAS shall be responsible for all the ground handling unless otherwise agreed upon between the Company and SAS within the frame of applicable ground services agreements.

The Company shall only be permitted to accept and load on board on these flights such passengers, baggage, mail and cargo as have been accepted and directed by SAS.

All revenue derived from the operation of these flights shall be for the sole account of SAS.

6.

SAS and its agents assumes no liability towards the Company or any third party for any loss, damage, destruction or delay caused by or otherwise arising out of the services undertaken by SAS or its agents according to this Agreement. The Company agrees to indemnify SAS and its agents for any amount which SAS or its agents, as a consequence of any such loss, damage, destruction or delay may have to pay to any th ·d party.

7.

This Agreement will be effective as from the day and year first above stated and will terminate one (1) month after written notice has been given by either party.

Regardless of the provisions in above paragraph either party shall have the right to terminate this Agreement at any time, if the other party becomes insolvent, makes a general assignment for the benefit of creditors or if a petition in bankruptcy or for its reorganization or the readjustment of its indebteness be filed by or against it, (provided the petition is found justified by the appropriate authority), or if a receiver, trustee or liquidator of all or substantially all of its property be appointed or applied for.

8.

The Company may not without the prior consent of SAS assign this Agreement in whole or in part or delegate any of the agreed rights and obligations under this Agreement.

9.

Performance of the obligations under this Agreement is made subject to authorization being granted by the appropriate governmental authorities.

10.

Both the Company and SAS shall be exempted from the obligation to fulfill their obligations under this Agreement if the failure to fulfill the obligations is due to riots, strikes, lock-outs, civil commotion, existence, apprehension or imminence of war between any nations, civil war, blockade, embargo, acts of governmental authorities, acts of God, fire, flood, fog, frost, ice, epidemics, quarantine, requisition of aircraft, breakdown or accident to aircraft or any similar cause beyond the control of the parties, if the safety of passengers and/or property is reasonable deemed to be in jeopardy by the captain of the Aircraft.

11.

Any dispute or claim arising out of or in any manner related to this Agreement shall be referred to and finally settled by arbitration.

The arbitration shall be held in Stockholm, and conducted in accordance with the laws of Sweden.

Executed in two counterparts.

THE COMPANY:

SCANDINAVIAN AIRLINES SYSTEM

## APPENDIX D

### AIRCRAFT LEASE AGREEMENT

(with purchase option, between
Aerlinte Eireann Teoranta and Braniff Airways, Incorporated)

THIS AGREEMENT made and executed this 10th day of September, 1965 between AERLINTE EIREANN TEORANTA, a corporation organized and existing under the laws of Ireland, the registered office of which is at 43, Upper O'Connell Street, Dublin, 1, Ireland, (hereinafter called "Aerlinte") and BRANIFF AIRWAYS, INCORPORATED, an Oklahoma corporation, having its general offices at Exchange Park, Dallas, Texas, United States of America (hereinafter called "Braniff").

W I T N E S S E T H :

WHEREAS Aerlinte owns and operates Boeing type jet aircraft series 720 and

WHEREAS Braniff is desirous of leasing (with option to purchase) one of such aircraft, Irish registration and identification letters EI-ALC, model 720-048 and manufacturer's serial number 18043 (hereinafter called the "Aircraft" which expression shall include all equipment installed therein at time of delivery) and

WHEREAS Aerlinte is prepared to lease the Aircraft to Braniff with option to purchase;

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. PERIOD OF LEASE. The lease of the Aircraft will be for a period commencing on the first day of November, 1965, and ending on the fifteenth day of May, 1966 (hereinafter referred to as the "lease period"). During the lease period Braniff shall not operate the Aircraft in excess of 2200 block hours. In this agreement "block hour" shall be deemed to mean each hour of time between removal of chocks at commencement of flight to refitment of chocks at end of flight and "flight hour" shall be deemed to mean each hour of time between the moment the wheels of the Aircraft leave the runway on takeoff until the wheels touch the runway on landing, with respect to each flight of the Aircraft.

2. DELAY IN DELIVERY. If due to circumstances beyond its control Aerlinte is unable to deliver the Aircraft on October 31, 1965, Aerlinte will deliver the Aircraft on the earliest possible date thereafter and Braniff will accept the Aircraft on such later date and Aerlinte's sole liability to Braniff shall be a pro-rata reduction in the basic rental commensurate with the period of delayed delivery. If Aerlinte offers the Aircraft for acceptance before October 31, 1965 and if Braniff accepts the Aircraft on such earlier date, Braniff will pay a pro-rata increase in the basic rental commensurate with the period of earlier delivery. However, if for any reason the Aircraft is not delivered to Braniff by November 15, 1965, Braniff may terminate this agreement and its obligations thereunder by notice to Aerlinte and Aerlinte will promptly repay to Braniff all amounts theretofore paid by Braniff to Aerlinte.

3. DELIVERY AND REDELIVERY. The Aircraft will be delivered by Aerlinte to Braniff at Love Field, Dallas, Texas, on October 31, 1965 and subject to the provisions of Clause 14 hereof will be redelivered by Braniff to Aerlinte on May 15, 1966 at Love Field, Dallas, Texas.

4. CONDITION OF THE AIRCRAFT. The Aircraft shall be delivered to Braniff in the condition specified in Section 2 of Appendix A hereto.

5. MAINTENANCE STANDARDS. Each party hereto shall comply with the appropriate provisions of Section 1 of Appendix A hereto. Braniff shall operate and maintain the Aircraft in such manner as not to prevent or restrict re-certification and/or re-registration of the Aircraft by the Irish Civil Airworthiness Authorities at the end of the lease period.

6. RESPONSIBILITY FOR MAINTENANCE AND OVERHAUL COSTS: Except as specifically provided for to the contrary in Appendix A hereto all maintenance and overhaul costs during the lease period shall be borne by Braniff.

7. DOCUMENTATION AND RECORDS. Each party hereto shall comply with the appropriate provisions of Section 3 of Appendix A hereto.

8. EXEMPTION FROM LIABILITY. With the exception of the representations expressly made by Aerlinte in this agreement, Aerlinte makes no other representations or warranties expressed or implied concerning the Aircraft or spares and shall have no responsibility or liability whatsoever with respect to or arising out of the condition or operation thereof following delivery to Braniff and Braniff hereby agrees to indemnify and hold Aerlinte harmless from and against any and all such responsibility and liability, whether based upon claims by Braniff, its employees, agents or third persons. Braniff shall have no responsibility or liability whatsoever with respect to or arising out of the condition or operation of the Aircraft or spares following redelivery to Aerlinte at the termination of the lease period and Aerlinte hereby agrees to indemnify and hold Braniff harmless from and against any and all such responsibility and liability, whether based upon claims by Aerlinte, its employees, agents or third persons.

9. SPARES SUPPORT BY AERLINTE. In order to assist Braniff in the operation of the Aircraft during the lease period Aerlinte will, at its expense, position at a point to be mutually agreed spares listed in Appendix B hereto. Braniff shall during the lease period and at its expense maintain the spares in a serviceable condition and shall return the spares in a serviceable condition (with at least 25% of time before overhaul remaining) to Aerlinte at the end of the lease period, except that with respect to items subject to unit exchange as specified in Appendix B hereto Braniff shall pay Aerlinte the reasonable cost of overhaul or repair thereof.

10. PAYMENT.

(a) Braniff will pay to Aerlinte a basic rental as follows:

(i) an advance payment of One Hundred Thousand U.S. Dollars ($100,000) on October 1, 1965, covering the basic rental for November;

(ii) five payments of One Hundred Thousand U.S. Dollars ($100,000) each on the first day of each month beginning December 1, 1965, covering the basic rental for such month; and

(iii) a payment of Forty-seven Thousand Eight Hundred Ninety U.S. Dollars ($47,890) on May 1, 1966, covering the basic rental for the period from May 1, 1966 through May 15, 1966.

Non-use of the Aircraft by Braniff for any reason whatsoever during the lease period, with the exception of destruction or damage beyond repair of the aircraft as provided for in Clause 12, will not entitle Braniff to any adjustment of the basic rental. All payments hereunder will be made by Braniff on the appropriate due date to Aerlinte at its office at 572 Fifth Avenue, New York, New York.

(b) In addition to the basic rental stipulated in (a) of this Clause Braniff will pay to Aerlinte as an allowance for airframe and engine overhaul time utilization on or before the fifteenth day of each month during the period beginning December 15, 1965, and ending on May 15, 1966, and also on June 1, 1966, the amount of Eighty-five U.S. Dollars ($85) for each flight hour the Aircraft was operated in the preceding month. Should Braniff be obliged to utilize any of its own engines on the Aircraft due to premature failure (not caused by the fault or negligence of Braniff or its agents or by ingestion of foreign bodies) of any of Aerlinte's engines, appropriate credit may be deducted by Braniff from the allowance for airframe and engine overhaul time utilization. The amount of such credit will be determined by multiplying the number of flight hours of utilization of such Braniff engine or engines by the rate of Fifteen U.S. Dollars Fifty Cents ($15.50) per engine flight hour.

11. U.S. GOVERNMENTAL AGENCY APPROVAL. Braniff shall, at its expense, use its best efforts to

(a) effect registration of the Aircraft under Section 501 of the United States Federal Aviation Act of 1958, as amended;

(b) obtain a United States Certificate of Airworthiness; and

(c) obtain such approval (or disclaimer of jurisdiction as the case may be) of the Civil Aeronautics Board of the United States to this agreement as may be required under any applicable provisions of the Federal Aviation Act of 1958, as amended;

provided however that in the event, despite such efforts, any of the foregoing cannot be obtained, Braniff may terminate this agreement and its obligations hereunder by notice to Aerlinte; in which event Aerlinte will promptly repay to Braniff all amounts theretofore paid by Braniff to Aerlinte, less an amount equivalent to the aggregate costs ~~incident to modifications to the Aircraft~~ incurred by Aerlinte solely by reason of this agreement, not to exceed Fifty Thousand U.S. Dollars ($50,000), and Aerlinte will also transfer and deliver to Braniff all related equipment, spare parts and accessories.

12. LIABILITIES AND INSURANCES

(a) From date of delivery of the Aircraft to date of redelivery or exercise of the option to purchase as provided in Clause 14 hereof, Braniff will be fully responsible to Aerlinte for any loss, damage or destruction of the Aircraft and spares whether due to Braniff's negligence or not and Braniff hereby indemnifies Aerlinte against any and all losses, costs, claims howsoever arising from the operation of the Aircraft and use of spares under this agreement.

(b) Braniff will during the lease period maintain insurance coverage upon the Aircraft under headings of:

(i) third party, passenger, mail, baggage and cargo legal liability - in amounts to be agreed upon between Braniff and Aerlinte, which will not be in any event lower than the limits applicable with respect to Braniff's Boeing 720 aircraft;

(ii) hull - in an amount not less than Five Million U.S. Dollars with loss payable to Braniff and Aerlinte as their respective interests may appear.

(c) Aerlinte will be named as an additional insured on Braniff's fleet policy and Braniff will furnish to Aerlinte prior to commencement of the lease period certificates evidencing all such policies and endorsements including the indemnities herein given. Such certificates will stipulate that the policies will not be cancelled, modified or reduced during the lease period without at least thirty (30) days notice to Aerlinte.

(d) In the event that the Aircraft shall be destroyed or damaged beyond repair during the lease period, this agreement and all obligations of Braniff hereunder except those arising out of this Clause 12 shall be automatically terminated as of the time of such destruction or damage beyond repair, provided that Braniff shall immediately notify Aerlinte of any such destruction or damage beyond repair and Aerlinte shall promptly pay to Braniff all amounts paid by Braniff as advance rental, prorated from the date of such destruction or damage beyond repair.

13. TAXES AND CUSTOMS DUTIES. Aerlinte will assume full responsibility for and indemnify and hold Braniff harmless from and against any and all Irish taxes and customs duties of any nature whatsoever which may become applicable to the transaction or any part thereof covered by this agreement including, without limitation, any sales, use, gross receipts, occupational or income tax of Ireland. Braniff shall assume full responsibility for and indemnify Aerlinte against all United States Federal or State taxes and customs duties, including, without limitation, any sales, use, gross receipts, or occupational taxes which may arise from (1) the importation of the Aircraft into the United States, (2) its operation during the lease period and (3) its purchase by Braniff in the event of exercise of the purchase option contained in Clause 14 hereof.

14. PURCHASE OPTION. Braniff shall have the option, to be exercised by written notice or prepaid cable to Aerlinte given not earlier than January 15, 1966 and not later than March 15, 1966, to purchase the Aircraft at the termination of the lease period for the sum of Five Million U.S. Dollars ($5,000,000). In the event Braniff exercises such option, (a) all amounts paid by Braniff to Aerlinte as rental and as allowance for airframe and engine overhaul time utilization pursuant to Clause 10 hereof shall be applied and credited against such purchase price, and (b) title will be transferred to Braniff free and clear of all mortgages, liens, claims, charges or any other encumbrances.

15. NOTICES. Any notices required hereunder shall be given in writing or by prepaid cable, and the effective date of each such notice shall be deemed to be the date upon which it was received. Aerlinte shall be addressed at 43, Upper O'Connell Street, Dublin, 1, Ireland if in writing or at AER LINGUS, DUBLIN if by cable, and Braniff shall be addressed at P. O. Box 35001, Dallas, Texas 75235, U.S.A., if in writing or at BRANWAYS, DALLAS if by cable; or at such other respective addresses as either may designate to the other in writing from time to time.

16. ARBITRATION. All disputes or controversies arising under, out of, in connection with, or in relation to this agreement which cannot be resolved after negotiation by the parties hereto shall be finally settled by arbitration, to be held in New York, U.S.A., in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Judgment upon the award rendered may be entered in any court having jurisdiction, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be.

17. GENERAL.

(a) This agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto, but it shall not be assigned wholly or in part by either party without the prior written consent of the other.

(b) This agreement shall be construed and performance thereof shall be determined according to the laws of the State of New York, U.S.A. Aerlinte hereby waives any objection to the jurisdiction of any court of competent jurisdiction in the State of New York in connection with any litigation arising out of this agreement.

(c) In all cases in which references are made in this agreement to the expiration or termination of the lease, such references shall be subject to the exercise by Braniff of the option to purchase as provided for in Clause 14.

(d) This agreement shall not be varied in its terms by any oral agreement or representation or otherwise than by an instrument in writing of subsequent date hereto, executed by both parties by their officers or agents thereunto duly authorized.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their respective officers or agents thereunto duly authorized, as of the day and year first above written.

AERLINTE EIREANN TEORANTA

By _____ (Signed)
General Sales Manager

BRANIFF AIRWAYS, INCORPORATED

By _____ (Signed)
Vice President

APPENDIX A TO AGREEMENT DATED SEPTEMBER 10, 1965
BETWEEN AERLINTE EIREANN TEORANTA AND BRANIFF AIRWAYS, INCORPORATED

SECTION 1. MAINTENANCE STANDARDS AND REQUIREMENTS:

1.1 Aircraft

1.1.1 Subject to the provisions of sub-sections 1.1.2, 1.1.3, 1.1.4. Braniff shall during the period of the lease maintain the Aircraft to the operating specification approved by FAA for Braniff Boeing 720 aircraft and at standards as high as those applied to the Braniff fleet of Boeing 720 aircraft.

1.1.2 All maintenance items falling due at periods in excess of 400 hours in the Aerlinte maintenance schedule shall be performed by Braniff unless Braniff carry out an equivalent item at equal or lower hours.

1.1.3 The equivalent or systems fitted on the Aircraft which are not fitted to standard Braniff aircraft shall be maintained by Braniff in a serviceable condition to the procedures specified by Aerlinte.

1.1.4 Braniff shall carry out any special inspections issued by Aerlinte falling due on the Aircraft or components during the lease period.

1.1.5 Prior to the commencement of the lease Aerlinte shall supply Braniff with a list of maintenance items which shall include those items referred to in 1.1.2, 1.1.3.

STATE OF TEXAS )
) ss.
COUNTY OF DALLAS )

Before me, a Notary Public in and for said state and county, on this day personally appeared Arthur J. Walls, known to me to be the person whose name is subscribed to the foregoing instrument, and known to me to be the General Sales Manager of Aerlinte Eireann Teoranta, a corporation, and acknowledged to me that he executed said instrument for the purposes and consideration therein expressed, and as the act of said corporation.

Given under my hand and official seal this 10th day of September, 1965.

(SEAL) (Signed)
Notary Public

My commission expires June 1, 1967.

STATE OF TEXAS )
) ss.
COUNTY OF DALLAS )

Before me, a Notary Public in and for said state and county, on this day personally appeared Horace Bolding, known to me to be the person whose name is subscribed to the foregoing instrument, and known to me to be a Vice President of Braniff Airways, Incorporated, a corporation, and acknowledged to me that he executed said instrument for the purposes and consideration therein expressed, and as the act of said corporation.

Given under my hand and official seal this 10th day of September, 1965.

(SEAL) (Signed)
Notary Public

My commission expires June 1, 1967.

1.2 Engines

1.2.1 Braniff shall maintain the engines in accordance with the Braniff maintenance system except that the provisions of 1.1.2, 1.1.3, and 1.1.4 shall also apply in respect of engines.

1.2.2 The approved overhaul life of the engines shall be that defined in the Aerlinte maintenance schedule valid at the date of the commencement of the lease period.

1.2.3 In the event of a premature engine removal during the lease period a Braniff engine may be used as a replacement.

1.2.4 Aerlinte will overhaul or repair or cause to be overhauled or repaired at its expense, including transport costs, the engine removed provided always that such removal was not occasioned by the fault or the negligence of Braniff or to the ingestion of foreign bodies.

1.2.5 All overhaul, repair and transport costs incurred on engines removed due to the fault or negligence of Braniff or to the ingestion of foreign bodies shall be borne by Braniff.

1.2.6 If at the expiration or termination of the lease period the Aircraft is returned to Aerlinte with a Braniff engine or engines installed then Aerlinte shall be obliged at its expense to return such engine or engines to Braniff by air freight shipment within two weeks thereafter.

1.2.7 In the event that Braniff decides to use an oil other than Esso 5251 the cost of the oil change at the commencement of the lease period and the cost of the resultant inspections and flushings shall be borne by Braniff. Braniff agrees to use only an oil approved by Pratt & Whitney.

1.3 Components

Braniff shall use the Aerlinte Maintenance Schedule of approved overhaul times expressed in block hours as a basis for changing time-expired components subject to the following conditions:

(a) Where the Braniff approved overhaul time for any component exceeds the Aerlinte time and where operating the component to the Braniff time would nonetheless cause the component to be changed during the lease period, Braniff may operate the component up to the Braniff life.

(b) Braniff will ensure that no component fitted to the Aircraft at redelivery to Aerlinte has exceeded the approved overhaul time expressed in block hours as laid down in the Aerlinte Maintenance Schedule valid at the commencement of the lease period.

(c) In changing components either time-expired or because of failure, Braniff may integrate the removed component into Braniff stock and repair and redeliver a Braniff component which is either new or has been overhauled or repaired by Braniff, the manufacturer or an FAA approved repair station. The fitting of such a component is subject to the supply of associated records as defined in Para. 3.4.

1.4 System of Time Recording

All maintenance or overhaul work called up by Aerlinte shall be expressed in block hours and Braniff shall operate a dual recording system in respect of the Aircraft whereby flight hours normally utilized by Braniff for this purpose are converted into block hours. (See Paragraph 3.2.3).

1.5 Defect rectification and premature removals (except engines)

All defect rectification shall be carried out at Braniff expense save only where it is mutually agreed that a defect arose from negligence on the part of Aerlinte prior to the lease period, in which event rectification of such defect shall be at the expense of Aerlinte.

1.6 Quality Control and Condition at termination of Lease

During the lease period, Aerlinte shall be entitled to position a quality control representative at Dallas from time to time to examine the Aircraft and its records. This representative shall advice Braniff of any outstanding work or defects which in his opinion would prejudice full scheduled operation of the Aircraft by Aerlinte after redelivery of the Aircraft to Aerlinte. Braniff shall carry out at its expense all reasonable requests for work or rectification of defects for which it is responsible under the provisions hereof prior to expiration or termination of the lease.

1.7 FAA Directives and Service Bulletins - Responsibility

1.7.1 Aerlinte shall deliver the Aircraft to Braniff with no Airworthiness Directives falling due during the lease period; provided that if it is not possible for Aerlinte to comply with any such Airworthiness Directive without delaying delivery of the Aircraft, Aerlinte will reimburse Braniff for the cost of complying therewith; and will also allow Braniff a pro rata reduction in the basic rental payable under Clause 10(a) for the down time required for such compliance if the same cannot be accomplished during the course of normal maintenance.

1.7.2 Any Airworthiness Directive applicable to the Aircraft issued during the lease period with an effective date before the expiration or termination of the lease shall be accomplished by Braniff at its expense.

1.7.3 Braniff shall not carry out any non-airworthiness modifications without the prior consent of Aerlinte.

SECTION 2. CONDITION OF AIRCRAFT

2.1 Certificate of Airworthiness

The Aircraft shall be delivered to Braniff with a valid Irish Certificate of Airworthiness.

2.2 Airframe Hours

At time of delivery the Aircraft shall have not less than 2,000 airframe hours available to next Major Base Check.

2.3 Engine Hours

At time of delivery two of the installed engines shall have not less than 2,200 hours each available to next scheduled overhaul. The other installed engines may have less than 2,200 hours each available to next scheduled overhaul and Aerlinte shall, at a time to be agreed, supply to Braniff two replacement engines in quick engine change units so that the time expired engines may be changed by Braniff at Aerlinte's expense during the lease period.

2.4 Interior Layout

2.4.1 Subject to the provisions of 2.4.2 the Aircraft shall be delivered to Braniff in a 30 First Class/89 Tourist Class configuration as shown on Aerlinte Drawing Number AL-A12-00-127, Issue B, dated July 19, 1965.

2.4.2 In order to achieve the above configuration Aerlinte will install three left hand Hardman First Class seats, 14 left hand Aerotherm triple Economy seats, 1 left hand Aerotherm double Economy seat, 14 right hand Aerotherm triple Economy seats. All other seats shall be provided by Braniff at its expense.

2.5 Modifications

2.5.1 Lounge - Aerlinte will install at its expense, a hatrack and windscreen in what is normally the Aerlinte lounge area and provide and fit passenger servive units appropriate to the final configuration. The final configuration shall be similar to that installed by Braniff on N7081 by BNF ER-8-25-543.

2.5.2 Escape Chutes

Aerlinte will install at its expense inflatable escape chutes at all four doors. The chutes on the passenger doors shall be door mounted and those on the service doors shall be roof mounted.

2.5.3 Paint Scheme (exterior)

During the lease period the Aircraft shall be operated in the Braniff color scheme and may be redelivered to Aerlinte with such painting. The cost of painting the Aircraft in the Braniff colors shall be borne by Braniff.

2.5.4 Removal of Equipment not required during lease

Prior to delivery of the Aircraft to Braniff Aerlinte shall remove the following equipment:

All liferafts and the emergency transmitted
All lifejackets
Sextant
Navigators stool
No. 1 Doppler tracker
No. 1 Doppler computer
No. 1 sensor controller
No. 1 computer controller
Pilots Doppler indicator
No. 1 antenna
No. 1 T/R unit
Loran receiver
Loran indicator
Loran control panel

SECTION 3. DOCUMENTATION AND RECORDS

3.1 Documentation to be supplied by Aerlinte

Aerlinte shall prior to the commencement of the lease provide Braniff with the following:

3.1.1 All maintenance documentation for the last Major Base Check.

3.1.2 All history of recordable components fitted to the Aircraft except details of the last overhaul which will be supplied on request for individual components.

3.1.3 A certified inventory of the Aircraft components prior to the Major Base Check.

3.1.4 A compliance listing, duly certified, of all applicable F.A.A. Directives at time of delivery of the Aircraft.

3.2 Braniff obligations during lease

3.2.1 During the lease period, the Aircraft shall be maintained in accordance with the procedures specified in Section 1 and Braniff documentation shall be used for all maintenance and overhaul work on the Aircraft and components. Where extra documentation items are required Aerlinte will supply copies of all necessary work sheets to Braniff. All documentation shall be held by Braniff during the lease period and shall be made available to Aerlinte prior to redelivery of the Aircraft in order to facilitate Irish re-registration of the Aircraft.

3.2.2 Braniff shall maintain up-to-date the Aerlinte component records, in addition to any separate record system which it may originate. Aerlinte shall assist Braniff to set up the Aerlinte component record system in Dallas, such assistance to include instruction in operation and procedures of the system if required by Braniff.

3.2.3 All records in the Aerlinte System shall be expressed in block hours as defined in the Agreement. In planning or recording maintenance or component changes due at specified block hours, Braniff may use actual flight hours operated plus a factor of twelve and one-half per cent. The component records returned to Aerlinte by Braniff at redelivery of the Aircraft will have been converted to block hours.

3.2.4 Braniff shall supply to Aerlinte, at monthly intervals and at expiration or termination of the lease, a certified listing of all recordable components changed during the lease period and a compliance listing, duly certified, of all applicable FAA directives issued during the lease period.

3.2.5 One month prior to redelivery of the Aircraft to Aerlinte, Braniff shall supply Aerlinte with a listing of all components due to become time-expired within a period of 500 flying hours from the date of return of the Aircraft to Aerlinte.

3.3. Component Changes

3.3.1 All previous history of components of Braniff fitted to the Aircraft shall be furnished to Aerlinte by Braniff. All records of Aerlinte components removed, and which thereby become the property of Braniff, shall on request be transferred to Braniff together with the records of the last overhaul.

3.3.2 In the case of components which are not recordable in the Aerlinte Maintenance System but which are recordable under FAA requirements, Aerlinte shall supply Braniff with a certified listing giving all information available on these items.

3.4 Documentation to be returned by Braniff at expiration or termination of lease

On redelivery of the Aircraft Braniff shall return to Aerlinte the Major Base Check documentation and component records together with all documentation covering (1) maintenance and overhaul of the Aircraft and (2) components installed by Braniff during the lease period.

3.5 Manuals and Technical Literature

3.5.1 Aerlinte shall update all 720 manuals of Aerlinte origin delivered to Braniff by Aerlinte prior to the signing of the agreement and shall supply maintenance and overhaul manuals for all components which Braniff may advise as not common to the Boeing 720-048 and the 720-027 but which can be overhauled or repaired by Braniff in its own facilities. Aerlinte will furnish any technical information which Braniff may seek covering such components. Aerlinte shall furnish to Braniff such maintenance manuals, operations manuals, FAA approved flight manuals and wiring diagrams as required by Braniff, not to exceed three each.

3.5.2 Aerlinte shall supply a copy of its approved maintenance schedule for reference during the lease period.

3.5.3 Aerlinte will send to Braniff amendments for the customized Spare Parts Catalogue.

3.5.4 All Manuals supplied to Braniff for the purpose of the lease shall be returned by Braniff to Aerlinte at the end of the lease period.

APPENDIX B

EQUIPMENT REQUIRED TO SUPPORT LEASED IRISH AIRCRAFT

| | | | | |
|---|---|---|---|---|
| A. | VHF Transmitter | Collins | 17L-7 | 2 each |
| | VHF Receiver | Collins | 51X-2 | 2 each |
| | VOR/VHF Control Panel | Gables | G-95V | 1 each |
| | ADF Receiver | Collins | 51Y-3 | 2 each |
| | ADF Control Panel | Collins | 614L-5 | 1 each |
| | Sense Antenna Coupler | Collins | 179J-1 | 1 each |
| | Noise Filter | Collins | 635F-1 | 1 each |
| | Instrumentation Unit | Collins | 344B-1 | 2 each |
| | Compass System | Sperry | C-6 | 2 each |
| | | | | (of each major component except flux valve) |
| | Nose Gear Wheels, Tires, Bearings & Caps | | | 4 Assemblies |
| | Fuel Flowmeters | | 8GJ77LAF2 | 2 |
| | Fuel Transmitters | | 8TJ59GAF3 | 2 |
| | Fuel Flow Amplifiers | | 10-60150-2 | 2 |
| | Frequency Controller | | 2-107A | 2 |
| | Flight Recorder | | 5424-201 | 2 |
| | Flight Data Magazine | | 5427 | 2 |
| | Accelerometer | | 5690 | 2 |
| | Data Encoder | | | 2 |
| | Recording | | 10819 | 2 |
| | Generators | | 904-JO16-1 | 2 |

## APPENDIX E

## MODEL POOL AGREEMENT

(used by the Scandinavian Airlines System)

Agreement made between whose Head Office is at

hereinafter referred to as

and whose Principal Office is at

hereinafter referred to as

whereby it is agreed, subject, if necessary, to the approval of their respective national authorities, as follows:

### Article 1

Main Principles

1. In accordance with the terms and regulations contained herein, and shall enter into a Pooling Agreement to cover all their services operated between points in on the one hand and points in on the other.

2. The partners shall use modern pressurized equipment except in emergency and shall maintain the highest standards prescribed by good airlines practice. In the event of nonpressurized or other unsuitable and/or non-competitive aircraft being used on the pool routes by either of the partners hereto such aircraft may be allocated a production value and/or ceiling in accordance with their useful production to the pool as a whole.

3. They shall maintain the closest co-operation with a view to achieving maximum efficiency at load factors which are as high as may be expected to achieve this aim. They shall collaborate in every way especially as regards scheduling, fare structure, selling and advertising of the services and the objective shall be mutually to develop and expand the air transport market between the and

4. In principle the pool production of the partners shall be planned in such a way that in any pool period both partners shall have an equal share of the total production

   As a principle the partners shall endeavour to share the operation on all pool routes; the share to be undertaken by each partner on the individual routes shall be agreed for each pool period taking into account the relative operating circumstances of the partners.

5. Schedules relating to the pool services shall be laid down for each traffic period with due consideration to the traffic concerned and commercial demands. For this purpose regular meetings between the partners shall take place at least three months before the beginning of the traffic period in question. The services, the frequency, the line numbers and the corresponding types of aircraft to be operated on the services shall be laid down in Annex(es) hereto.

6. Except in cases of emergency there shall be no deviation from the programme as set out in the Annex(es) unless this has been mutually agreed between the partners.

### Article 2

Definitions

1. The following words when used in this agreement shall have the following meanings:

   (1) Annex - any attachment to this agreement containing information specific to the current traffic period concerned.

(2) Appendix - any attachment to this agreement containing variable data in amplification of the pool contract.

(3) Services - the scheduled services for the carriage of passengers, baggage, freight and mail operated in accordance with the terms of this agreement.

(4) Sector - the stretch between two subsequent scheduled landing points as laid down for each service under this agreement.

(5) Flight - a single flight in one direction performed by either of the partners hereto on one or more sectors.

(6) Extra flight - a flight in excess of the scheduled services which is included in the pool as a service.

(7) Extra capacity - the additional capacity which results from the substitution of a larger capacity aircraft for the service which is included in the pool in accordance with the provisions of this agreement.

(8) Supplementary flight - a flight in excess of the services which does not count for pool apportionment and which must compensate the pool in accordance with the provisions of this agreement.

(9) Supplementary capacity - additional capacity which result from the substitution of a larger capacity aircraft for the normal service and which must compensate the pool in accordance with the provisions of this agreement.

(1 ) Charter-flight - a flight where the charterer be charged for the entire capacity of the aircraft regardless of the space to be utilized by him, in addition to which possible pick-up load at published IATA fares/rates may be transported without constituting a part of the charter itself.

(11) Ceiling - the agreed fixed load maximum per type of aircraft for inclusion of revenue in the pool.

(12) Load - passengers, baggage, freight and mail all included.

(13) Fare - the amount charged by a carrier for carriage of a passenger and his free baggage allowance over the route specified.

(14) Rate - the amount charged by a carrier for carriage of a unit of weight/volume or value of freight, excess baggage and mail.

(15) Reservation - booking - the allotment in advance of seating accommodation for a passenger or of space or weight capacity for freight or baggage or mail.

(16) Stopover - a deliberate interruption made by a passenger in connection with change of aircraft on the airport concerned exceeding the time of departure of first possible connecting flight to destination contemplated.

(17) Ticket - Passenger Ticket and Baggage Check, including all flight, passenger and other coupons therein, issued by the carrier which provide for the carriage of the passenger and his baggage.

(18) Free I ticket - free ticket (for which, however, a small clearance charge or insurance premium may be payable) and in respect of which a firm booking can be made.

(19) Free II ticket - free ticket (for which, however, a small clearance charge or insurance premium may be payable) and in respect of which no firm booking can be made, transportation taking place on an "if space available" basis.

(20) Service I ticket - free ticket issued to the pool partners' personnel when travelling for service purposes and in respect of which a firm booking can be made.

(21) Service II ticket - free ticket issued to the pool partners' personnel when travelling for service purposes and in respect of which no firm booking is possible, transportation taking place on an "if space available basis".

(22) Reduced fare I ticket or consignment note - ticket or consignment note issued at a lower fare or rate than the published normal IATA fare or rate because of a special category of passenger (such as being an agent, a student, a tour conductor, a member of personnel or personnel's family, etc.) and in respect of which a firm booking can be made.

(23) Reduced fare II ticket or consignment note - as above but in respect of which a firm booking is not possible and transportation will take place on an "if space available" basis.

(24) Child ticket - a ticket issued at 50% of the published normal IATA fare because of the passenger being of 2 to 12 years of age only.

(25) Baby ticket - a ticket issued at 10% of the published normal IATA fare because of the passenger being under 2 years of age only.

(26) Service freight - freight belonging to either partner of this contract.

(27) "If space available" basis - any transportation which is provided without a reservation having been made.

(28) Production - the number of tonne-kilometres offered.

(29) Units - average fares and rates to be used for computing revenues deriving from the pool services.

(30) Airports - any airport used as the scheduled place of departure or destination or the services covered by this agreement. When the word Airport is used in this context in the agreement, then it shall also mean the agreed alternate airports as set out in the Annex to this agreement.

(31) Irregularity - any discrepancies from the agreed programme as set out in the Annex to this agreement.

(32) Traffic period - a summer or winter period, as from time to time defined by Traffic Conferences of IATA.

(33) Pool period - a period from the beginning of a summer traffic programme until termination of the following winter traffic programme.

Article 3

Pool Revenue

1. All revenue derived from the carriage of passengers, excess baggage, freight and mail (the latter at the lowest rate per class of mail) on the pool routes (excluding those categories referred to in sub-paragraph 3.2 below) shall be brought into the pool by each partner in accordance with the provisions of this agreement and at the rates/units quoted in the Annex hereto. Such rates/units shall be established separately per passenger, per kilo of excess baggage, per kilo of freight and per kilo of mail in accordance with the tariffs and categories set out in the Annex.

2. Revenue, if any, derived from the following categories shall be excluded from the pool:

   (a) Service Consignment Notes
   (b) Tickets issued in accordance with IATA Res. 200
   (i.e. free and reduced fare tickets issued to staff and relatives).
   (c) Passengers paying less than 25% of the applicable fare
   (d) Infants paying 10%
   (e) No-show (failed to join) passengers.

   Unless otherwise agreed companies' freight will be transported on the owner's aircraft unless carried on a subject to space available basis on the other partner's aircraft.

   The same rule shall apply to such tickets issued by other airline companies, not being parties to this agreement.

3. IATA type tickets and/or consignment notes may be interchanged from one Company's services to the other's without needing an endorsement from the Company on whose service transportation was initially to be undertaken. This arrangement will apply only insofar as the pooled services are concerned; it shall, however, be subject to reconsideration by the partners from time to time.

4. Free Service and reduced fare tickets and consignment notes (except for Companies' stores) may be issued without further formality by each of the partners on the pooled services for carriage on either partner's aircraft. Such tickets and consignment notes shall be issued within reasonable limits, in strict conformity with the conditions stipulated in the relating IATA regulations, and for tickets and consignment notes issued to or for the personnel of the partners in strict conformity with their own Company's staff travel regulations. If one of the partners is able to prove that the carriage of certain categories of staff on a pool route or routes is operating to the detriment of that route from a revenue point of view then that route shall be closed to those categories of staff and both partners' personnel shall conform to the revised arrangements.

5. The carrying partner may debit the issuing partner for revenue, if any, shown on tickets and/or consignment notes in respect of those categories mentioned in sub-paragraph 2 of this Article.

Article 4

Apportionment of Pool Revenue

1. The apportionment of the pool revenue shall be made at the end of the pooling period on the basis of the production achieved by the partners during that period. The production values for each type of aircraft operated by the partners on the pool route shall be as laid down in the Annex. When calculating the production of the partners the great circle distances shall apply. This latter calculation shall be subject to the provisions of Article 1.2 as they apply to unpressurized and/or unsuitable and/or non-competitive aircraft operated on the pool route.

Article 5

Construction of Units

1. It is agreed between the partners that the units referred to under Article 3 above shall be fixed as near as possible to the actually collected revenue rate. If one partner is able to prove that the units which are being used for the assessment of pool revenue during a particular period are widely divergent from the average collected revenue rate than the partners shall consult with a view to establishing revised units to be applied retroactively from an agreed date in that traffic period.

2. In the event of new fares and rates being adopted by IATA resolution the agreed units shall be reconsidered. Any amendment to these units shall be effected from the date of the introduction of the IATA Resolution.

3. Commission of 10% on passenger revenue and 7-1/2% on freight revenue shall be deducted when assessing the unit which is to be applied. No commission will be deducted in respect of mail and excess baggage transportation. No further deduction of commission will be required when carrying out the normal pool accounting procedure.

Article 6

Principles in connection with Irregularities

1. If during a particular traffic period one partner is unable to carry out its share of the scheduled programme then, in order to maintain the continuance of the programme, the other partner may take over the share that the failing partner is unable to perform. Full discussions shall, however, take place between the partners in order to decide what arrangements have to be made in this respect. The revenue from the flights taken over shall be brought into the pool by the operating partner and the production from such flights shall count in favour of that partner. If, however, the partner who has failed to carry out its share of the programme wishes to make up the lost production, the question of making up this production shall be subject to discussion between the partners in advance of any compensatory flights.

In the event of a partner being unable to carry out individual flights the partners shall agree mutually whether or not the other partner shall carry out such flights in order to maintain the continuance of the programme. If it is agreed that the other partner shall take over such flights then the revenue from the flights taken over shall be put into the pool by the operating partner and the production from such flights shall count in favour of that partner. There shall, however, be no question of a failing partner making up the lost production for individual flights which it has failed to perform.

2. Unless otherwise agreed, any service which fails to arrive at its destined port of arrival or recognized alternative within 12 hours of its scheduled time of arrival shall be out of pool. Agreed alternative airports shall be set out in the Annex hereto.

3. Unless otherwise agreed, the following procedures shall be applied in the event of flights being cancelled, interrupted or diverted, or if a scheduled airport is overflown:-

   (1) If a flight is cancelled then it shall not count for pool production.

   (2) If a flight is interrupted at an intermediate scheduled airport or at its agreed alternate airport then that flight shall place revenue into the pool and shall count production only for the sector which has been performed.

   (3) If a flight is diverted to other than a recognized alternate airport then that flight shall be out of pool.

   (4) If a scheduled intermediate airport is overflown but the flight is performed to the scheduled airport of termination of the service then revenue from load carried from origin to destination shall be placed into the pool and production for the flight shall be counted in proportion to the revenue load placed into the pool as compared with the total load carried on the sectors involved in the current calendar month.

   The partners shall consult with regard to all other irregularities which may arise which are not covered by the above sub-paragraphs.

4. Flights from or to an airport at the beginning and/or end of a pool period, in order to start or to finish the operation of the service as agreed upon, shall be considered as normal flights in respect of the pool.

5. In the event of a partner being unable to carry out its share of the scheduled programme and the other partner decides to take up this share in order to preserve the continuity of the programme then any positioning flights which are necessary in order to take over the services in question shall be included in the pool in the same manner as pool flights.

6. Positioning flights performed to take over services to commence normal pool operations and/or to perform extra flights shall not count more production than the pool flight for which the aircraft has been positioned.

7. Unless otherwise agreed no charges whatsoever shall be borne by the pool.

## Article 7

Extra Flights and Capacity

1. Each partner shall have the right to perform additional flights and/or to substitute larger capacity aircraft for the normal aircraft on the pool routes to take extra traffic offering. In principle the operation of additional flights and/or capacity shall be subject to Article 1.4 above. In the event of either of the partners considering that an additional flight or additional capacity is required the matter shall be subject to discussion between the partners in advance.

2. If the partners agree that extra flights/capacity are necessary on the pool routes then such agreement shall be confirmed in writing to the partner undertaking the extra flight or operating the extra capacity. The letter of confirmation shall set out the production which is to be taken into account

and the sectors on which the additional flights/capacity are to be operated. When extra flights/capacity have been agreed between the partners then they shall be treated as normal pool flights including the return (positioning) flights if any. In the event of a partner considering that additional flights/capacity are required on the pool routes and that partner is unable to consult with the other partner before such flights/capacity are operated then the partners shall decide in retrospect as to how the additional flights/capacity which have been performed shall be accounted for in the pool.

3. Unless otherwise agreed between the partners the revenue from supplementary flights/capacity shall be placed into the pool to compensate the normal pool services to the percentage of the load capacity set out in the Annex hereto. This compensation must be effected in all cases unless the partner concerned can show in retrospect why any of the load carried on supplementary flights/capacity could not have been transported on the normal pool services.

4. To assess the rate at which compensation shall be paid into the pool from supplementary flights/capacity the total revenue earned by the supplementary flight/capacity shall be divided by the total load carried taking into account passenger weights as set out in the Annex. In carrying out this assessment the weight and the revenue, if any, of those categories stipulated in Article 3.2 of this agreement shall be omitted from the calculation. Compensation will be paid to the normal pool services at the resultant average rate of revenue, earned per kilo on the supplementary flight. When calculating for purposes of compensation the weight carried on the normal pool service, the weight of those categories referred to in Article 3 para. 2, will be excluded from the pool service when assessing the total weight of traffic carried by that service.

5. In the event of aircraft of other type than those corresponding with the respective services (line numbers) as laid down in the Annex being used, the partners will agree upon the production of such aircraft to be taken into consideration for the calculation of pool apportionments for each separate case.

6. Where in the cases of emergency or for technical reasons a larger capacity aircraft is substituted for the aircraft normally scheduled to operate, such larger capacity aircraft as has/have been substituted will count for pool apportionment at the same production value as the aircraft for which the substitution has been effected; subject always to the actual payload carried by such larger capacity aircraft being no greater than that which could have been carried by the regular pool aircraft for which it has been substituted. If, in fact, the actual payload carried by the larger capacity aircraft is in excess of that of the aircraft for which substitution has been effected then it shall be decided whether or not such a flight shall be in or out of pool, in the latter event the provisions of Article 7.3 shall apply.

## Article 8

### Charter

1. Charter flights - according to IATA Resolution 045 - shall be out of pool except that load which is transported in addition to the charterer's load shall be taken into consideration for the pool in the same way as the load of supplementary flights.

## Article 9

### Administration

1. The pool administration shall be taken over by the partners in turn, normally for a pool period at a time. Decisions in this respect shall be recorded in the Annex hereto.

2. The traffic documents required for the accounting shall be provided reciprocally by the partners. For this purpose the documents will be exchanged direct between the partners' Head Offices.

3. Within 30 days after each calendar month of operation the partners shall provide each other with a statement containing day by day the details of the traffic on the services, in accordance with the categories referred to in Article 3 supported by statements showing the tonne-kilometres actually performed.

4. All revenue shall be calculated per section and per direction and brought into the pool in shillings sterling at the units defined in the Annex hereto. Where applicable the currency rate to be used for calculations shall be as defined in IATA Resolution 021B.

5. The partner carrying out the administration of the pool shall whenever deemed opportune by either of the partners prepare a cumulative provisional apportionment of the pool based upon the proportion of the tonne/kilometres performed by the partners during the period.

6. The cumulative balances arrived at in accordance with paragraphs 4 and 5 of this Article shall be debited by the creditor partner in the national currency of that partner, in accordance with the provision that if in the course of the pooling period the account shows a considerable balance in favour of one of the partners that partner may claim a provisional payment of up to 75% of the total amount accruing to it.

7. At the end of each pool period definite apportionments shall be agreed upon and the provisional settlements, if any, shall be revised on the basis of the proportion in tonne-kilometres actually performed by the partners during the whole period.

8. The difference resulting from the revision shall be debited by the creditor partner 14 days after the establishment of the agreed definite apportionment. The debiting and payment shall take place in the currency of the creditor partner.

9. In case of devaluation(s) during a pool year of or toward the other currency two periods of definite settlement shall be defined: the first prior to devaluation and the second on and subsequent to devaluation. The rate of exchange prevailing during each period will be used and in all questions of revaluations the appropriate IATA regulations will apply.

10. For the purpose of the control and settlement of the accounts the pool accountants will visit each other reciprocally and shall have at their disposal all original documents of accounting etc. necessary for this purpose.

Article 10

1. Any changes or amendments to this agreement shall be made in writing and signed by the partners hereto and shall be expressed as being changes or amendments to this agreement.

2. The terms of the Appendix and Annex and such other matters as may be agreed in separate correspondence on the subject of the pool, shall always be governed by the terms of this agreement and shall in no way override these terms unless specifically agreed otherwise.

3. It is agreed that all matters relating to this Agreement shall be dealt with by the Head Offices of the partners direct.

Article 11

Reconsideration of conditions

In the event of one of the partners considering that any of the conditions of this agreement are operating to its disadvantage then that partner shall give notice of this fact to the other partner and the conditions concerned shall be reconsidered. Any changes which result from the reconsideration of the conditions in question shall be effective from the first day of the calendar month following the decision in this respect.

Article 12

Arbitration

In the event of any dispute concerning the interpretation or application of this agreement, or concerning any rights or obligations based on or relating to this agreement, such dispute shall be referred to and finally settled by arbitration in accordance with the procedure contained in the IATA Resolution (850), "Form of Interline Traffic Agreement".

Article 13

Annexes and Appendices to the Agreement

1. The pool services as well as all the details regarding the pooling method shall be fixed in annexes to this Pool Agreement.

2. The annexes made a part of this Agreement shall be of limited validity and must be approved and signed by both partners.

3. Amendments of a general nature to the terms of this agreement shall form the subject of a separate appendix to this agreement and shall not be included in the annexes hereto.

Article 14

Heading of Paragraphs

1. Headings are inserted at each paragraph in this Agreement for the purpose of reference and convenience and do in no way define, limit or describe the scope or intent of this agreement.

Article 15

1. This agreement shall commence on and from the day of April and shall remain in force until the last day of the IATA Winter Traffic Period . It will continue thereafter unless determined by one partner giving to the other not less than twelve months prior notice of termination such notice to expire any time after the said last day of the IATA Winter Traffic Period

2. This agreement may be terminated at any time if one of the partners hereto becomes insolvent, makes a general assignment for the benefit of creditors, or commits an act of bankruptcy, or if a petition in bankruptcy for its re-organization or the re-adjustment of its indebtedness be filed by or against it, or if a receiver, trustee or liquidator of all or substantially all of its assets be appointed or applied for.

Article 16

As witness the hands of the duly authorized Agents of the partners hereto.

| | |
|---|---|
| Signed, for and on behalf of | Signed, for and on behalf of |
| By | By |
| Its | Its |
| Dated | Dated |

ANNEX I

Annex to the Pool Agreement effective on and from April between and

Unless specified otherwise, the Articles referred to in this Annex are the Articles of the above-mentioned Pool Agreement.

1. Traffic Period

This Annex shall be valid from until both dates inclusive.

2.

| Services | Line Nos. | Type of aircraft | Frequency | Load Capacity kgs. |
|---|---|---|---|---|
| S.A.S. | | | | |
| Day Services: | | | | |
| Night Services: | | | | |
| Day Services: | | | | |

Night Services:

Freighter Service:

3. Alternative Airports

The agreed alternative airports referred to in the Agreement are:-

| | Alternates |
|---|---|

4. Kilometric Distances

Kilometric distances to be used in calculating tonne/kilometre production shall be as follows:

| | For calculation of ton-kms |
|---|---|

5. Units

(a) The revenue derived from transportation of passengers, excess baggage, freight and mail per Article 3, sub-paragraph 1 of the Agreement shall be brought into the pool per sector and per direction as follows:

Passengers Including Free Baggage Allowance

| | |
|---|---|
| 100% paying passengers tourist day fare )<br>100% paying passengers standard fare )<br>100% paying passengers creative fare ) | Single Tourist Day Fare less 25% |
| 100% paying passengers Tourist Night fare | Night round trip fare less 33% |
| Excess Baggage | Local excess baggage rate less 10% |
| Freight (including Diplomatic Mail) | Local rates less 40% |
| Mail | At the lowest rate per category per direction per sector earned by either of the parties. |

(b) Fares, Rates and Units in Shillings

| Passenger | | | | Freight | |
|---|---|---|---|---|---|
| Tourist Day | | Tourist Night | | | |
| Fare | Unit | Fare | Unit | Rate | Unit |

(c) It is agreed between the partners that in this pool period revenue from first class passengers carried on the pool sectors shall be placed into the pool at the Tourist Day unit applicable on that sector on which the first class passenger has been carried.

(d) Mail Tariffs per Kilo in Shillings

| LC | | AO/CP | | JX | |
|---|---|---|---|---|---|
| GFR | Sh. | GFR | Sh. | GFR | Sh. |

For the calculation of mail revenue which must be brought into the pool, the weights shall be rounded off per flight, per sector and per category at kilogrammes, up to and including 499 grammes is rounded off to the next lower kilogramme and 500 grammes and more is rounded off to the next higher kilogramme.

6. Passenger Weights

When it is necessary to apply passenger weights including free baggage in accordance with the terms of this Agreement, the following weights shall be used:

| | Standard and Tourist Passengers |
|---|---|
| 100% paying passengers (adults) | 100 kg. |
| 50% paying passengers, i.e. | 50 kg. |

7. Compensation from Supplementary Flights/Capacity (mixed passenger and freighter aircraft)

Where it is necessary to effect compensation from supplementary flights and/or capacity the following shall be taken into account:

a) Supplementary Flights

A supplementary flight shall guarantee to the Pool service which it is duplicating, or in conjunction with which it is operated, a 100% load factor. From the load remaining after the guarantee has been paid in accordance with the first sentence, all normal services operated on the same day in the same direction to the same point shall be guaranteed a 65% load factor, or such lesser figure dependent upon the amount of load remaining on the extra flight after the normal Pool service in conjunction with which it has been operated has been guaranteed to 100%. In the context of this Agreement, a 100% or 65% load factor shall be 100% or 65% of the agreed load capacity of the aircraft in question as evidenced by Article 2 of this Annex.

b) Supplementary Capacity

Where supplementary capacity has been operated, revenue shall be placed into the pool up to 100% of the agreed production value of the normal pool aircraft which should have operated. From the load in excess of this figure compensation shall be made to all the normal pool services operated on the same day in the same direction to the same point to a 65% load factor.

8. Compensation from Supplementary Flights/Capacity - Pure Freighter Aircraft

Where it is necessary to effect compensation from supplementary flights and/or capacity, the following shall be taken into account:-

a) Supplementary Flights

A supplementary flight shall guarantee to the pool freighter service which it is duplicating or in conjunction with which it is operated a 100% load factor. From the load remaining after the guarantee has been paid in accordance with the first sentence, all normal services (mixed passenger and freighter aircraft) operated on the same day in the same direction to the same point shall be guaranteed a 65% load factor of the theoretical freight capacity of those aircraft. In the context of this Agreement, the theoretical freight capacity of the normal services (mixed passenger and freighter) shall be 15% of the agreed load capacity of the aircraft in question as evidenced by Article 2 of this Annex.

b) Supplementary Capacity

Where supplementary capacity has been operated revenue shall be placed into the Pool up to a 100% of the agreed production value of the normal freighter aircraft which should have operated. From the load in excess of this figure, compensation shall be made to all the normal pool services (mixed passengers and freighter aircraft) operated on the same day in the same direction to the same point to a 65% load factor of those services' theoretical freight capacity. The theoretical freight capacity referred to shall be assessed in accordance with 8(a) above.

9. Administration of the Pool

It is agreed that the administration of the pool shall be carried out by for the period until the end of the IATA Winter Traffic period

Signed, for and on behalf of
By .....
Its .....
Dated .....

Signed, for and on behalf of
By .....
Its .....
Dated .....

- END -

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