ABSTRACT

BERMUDA CAPACITY PRINCIPLES

BERMUDA CAPACITY PRINCIPLES IN THE SEVENTIES, AND THEIR IMPLICATIONS FOR JORDAN

BY

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DEDICATION

To my mother, whose devotion has inspired me to higher achievements.

To my wife, whose love has inspired me to surmount great obstacles.

ABSTRACT

The bilateral air transport agreement that was signed thirty years ago between the United Kingdom and the United States received almost universal acceptance. That agreement is known as the "Bermuda Agreement". Its principles were followed by the majority of states. This thirty-year-old Agreement was denounced by the United Kingdom on June 1976.

This thesis presents a study about the Bermuda Capacity Principles in the Seventies, and their implication for Jordan.

The first chapter is exclusively about Jordan and International Civil Aviation. The second chapter deals with the bilateral air transport agreements. The third chapter states some important issues of the Bermuda Agreement. The fourth chapter discusses the Bermuda Principles as a model for the bilateral air transport agreements generally. The fifth chapter discusses recent developments in the application of the Bermuda Agreement. Recommendations to rectify some disputable aspects in the bilateral air transport relations, and in particular those of Bermuda type of agreements are made with the conclusion in chapter six.

AVANT-PROPOS

L'accord bilatéral de transport aérien intervenu il y a trente ans entre le Royaume-Uni et les Etats-Unis d'Amérique a reçu l'approbation mondiale. Cet accord est connu sous le nom de "l'Accord des Bermudes". Les principes énoncés furent suivis par la majorité des Etats. Cet accord, vieux de trente ans, a été dénoncé par le Royaume-Uni en 1976.

Cette thèse présente une étude des principes de capacité apparaissant à "l'Accord des Bermudes" dans les années soixante-dix, et ses implications en Jordanie.

Le premier chapitre concerne exclusivement la Jordanie dans le domaine de l'aviation civile internationale. Le second chapitre traite des accords bilatéraux de transport aérien. Le troisième chapitre cite quelques points saillants de "l'Accord des Bermudes". Le quatrième discute des principes de "l'Accord" pouvant être pris comme modèles pour les accords bilatéraux de transport aérien en général. Le cinquième chapitre traite de récents développements dans l'application de "l'Accord des Bermudes". Des recommandations susceptibles de rectifier certains aspects discutables engendrés plus particulièrement par des accords du genre de "l'Accord des Bermudes", et ce dans les relations bilatérales, suivent avec la conclusion au chapitre 6.

Acknowledgement

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I will forever remain grateful to Mr. Ahmed El-Zoubi, my uncle, for the immeasurable support which he rendered throughout my life.

Finally, to my sisters, brothers and family, I wish future health and happiness.

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It is hereby stated that notwithstanding the author's occupation in the Jordanian Civil Aviation Department, the information disclosed and the views expressed in this thesis are so rendered in an exclusively personal capacity, and, in no way, reflect any official position of that Department.

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ABBREVIATIONS

ALIA.	The Royal Jordanian Airline
I.A.S.L.	Institute of Air and Space Law
I.C.A.O.	The International Civil Aviation Organization
I.A.T.A.	The International Air Transport Association
K.L.M.	Koninklijke Luctvaart Maatschappij N.V.- Royal Dutch Airlines
S.A.S.	Scandinavian Airlines System
U.K.	United Kingdom
U.S.A.	United States of America
Ibid.	Ibidem (in the same place - herein refers only to the immediately preceding item)
W.P.	Working paper
Doc.	Document
U.N.	United Nations
P.I.C.A.O.	Provisional International Civil Aviation Organization
Vol.	Volume
Res.	Resolution

SATC.	The Special Air Transport Conference which will be held at Montreal 13-26, April, 1977
ITA.	Institut Du Transport Aérien
ATC.	Air Traffic Control
FAA.	Federal Aviation Administration -U.S.A-
J.A.L.C.	Journal of Air Law and Commerce.
AIP.	Aeronautical Information Publication
ARR.	Arrival
Dep.	Departure
CAB.	Civil Aeronautics Board - United States of America
V.V.	Vice-versa

Chapter I

JORDAN AND INTERNATIONAL AIR TRANSPORT

A- Jordan as a Sovereign State

The emergence of the Hashemite Kingdom of Jordan as an independent sovereign state took place on the 22nd of March 1946.[1] The Kingdom was completed in 1949 with the annexation (formalized in 1950) of a portion of Arab Palestine West of the Jordan River. The present Jordanian territory is thus formed from what used to be the mandated territory of Transjordan and that part of central Palestine which remained in Arab hands after the signature of the Armistic Agreement between Jordan and the Israelis in 1949.[2]

As far as the constitutional situation is concerned, there was no constitution until 1929 when a constitutional law known as the Organic Law (Kanun Asasi) of April 1929 was promulgated.[3] In 1949 a new constitution was promulgated.[4] The 1946 constitution remained in force until another constitution was adopted on January 2, 1952. The final form of the new constitution had 9 parts and 131 articles.[5] This constitution with amendments made respectively in 1954, 1955, 1960 and 1965 is the one now in force.[6]

The existing system of law was enacted late in 1951 as a compromise after the annexation of the West Bank, because the

legal system of each bank had developed on different lines. Among the unified laws enacted late in 1951, were the Criminal Code, the Criminal Procedure Code, the Law of Evidence, the Land Law, the Civil Procedures Rules and the Income Tax Law.[7]

As far as civil aviation is concerned, Jordan acceded to the Chicago Convention of 1944 on 18, March, 1947 and the Convention came into force for Jordan on 4, April, 1947. To fulfil the obligations of the Convention, states parties to the Convention must have national legislation and regulations. Many articles of the Convention refer to national laws and regulations, and each state has an obligation of adopting measures ensuring that its aircraft will comply with the national laws and regulations of the other contracting States when an aircraft of its nationality flies over or lands in the territories of these states.[8]

Before 1952 there was no Jordanian civil aviation code (law) in the true sense. A draft law and regulations were prepared and brought into force in 1953. This law is entitled the Law of Civil Aviation, No. 55/1953,[9] and has been amended from time to time.[10]

1. The Geographical Position

Jordan lies in the heart of the Middle East - the land-bridge between Europe, Asia and Africa,[11] and is surrounded by Iraq to the east, Saudi Arabia to the south, Syria to the north and Israel to the west.

Since ancient times its geographical location exposed it to various conquerors who occupied it for various reasons such as security and protection of trade routes. Today Jordan continues to occupy a central position in west Asia not only geographically but also, in some respect, politically.[12] This location both in regional and continental terms results in the country having a highly strategic position geographically, politically and in terms of communications.

Its strategic position in terms of communications is due to the locus of the Middle East. Since ancient times the Middle East, in addition to generating trade and commerce, has been one of the areas through which trade has moved by land between Southern and South East Asia and Europe. While this pattern was affected by the development of shipping routes at first around the Cape of Good Hope and later through the Suez Canal with the consequence that the trade routes were used for regional trade, the aircraft revived the traditional pattern and once again the Middle East became a major transit area for communications between

Asia and Europe , this time by means of aircraft. The Middle East is on the most direct air route to Southern Asia and because of the cluster of traffic-generating points running along the South Asian littoral, it remains a high competitive route, in terms of economics, to Hong-Kong, China and Japan, notwithstanding that alternative routes are available to these countries (via the U.S.S.R. or the North Pole).

The air space over the Middle East constitutes a "natural path" on the route between Eastern and Western Worlds. The same stands for those airlines of countries north and south of the Middle East.

Within the Middle East, as already noted, Jordan occupies a central position with, in addition to the air routes crossing its territory running from Europe to Asia, air routes running from places in the Middle East to other places in the Middle East. Air transport has resulted in a revival of its historic role as a cross road both for Middle Eastern routes and for intercontinental routes. This development in recent years has been assisted by its political stability and its "open door" policy.

Other factors have played a part. The weather is excellent for aircraft operations and, at least in Jordan, good air navigation facilities are available.

2. Economic Situation

Jordan is a poor country with a low rainfall and few natural resources. It has had to depend upon Foreign Aid in the form of grants and loans to maintain its economy.[13] Primarily its economy is based on agriculture and the export of agricultural products. Until recently most industry was ancillary to agriculture; basically the industry processed agricultural products. Other industries have been created to extract minerals and phosphates but their growth has been inhibited by lack of capital, a small market, high cost of fuel and deficiencies in the transport system.[14]

After independence in 1948 it became apparent that, if foreign aid was not secured, between one third and one half of the population would live at below subsistence level.[15] In total, foreign grants have contributed approximately one quarter of the goods and services available for all purposes.[16]

The obvious consequence of Jordan's economic position is that it originates little air traffic. Most of it is of a non-discretionary character. Discretionary traffic is virtually non-existent. However it does possess places of great religious, historical, and archeological importance. Consequently, it is attractive to tourists, and tourist traffic is growing to a degree where tourists expenditures are now an important source of foreign

exchange. This factor is of great importance to the development of air traffic.

The Government formulated a 10-year development program aimed at raising production and living standards and, so far as possible, reducing dependence on foreign aid.[17] This program was followed by another plan called the Seven-year Economic Plan of 1964-1970, and the most recent Plan of 1974. The 1974 Plan is different from the previous plans in one thing - it allows the foreign capital to be invested in Jordan under guarantees from the Jordanian Government.

The fact that Jordan was a recipient of large-scale foreign aid (mainly grants) should not lead one to minimize the achievements of the Jordanian economy. Since World War II the world has seen many underdeveloped countries which have received large amounts of foreign aid with little or no effect on economic development. Jordan is an exception.[18] The general economic situation of the country is improving very rapidly. Civil aviation development is considered as one of the most important issues. In the 1974 Plan the Government planned to acquire technical equipment for navigational facilities and wide-bodied aircraft and to establish a new international airport.

B- Air Traffic in Jordan

Each state in the world forms part of the global air traffic market. A state must be viewed not only as a place of origin and destination of traffic, but also as a junction of international air services and, consequently, international traffic. The state's importance is measured by its traffic. The importance of the state in the aviation community could be a basis for its share of international traffic. The ability of a carrier to perform proper and sound transportation services is also relevant.[19]

Many factors can affect air traffic in a country such as its location, the degree of its development, its economic situation, and its financial condition. National control of air traffic is also relevant, but it is the government's task and responsibility to develop the national air transport and to further the development of international civil aviation.

Due to the fact that Jordan is a developing country with a small population, the country has a limited amount of traffic. Until 1968 there was no viable and truly national carrier. Prior to this, there had been a succession of carriers which were in part owned or were controlled by foreign interests.

When the Government started to regulate and organize civil aviation, it was faced with many obstacles — lack of money, of adequate airports and navigational facilities, of personnel

and of a national carrier. There were two airports one at Jerusalem and the other at Amman; the later was not then classed as an international airport. With the extension of the run-way at Amman Airport and the establishment of Aqaba Airport, Jordan now has two international airports in addition to Jerusalem Airport, which is still occupied by the Israelis.[20]

As far as the national carrier is concerned, Alia - The Royal Jordanian Airline is the Jordanian national carrier.[21]

International air traffic to and from Jordan is carried by both Jordan's flag carrier (Alia), and foreign airlines.

According to the ICAO Digest of statistics, the traffic flow in Jordan up to 1970 was as follows:

Year	Passengers carried
1964	86408
1965	110220
1966	151160
1967	108395
1968	106195
1969	120488
1970	118794

The following statistics show detailed information about the international air transport traffic at Amman Airport and the

domestic air transport traffic as well for the years 1973, 1974 and 1975. These statistics obtained from the Civil Aviation Department in Jordan.

International Air Transport Traffic at Amman Airport 1973, 1974, and 1975

(A) Aircraft

	1973	1974	1975
Scheduled Flights	4799	6278	7449
Non-Sched. Flights	306	348	966
General Aviation	334	390	562
Grand Total	5439	7016	8987

Aircraft Movement Classification

	1973	1974	1975
Turbo Jet	4540	6311	8123
Turbo Prop.	423	472	710
Propeller	476	233	154
Total	5439	7016	8987

(B) Passengers

	1973	1974	1975
Scheduled Flights:			
ARR.	125833	185349	274192

	1973	1974	1975
DEP.	129066	197970	278784
Total	254899	383319	552976
Non-Scheduled Flights:			
ARR.	2125	2445	1762
DEP.	2824	3114	3580
Total	4949	5559	5342
Scheduled and Non-Scheduled:			
ARR.	127958	187794	275954
DEP.	131890	201084	282364
Grand Total	259848	388878	558318

Passenger Traffic Classified By Regions

	1973	1974	1975
Middle East	145803	246694	320650
Europe	58148	71324	125104
Africa	48144	64142	92172
Far East	7753	5111	20392
U.S.A.	.....	1607	.....
Total	259848	388878	558318

(C) Freight

	1973	1974	1975
Scheduled Flights:			
Loaded	1049865	1520186	2926241
Un-loaded	3181749	4146212	5265060
Total	4231614	5666398	8191301
Non-Scheduled Flights:			
Loaded	142492	120306	244537
Un-loaded	818648	1251829	2284696
Total	961140	1372135	2529233
Grand Total	5192754	7038533	10720534

(D) Mail

	1973	1974	1975
Loaded	61732	80607	92056
Unloaded	74496	143763	179237
Total	136228	224370	271293

Domestic Air Transport Traffic at

Amman Airport

(A) Aircraft

	1973	1974	1975
Scheduled Flights	350	340	382
Non-Scheduled Flights	29	66	200
Total	379	406	582

(B) Passengers

	1973	1974	1975
Scheduled Flights			
ARR.	4631	5880	15580
DEP.	3998	5008	11726
Total	8629	10888	27306
Non-Scheduled Flights			
ARR.	147	458	624
DEP.	245	599	799
Total	392	1057	1423
Grand Total	9021	11945	28729

(C) Freight

	1973	1974	1975
Loaded	2667	4781	20346
Unloaded	1856	390	2378
Total	4523	5171	21724

Alia - The Royal Jordanian Airline carried, according to ICAO Digest of statistics No. 199. B, Airline Traffic vol. 2 1970-1974 the following traffic:

Year	Passengers carried thous.
1970	119
1971	120
1972	120
1973	162
1974	243

For more detailed information see the following table.

ALIA - THE ROYAL JORDANIAN AIRLINE

TOTAL TRAFFIC OF SCHEDULED AIRLINES

SCHEDULED FLIGHT (REVENUE)

		1970	1971	1972	1973	1974
Aircraft km Mill.		5.1	5.2	5.4	5.6	6.4
Aircraft Departures Thous.		4	4	4	5	6
Aircraft Hours Thous.		8	10	11	10	11
Passengers carried Thous.		119	120	120	162	243
Freight Tonnes carried Thous.		1.1	1.5	2.2	2.4	3.8
Passenger km performed Mill.		169	185	210	289	374
Seat km Available Mill.		411	575	587	656	819
Passenger Load Factor		41	32	36	44	46
Tonne-km. Performed	Passengers incl Baggage Mill.	16.4	17.1	19.1	26.3	34.0
	Freight Mill	1.2	2.6	4.7	5.4	7.2
	Mail Mill.	0.1	0.1	0.1	0.1	0.2
	Total Mill.	18	20	24	32	41
Tonne km Available Mill.		46	72	73	77	98
Weight Load Factor %		39	28	33	42	42

NON-SCHEDULED FLIGHT (REVENUE)

	1970	1971	1972	1973	1974
Aircraft km Mill.	0.1	0.3	1.0	0.4	0.4
Aircraft Departures Thous.	0.1	0.1	0.2	0.1	0.2
Aircraft Hours Thous.	0.2	0.4	3.9	1.2	0.7
Tonne km Performed. Mill.	...	1.4	0.7	4.5	2.4
Tonne km Available Mill.	0.9	4.8	6.2	9.2	7.1
Passenger km Performed. Mill.	...	...	...	45.0	25.1

NON-REVENUE

Aircraft Hours Thous.	0.2	0.3	0.2	0.2	0.3

TOTAL AIR SERVICES (REVENUE)

Aircraft km Mill.	5	5	6	6	7
Aircraft Departures Thous.	4	4	4	5	6
Aircraft Hours Thous.	8	11	15	11	12
Passengers km Performed Mill.	169	185	210	334	399
Tonne km Performed Mill.	18	21	25 E	36	44
Tonne km Available Mill.	47	77	79	86	106

1. Routes

The routes operated by Alia - The Royal Jordanian Airline are spread widely. The Jordanian international net-work covers Europe, North Africa, South Asia and the Arabian Gulf.

It operates into Europe on the following routes

Amman - Geneva - Brussels - Amsterdam and vice-versa

Amman - Frankfurt - Copenhagen and vice-versa

Amman - London - Amman

Amman - Paris - Amman

Amman - Rome - Paris and vice-versa

Amman - Athens - Madrid - Casablanka and vice-versa

In addition, routes are operated to Bangkok via Bahrain and vice-versa and to Cairo, Casablanka and to all Arabian Gulf States, Saudi Arabia, Pakistan, Iran and Lebanon.

These routes are operated under bilateral agreements or temporary permits.

The Jordanian approach towards the determination of the route structure is based on the understanding that any operated route or service should be profitable.

The following table shows the traffic carried by Alia - The Toyal Jordanian Airline and the routes which it operates.*

* ICAO Digest of Statistics No. 207. Traffic flow 1975.

TRAFFIC BY AIRLINE, SHOWING DETAILS BY FLIGHT STAGE

Scheduled Services — International Operations (Revenue Traffic)

Country: JORDAN **Airline:** ALIA **Period:** JUNE 1975 **Table:** 267

STAGES OF SERVICE		Airport to Airport Distance (km)	Passenger Seats Available	Revenue Passengers Carried	Passenger Load Factor	Total Payload Capacity	Revenue Traffic (tonnes) Freight	Revenue Traffic (tonnes) Mail	Type(s) of Aircraft and Number of Flights					
AMMAN	DOHA	1691	250	2	1	28	.4	-	B720	2				
DOHA	AMMAN	1691	250	245	98	28	1.1	-	B720	2				
AMMAN	DOHA	1691	1061	226	21	148	5.2	.1	B727	6	B707	1	B720	1
DOHA	MUSCAT	729	1061	92	9	148	2.9	.1	B727	6	B707	1	B720	1
AMMAN	MUSCAT	- - -	125	-		84	-	-	B720	1				
MUSCAT	DOHA	729	1061	184	17	148	.2	.0	B727	6	B707	1	B720	1
DOHA	AMMAN	1691	1061	714	67	148	4.4	.0	B727	6	B707	1	B720	1
MUSCAT	AMMAN	- - -	125	105	84	84	-	-	B720	1				
AMMAN	KUWAIT	1184	3813	611	16	512	7.9	.5	B727	14	B720	9	B707	6
KUWAIT	AMMAN	1184	3813	3397	89	512	28.4	.3	B727	14	B720	9	B707	6
AMMAN	BAGHDAD	798	566	158	28	74	6.0	.3	B707	3	B720	1		
BAGHDAD	KUWAIT	558	566	100	18	74	3.1	.3	B707	3	B720	1		
KUWAIT	BAGHDAD	558	571	419	73	74	2.9	-	B707	3	B720	1		
BAGHDAD	AMMAN	798	571	535	94	74	3.0	.0	B707	3	B720	1		
AMMAN	TEHERAN	1474	1197	747	62	173	4.9	.0	B727	7	B707	2		
TEHERAN	AMMAN	1474	1197	1026	86	173	1.3	-	B727	7	B707	2		

Country: JORDAN **Airline:** ALIA **Period:** JUNE 1975 **Table:** 268

STAGES OF SERVICE		Airport to Airport Distance (km)	Passenger Seats Available	Revenue Passengers Carried	Passenger Load Factor	Total Payload Capacity	Revenue Traffic (tonnes) Freight	Revenue Traffic (tonnes) Mail	Type(s) of Aircraft and Number of Flights					
AMMAN	ABU DHABI	1992	735	370	50	100	32.0	.2	B707	5				
ABU DHABI	KARACHI	1283	735	127	17	100	1.6	.1	B707	5				
KARACHI	ABU DHABI	1283	735	149	20	100	13.1	-	B707	5				
ABU DHABI	AMMAN	1992	735	389	53	100	12.4	.0	B707	5				
AMMAN	DUBAI	2026	588	160	27	80	29.4	.2	B707	4				
DUBAI	KARACHI	1191	588	87	15	80	.2	.2	B707	4				
KARACHI	DUBAI	1191	588	218	37	80	8.7	-	B707	4				
DUBAI	AMMAN	2026	588	528	90	80	8.6	.0	B707	4				
AMMAN	BAHRAIN IS	1553	1452	592	41	201	3.8	.4	B707	9	B727	1		
BAHRAIN IS	BANGKOK	5364	1323	535	40	180	.4	.2	B707	9				
BANGKOK	BAHRAIN IS	5364	1323	788	60	180	10.2	-	B707	9				
BAHRAIN IS	AMMAN	1553	1452	811	56	201	11.7	.1	B707	9	B727	1		
AMMAN	BEIRUT	211	4503	1894	42	650	14.8	.5	B727	32	B720	3		
BEIRUT	AMMAN	211	4503	3179	71	650	57.0	.0	B727	32	B720	3		
AMMAN	ROME	2366	516	206	40	76	1.2	.1	B727	4				
ROME	AMMAN	2366	387	115	30	57	12.0	.4	B727	3				
AMMAN	PARIS	3365	544	226	42	68	9.5	.0	B707	2	B720	2		

TRAFFIC BY AIRLINE, SHOWING DETAILS BY FLIGHT STAGE

Scheduled Services – International Operations (Revenue Traffic)

Country: JORDAN *Airline:* ALIA *Period:* JUNE 1975 *Table:* 269

STAGES OF SERVICE		Airport to Airport Distance (km)	Passenger Seats Available	Revenue Passengers Carried	Passenger Load Factor	Total Payload Capacity	Revenue Traffic (tonnes) Freight	Revenue Traffic (tonnes) Mail	Type(s) of Aircraft and Number of Flights			
AMMAN	ROME	2366	1256	933	74	176	8.4	.3	B707	5	B727	4
ROME	PARIS	1088	1104	713	65	156	8.2	.1	B727	4	B707	4
•ROME	GENEVA	- - -	147	104	71	20	.0	.0	B707	1		
•AMMAN	GENEVA	- - -	125	5	4	14	-	-	B720	1		
•GENEVA	PARIS	- - -	147	104	71	20	.0	.0	B707	1		
PARIS	ROME	1088	1380	870	56	195	14.8	.1	B727	5	B707	5
ROME	AMMAN	2366	1380	849	62	195	26.6	1.0	B727	5	B707	5
PARIS	AMMAN	3365	272	81	30	34	1.2	.0	B707	1	B720	1
•PARIS	FRANKFURT	- - -	147	38	26	20	.7	.0	B707	1		
•FRANKFURT	AMMAN	- - -	147	38	26	20	.7	.0	B707	1		
AMMAN	GENEVA	2997	1154	562	49	154	7.2	.1	B707	7	B720	1
GENEVA	BRUSSELS	533	1154	395	34	154	3.8	.1	B707	7	B720	1
BRUSSELS	AMSTERDAM	158	1154	301	26	154	.7	.0	B707	7	B720	1
AMSTERDAM	BRUSSELS	158	1301	117	9	174	4.9	.0	B707	8	B720	1
BRUSSELS	GENEVA	533	1301	263	20	174	30.0	.1	B707	8	B720	1
GENEVA	AMMAN	2997	1426	279	20	188	32.4	.2	B707	8	B720	2
AMMAN	FRANKFURT	3022	1911	1734	91	260	6.5	1.0	B707	13		
FRANKFURT	COPENHAGEN	678	1911	629	33	260	2.9	.3	B707	13		
COPENHAGEN	FRANKFURT	678	1764	432	24	240	4.0	.1	B707	12		
FRANKFURT	AMMAN	3022	1764	1122	64	240	37.8	.9	B707	12		
AMMAN	LONDON	3661	1301	1225	94	174	2.8	.3	B707	8	B727	1
LONDON	AMMAN	3661	1301	977	75	174	46.7	-	B707	8	B727	1
AMMAN	ATHENS	1296	1032	569	55	152	4.3	.4	B727	8		
ATHENS	MADRID	2359	1032	515	50	152	4.0	.2	B727	8		
MADRID	CASABLANCA	850	1032	89	9	152	3.5	.0	B727	8		

Country: JORDAN *Airline:* ALIA *Period:* JUNE 1975 *Table:* 270

STAGES OF SERVICE		Airport to Airport Distance (km)	Passenger Seats Available	Revenue Passengers Carried	Passenger Load Factor	Total Payload Capacity	Revenue Traffic (tonnes) Freight	Revenue Traffic (tonnes) Mail	Type(s) of Aircraft and Number of Flights			
CASABLANCA	MADRID	850	1032	120	12	152	2.1	.0	B727	8		
MADRID	ATHENS	2359	1032	414	40	152	7.5	.4	B727	8		
•CASABLANCA	ATHENS	- - -	129	11	11	19	-	.0	B727	1		
ATHENS	AMMAN	1296	1161	518	45	171	14.3	.1	B727	9		

2. Traffic Rights

International commercial air services depend for their existence on the availability of traffic rights i.e the right to pick up and discharge commercial traffic in the territory of the other countries. To ensure continuance of service and, indeed, to attract investment to secure the means by which service is to be provided, stability in commercial rights is required. That stability is obtained by entering into treaties with other countries that provide for the exchange of traffic rights which are only terminable upon notice being given by either party.

Normally there is no difficulty in obtaining non-traffic rights i.e the right to overfly and land for non-traffic purposes so long as the countries concerned are parties to the International Air Services Transit Agreement. Usually problems only arise when traffic rights are sought, for states follow different policies mostly to ensure that traffic rights are only exchanged where they will benefit their national carriers.

As the prescription of the traffic rights is the dominant purpose of an agreement, Jordanian agreements contain a detailed description of these rights, the situation in which they may be exercised and the routes over which they may be exercised.

There are two general principles that guide Jordan in negotiating bilateral air transport agreements:-

(a) there should be reciprocity; and

(b) rights beyond Jordan will not be granted unless the other state grants to Jordan rights beyond its country.

Of these, at this time, only the second requires comment. It is, of course, an implementation of the reciprocity principle, but its importance in Jordanian policy warrants it being treated as a separate issue. Beyond-rights broadly take two forms. In some Jordanian agreements the beyond-rights are expressed broadly or without geographical restriction except in so far as the agreement by necessary implication may limit the geographical scope of the places beyond that may be served. In other cases the places beyond may be specified in detail.[22]

In the specification of routes there may be two extreme cases. On the one hand the places may be specified broadly e.g. A via intermediate points to B. Obviously this confers upon the carrier of A a flexible route structure giving it access to any points that are intermediate between A and B. Alternatively a stricter formulation may be used which confers on the carrier only one or two intermediate places.[23] There is a middle stage where numerous intermediate points are specified.[24] Clearly from a commercial point of view the first type of route is most advantageous to the grantee of the rights assuming that in all three cases the same general route is being considered.

3. National Interest.

Nations' interests in aviation vary with the circumstances of each nation. However common to all is the desire to have effective communications both within the nation and with other nations, with which it has substantial economic, social or political links. International air transport has become over the past three decades a primary means of communication among the people of the world.[25]

Whether civil aviation viewed as purely a business enterprise or as a public utility, it is regarded as an instrument of national policy for not only are economic factors taken into account for establishing the public interest but also other factors such as:

1. Political,
2. Military for power and security,
3. National economy,
4. Promotion of nation for improving the efficiency of administration in national territories,
5. Promotion of social culture and national integration,
6. Prestige

These are some of the reasons which why states promote air transport and aviation and it is to give effect to these purposes that states take an active part.

Governmental activities affecting the development and

functioning of the means of transportation and communication may be classified under three headings:

(1) regulation, (2) promotion, and (3) direct operation. Regulation has typically included governmental control over the extension and abandonment of services, and determination of rates charged.[26]

Jordan is no exception. The Jordanian policy towards the development and the promotion of civil aviation is serious and consistent. The Government planned to have a world-wide network with as many traffic rights as possible to be operated by the national carrier.

For the national carrier one of the immediate and the present consequences of the state's interest are that

(a) it must secure wide-bodied commercial aircraft;

(b) the infrastructure is being improved substantially to match the growth of the airline and the new equipment which it is acquiring.[27]

C- The Jordanian Approach Towards The Bilaterals

The Chicago Conference, of 1944, having failed to find an acceptable framework for the multilateral exchange of commercial traffic rights, the Convention endorsed, in Article 6, the bilateral approach to such exchanges. This method has been followed all over the world; and scheduled international air transport services developed through and are governed by a vast network of bilateral agreements.[28]

Prior to the Chicago Convention there were some bilateral agreements. In the 1920's there began to appear a few bilateral agreements exchanging rights to carry traffic on specified routes into and through the territories of the two signatories. Some were negotiated between governments, but many were negotiated between the airlines desiring to exercise the rights and the Government of the territory concerned. Although agreement was often difficult to obtain, the form and content was simple and there was no uniformity of text.[29]

The foundation of the bilateralism lies in Articles 1 and 6 of the Chicago Convention. Article 1 provides that:- "The contracting states recognize that every state has complete and exclusive sovereignty over the air space above its territory." Article 6 states that "No scheduled international air services 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".[30]

It follows from these provisions that the aircraft could not overfly or land or indeed exercise commercial rights in other countries unless these countries gave their prior consent.[31] That consent can be given in various forms. It may be made on either a unilateral basis or by means of a bilateral agreement between the two countries.[32]

In Jordanian law both these methods are recognized. Article 41 of the civil aviation law No. 55/1953 reads as follows:

> "Scheduled international air services may not be operated except in accordance with established procedures. However the cabinet if recommended by the minister may grant temporary licences to start and operate international services".

Jordan as a national policy seeks to enter into air transport agreements in preference to placing reliance upon unilateral permits.[33]

Another factor that forms the use of the air transport agreement is that rights are mutually exchanged and that both parties have a common concern in the maintenance of air services between their countries.

1. The Effect of Bermuda Principles

The Bermuda Agreement, to be discussed later, became a model for the agreements of many countries mainly because, at least in the first decade after the Second World War, it created an environment in which international air transport could develop on an orderly and economic basis.

Most Jordanian air transport agreements are of the Bermuda type, for that type permits the carriage of fifth freedom traffic subject to some limited constraints. As already noted Jordan originates only a limited amount of national traffic. Consequently, fifth freedom traffic is important to the viability of its international air transport interests.

The principle of "fair and equal opportunity" also found in the Bermuda agreement was equally in Jordanian interest as it was the source of measure of protection for the national carrier during its formative years against competition from foreign airlines.

2. The Capacity Clauses in Jordanian Bilateral Agreements.

Since Jordanian bilateral air transport agreements are mostly based on Bermuda-type the capacity clauses are usually of the Bermuda-type. They may not use precisely the same words or form as that used in Bermuda Agreement, but the same spirit is maintained. The following principles appear in any Jordanian bilateral air transport agreement of a Bermuda-type:

1. The principle of fair and equal opportunity for the designated airlines of both contracting parties to operate the agreed services on the specified routes.

2. The interests of the airlines designated by one contracting party shall be taken into account by the designated airlines of the other contracting party, while operating the agreed services, so as not to affect unduly the services the first provide on the whole or part of the same routes.

3. The agreed services provided by the designated airline of the contracting parties shall bear close relationship to the requirements of the public for transportation on specified routes and shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate to carry the current and reasonably anticipated requirements for the carriage of passengers, cargo, and mail originating from or

destined for the territory of the contracting party which has designated the airline.

Jordan does not follow a restrictionist policy and it has very seldom requested clauses limiting frequency and capacity in its bilateral agreements. If any restriction on frequencies or capacity appears in a bilateral agreement it is done at the instigation of the other contracting state.

As far as capacity is concerned, Jordanian bilateral air transport agreements can be classified into four categories:

1. Agreements containing general principles such as the agreements which were concluded with Egypt, Iraq and Saudi Arabia.

2. Agreements with the Bermuda - type capacity clauses such as the agreements with U.K, Thailand, Greece, Malaysia, Italy, Singapore, Qatar, Bahrain, U.A.E, Oman and Sri Lanka.

3. Agreements of a pre-determination type such as the agreements with France, Tunisia and Sudan.

4. Agreements with no capacity clauses such as the agreements with Austria, Yemen Arab Republic, Norway, Sweden, Denmark, Belgium, Netherlands and Luxembourg. In such an agreements the determination of the capacity is to be regulated by further arragements between the two contracting parties.

Experience in the negotiation of the bilateral air transport agreements between Jordan and the other countries, led the Jordanian Civil Aviation Authorities to adopt a standard form of agreement which will be discussed and analysed in the following section.

3. The New Standard Form of Agreement

Many factors lie behind the formulation of the new standard form. There is not much difference between Bermuda-type and this form, but an analysis to the form will illustrate the basic differences.

The importance of non-scheduled services in the modern civil aviation is an example. The fact is that some Jordanian bilateral air transport agreements do not cover the operation of non-scheduled services. However in the preamble of the standard form the following provision was included reading as follows:

"..... Desiring to conclude an agreement supplementary to the said Convention, for the purpose of establishing scheduled and non-scheduled air services between and beyond their respective territories".

Article 1 of the form sets out the definitions and it is similar to Bermuda-type.

Article 2 contains the basic grant of traffic rights. It gives a description of traffic rights to be exchanged.

Article 3 makes provision about the necessary authorizations and the conditions imposed upon the airline (s) by the aeronautical authorities of either contracting party.

Article 4 deals with suspension and revocation of the operating authorization.

Article 5 is the most important article in the form; it describes the capacity regulations. The Article is divided into two parts. Part 1 is for capacity regulation of scheduled air services and reads as follows:

Article 5

Capacity Regulations

1. Scheduled air services

1. The designated airline or airlines shall enjoy fair and equal opportunities to operate the agreed services between the territories of the contracting parties.

2. The designated airline or airlines of each contracting party shall take into consideration the interests of the designated airline or airlines of the other contracting party so as not to affect unduly the agreed services of the later airline or airlines.

3. The capacity of transport offered by the designated airline or airlines shall be adapted to traffic demands.

4. The main objective of the agreed services shall be to provide capacity corresponding to traffic demands between the territory of the contracting party which designated the airline or airlines and the points served on the specified routes.

5. The right to designate airline or airlines to carry international traffic between the territory of the other contracting party and the territories of third countries shall be exercised in conformity with the general principles of normal development to which both contracting parties subscribe and subject to condition that the capacity shall be adapted:

a. to traffic demands from and to the territory of the contracting party which has designated the airline or airlines

b. to traffic demands of the areas through which the service passes, local and regional services being taken into account,

c. to the requirements of an economical operation of the agreed services.
part II of the Article is for capacity regulation of non-scheduled air services and reads as follows:

II. Non-scheduled air services

1. The traffic volume shall be agreed between the designated airline or airlines of the contracting parties so as to ensure an equal share of the offered capacity.

2. Agreements according to para.1 above shall be reached between the designated airline or airlines:

a. for a series of non-scheduled flights at the latest (3) weeks before the commencement of the pertaining summer and winter period.

b. for non-scheduled single flights at the latest (3) days before the commencement of the operation (s).

c. the airlines designated by each contracting party may assign the whole or part of its share of the non-scheduled services program to other airline or airlines registered in the territory of one of the contracting parties.

This part of the Article constitutes a deviation from Bermuda-type agreements. The principle of equal share of the offered capacity between the designated airlines of both contracting parties appears. Another matter of note is that the

regulation of non-scheduled flights is left to the designated airlines of both contracting parties, but notwithstanding the silence of the clause, the agreement between the airlines is subject to the approval of both contracting parties.

In the event that the designated airlines enter into agreement to pool the air services which they operate under the agreement, these agreements are subject to the approval of the contracting parties, as such agreements are relevant to the conclusion of an air transport agreement and to the inauguration of air services under it.

Article 6 talks about the applicability of laws and regulations and the designated airlines are subject to the laws and regulations of the country to which they are operating. This is similar to Bermuda type agreements.

Article 7 deals with the recognition of certificates and licenses. This article is the same as Article 4 of the Bermuda Agreement.

Article 8 is about "Exemption from customs and other duties" and states materials exempted from or subject to custom duties or other fees.

Article 9 deals with the direct transit traffic. This is another addition to Bermuda type, but this article is designed

specially for transit passengers to ensure that they are not subject to control and that the baggage and cargo in direct transit is exempted from customs duties and other similar taxes.

Article 10 provides for regulation of "Transport Tariffs". It states what should be taken into consideration in establishing tariffs. It establishes the procedures for submission of the tariffs, the settlement of the differences and disputes and provides that when possible, agreement on these matters is to be reached through the rate-fixing machinery of the IATA subject to the governments' approval. This article is the same as Article 11 of the Annex of the Bermuda Agreement.

Article 11 deals with "Transfer of net revenues". This article is to protect the financial position of the airlines of each contracting party. It specifies the procedures for the transfer of the net revenues to be in accordance with the foreign exchange regulations of the contracting party in the territory in which the revenue accrued.

Article 12 deals with "Airport and similar charges" i.e. there shall be no discrimination between the national carrier and the carrier of the other contracting party in imposing such charges.

Article 13 is about "Representation, Ticketing and Sales Promotion". Each designated airline shall have an equal opportunity to employ its technical and commercial personnel for the

performance of the agreed services, but subject to the laws of the other contracting party. Paragraph 2 of this article gives the right of equal opportunity for each designated airline (s) to advertise and to promote sales in the territory of the other contrancting party.

Article 14 provides for "consultations and modifications". It requires that consultations be conducted regularly and frequently in order to ensure close collaboration in all matters affecting the implementation of the agreement. Any required modifications may be carried out by consultations which are to begin within a period of sixty days of the date of the request. The agreed modifications come into force thirty days after they have been confirmed through diplomatic channels. Modifications concerning the route schedule come into force ten days after the exchange of diplomatic notes.

Article 15 is about "settlement of disputes". It states the procedures for the settlement of any dispute that may arise between the two contracting parties.

Article 16 deals with "Termination". It provides the procedures to be followed in case any contracting party wishes to terminate the agreement. The agreement may be terminated by giving twelve months notice in writing.

Article 17 requires that the agreement and all ammendments thereto shall be registered with the ICAO.

Under Article 18 the form on which the agreement is to enter into force is specified and the languages of the agreement are enumerated.

The second part of the agreement is Annex or route schedule. This describes the route pattern which includes the points of origin, the intermediate points, the points in the other contracting party and the points beyond that each designated airline (s) is permitted to operate and the frequencies may also be specified.

Further arrangements may be agreed between the negotiators. These arrangements may supplement or interpret the agreement or record differences or do all three. They are called memoranda of understanding or agreed minutes and are signed by the leaders of the delegations negotiating the Agreement and the Annex.

Footnotes

1. In March 1946, Great Britain, in the Treaty of London recognized Transjordan as a fully independent state; on May, Abdullah was proclaimed king, see Harris Jordan, Survey of World Cultures, New Haven 1958 pp. 11-18.

The history of the country in the 20th century commenced on March 27th 1921 when a conference was held in Jerusalem between the Secretary of State for Colonies (Winston Churchill), the High Commissioner and Amir Abdullah at which an arrangement was made where by the Amir undertook to assume the administration of Transjordan under the general direction of Commissioner for Palestine representing the mandatory power. In the same year the British Government, conditionally, recognized Amir Abdullah as the ruler of Transjordan, but effective control remained in their hands. At that date, there was no constitutional government in Transjordan and it was still subject to the League of Nations mandate for Palestine, although exempted from some of its clauses concerning the establishment of a Jewish National Home. For more details see Abu Ash-Sha'r, Amin, Mudhakkirate Al - Malek Abdullah ben al - Husain (san-paulo 1953) p. 176-; King Abdullah's Memories; see also Abidi, Jordan, A political study 1948 - 1957 pp. 5-24 under section (TA'SIS AL-IMARAH) Foundation of the Amirate. See also Aruri Jordan; Political Development 1921 - 1965, The Hague 1972 pp. 21-24.

On 14 December 1955 Jordan was admitted to the United Nations Organization. See U.N, SCOR, 1st year 57th mtg., 19, 101. United Nations yearbook 1955 (New York 1956) 27.

2. This Agreement called Transjordan - Israel truce on 3, April, 1949, for more details see ABIDI, Jordan A Political Study 1948 - 1957 pp. 24 - 52, see also U.N. Doc. s/1302/Rev. 1. see Security Council Official Records, special suplement No. 1 (N.Y) June 20th, 1949.

3. Transjordan, the Official Gazette No. 188 dated on April, 19, 1928.

4. The draft of the constitution was finalized on November 28, 1946, approved by the King on 7 December, 1946, and published on 1st, February, 1947. Transjordan, the Official Gazette 1st, February, 1947.

5. The Constitution was published in the Official Gazette (8 January, 1952) 3 - 14. See the National Assembly, the Constitution of the Hashemite Kingdom of Jordan and its amendments, Middle East Journal, 6 (spring 1952) 28 - 38; see also Abidi supra note 1 pp. 96 - 102, see also ARURI supra note 1 p. 92.

6. The amendments published in the Official Gazette No. 1831 (1965) -The Constitution Amendment Act-. The text of 1952 constitution and amendments in Arabic was published in (Majmua't al-qawanin wa alanthima. Vol. 1 pp. 5 - 25; an English translation was published by Istiqlal Arab press Amman (N.D).

7. For more details, see Mogannam, E. Theedore: Development in the legal system of Jordan; The Middle East Journal vol. VI 1952 p. 196.

8. Pepin, Eugene: Development of the National Legislation on Aviation since the Chicago Convention, 24 J.A.L.C. (1957) pp. 1 - 13.

9. Jordan Civil Aviation law No. 55 of 1953 published in the Official Gazette No. 1135 dated March, 1st, 1953. The law was prepared by British experts. What was applicable before is the (Air Navigation) (colonies protectionates and mandated territories) order of 1934 as amended in 1937. This order was based on Paris Convention.

   For the text of the 1953 law see Air Law and Treaties of the World, vol II 1965 Washington pp. 1499 - 1514.

10. The amendments were as follows:

    a. law No. 37/1954 published in the Official Gazette No. 1207 January 1, 1955;

    b. law No. 34/1958 published in the Official Gazette No. 1404 November 16, 1958;

    c. Provisional law No. 11/1959. Published in the Official Gazette No. 1414 March, 1, 1959;

    d. law No. 31/1961. Published in the Official Gazette No. 1564 September, 2, 1961.

11. The Middle East where man first lived in an organized society, can be considered as the cradle of civilization in the world. It is generally regarded as that area of south west Asia and east of Mediterranean sea. See Burns E. McNall, Western Civilizations : Their History and Their Culture, 5th, ed; 1958 New York p. 28. See also Lilienthal M. Alfred. There Goes the Middle East (The Bookmailer, INC, New York) 1958 pp. 16 - 17. He quotes, Admiral Arthur W. Radford as saying "The importance of the Middle East to the free world can hardly be overestimated military and economically. First, its huge oil reserves now supply most of the wants of Europe, and their loss would be disastrous. Secondly, its geographic location is astride the lines of communication between west and east, and thirdly it is only in this area that the Soviets have no buffer states".

See also Encyclopedia Britannica, 1968 for more details about the Middle East countries particularly under Jordan.

12. The total area of Jordan is 37,740 square miles of which 2,165 square miles are the west bank. For more information, see ARURI: Jordan: political development 1921 1965 p. 34, see also Harris Jordan survey of world clutures, New Haven 1958 pp. 14 - 27.

13. In the very early years of the establishment of the Kingdom the country was faced with most serious economic problems. The question was: could Jordan exist without foreign subsidy having regard to its limited resources and the fast growth of population? For more details see The Economic Development of Jordan pp. 50 - 62. The Johns Hopkins press, Baltimore 1957.

14. See supra note 12, ARURI, pp. 49 - 66 and Jordan the yearbook, 1964, pp. 104 - 105; see also supra note 2 Abidi pp. 177 - 187.

15. The Johns Hopkins press, Baltimore 1957 The Economic Development of Jordan pp. 50 - 62.

16. Ibid. p. 54

17. Ibid. p. 5

18. Eliyahu Kanovsky: The Economic Impact of the six - day war, London 1970 pp. 347 - 428.

19. H. A. Wassenbergh Aspects of Air Law and Civil Air Policy in the Seventies. The Hague 1970 p. 32.

20. The length of Amman Airport is 11.500 foot. The length of Aqaba Airport is 10.000 foot. For more information about the two Airports see AIP Jordan included as appendix III of this thesis.

21. Alia - The Royal Jordanian Airline was formed by the Provisional Ordinance No. 20 of 1968 called (Alia Corporation - The Royal Jordanian Airlines Ordinance). Section 1 provides: This Provisional Ordinance shall be cited "Alia Corporation— The Royal Jordanian Airlines Ordinance 1968 and shall come into force from the date of its publication in the Official Gazette". See also section 5 of the Ordinance about the functions of the airline. For more information about the history of the commercial airlines in Jordan see Baqain, Civil Aviation in Jordan. Thesis submitted to the Faculty of Graduate Studies and Research, McGill University 1970 at pp. 14 - 19.

    Alia - The Royal Jordanian Airline has a fleet of 10 Boeing Aircraft of different types. It received the first Boeing - 747 in December, 1976.

    Other carriers which existed in 1975 J.W.A. (Jordan World Airways) for freight and charter services and Arab Wings for executive flights.

22. For the broad type of agreements see Annex to the Agreement with Denmark signed on December, 7, 1961. For the precise beyond-rights see Annex to Agreement with Netherlands signed at Amman on 24th August, 1960.

23. B. Cheng, The Law of International Air Transport, London, 1962, pp. 392 - 393.

24. Ibid. p. 394

25. Thornton, International Airlines and Politices, Michigan, 1970 p. 1, see also for more detailed illustration H. A. Wassenbergh, Aspects of Air Law and Civil Air Policy in the Seventies. The Hague 1970 pp. 9 - 16.

26. Lissitzyn, International Air Transport and National Policy. New York 1942 pp. 21 - 22.

27. The Government has two plans. The first one called The Seven-Year Program for Economic Development in Jordan, 1970; the second called The Three-Year Development Plan, 1974. For aviation development see under Aviation in the second plan.

28. McWhinney and Bradley, The Freedom of the Air, 1968 Netherlands p. 159, see also J.A.L.C. vol. 30 p. 248 Bilateral Agreements on Air Transport, by O.J. Lissitzyn.

29. Sir George Cribbett, "Some International Aspects of Air Transport" Journal of the Royal Aero. Society, p. 669 at p. 671 (1950).

30. See Ralph Azzie, Negotiation and Implementation of Bilateral Air Transport Agreements, lecture 1 - 1967 given at the I.A.S.L. McGill University, Montreal.

31. Supra note 28, J.A.L.C. vol. 30.

32. For more detailed analysis see. Showcross and Beaumont on Air Law 3rd. ed. vol. 1 London 1966 p. 280, see also supra note 31 p. 248, see also supra note 30.

33. The first bilateral air transport agreement was concluded between the Government of the Hashemite Kingdom of Jordan and the Government of the Republic of Turkey in 1948, published in the Official Gazette No. 974 dated on 16th February, 1949. The countries with which Jordan has bilateral air transport agreements are as follows:

Afghanistan, Austria, Bahrain, Belgium, Brazil, China, Cyprus, Denmark, Egypt, Emirates United Arab, France, German Federal Republic, Greece, Iraq, Italy, Lebanon, Luxrmburg, Malaysia, Morocco, Netherland, Norway, Oman, Pakistan, Qatar,

Romania, Saudi Arabia, Singapore, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syria, Thailand, Tunisia, Turkey, U.K., U.S.S.R, Yemen Arab Republic, Yugoslavia, Chile, and U.S.A. -(Non-scheduled Agreement)-.

Chapter II

THE BILATERAL AIR TRANSPORT AGREEMENTS

Background

A bilateral is a treaty between two governments. Therefore the treaty making bodies on each side are those ultimately responsible for a bilateral agreement covering air matters.[1]

Since a bilateral is a treaty what then does the term treaty mean? Lord McNair in Law of Treaties, 1961 defines a treaty as follows:

"The treaty is a written agreement by which two or more states or international organizations create or intend to create a relation between themselves operating within the sphere of international law".[2]

The Vienna Convention on the Law of Treaties of 1966 in Article 2 (a) defines a treaty as 'an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation'.[3]

The first definition needs clarification; a treaty, in addition to creating a relation between the contracting parties also creates rights, duties, and obligations on each side.

The second definition does not specify the purpose of a treaty. It just speaks of the formalities.

However what is of concern is the bilateral air transport agreement. It could be deduced that a bilateral air transport agreement is an agreement dealing with air transport affairs, regulating the civil aviation aspects, the exchange of routes and the grant of traffic rights. In other words the bilateral air transport agreement is a contract between two governments for the purpose of regulating the routes, the exchange of the traffic rights, the frequencies and the capacity between and beyond their respective territories.

The purpose of an air transport agreement is to facilitate the expansion of the benefits of air transportation to the public. A bilateral agreement ordinarily takes the form of a trade of routes.[4]

Bilateral air transport agreements first began to be used in the late 1920's. In 1950 Sir George Cribbett wrote ".... The farsighted draftsmen of the Convention for the Regulation of Aerial Navigation of 1919, known as the Paris Convention, apparently intended that there should be reasonable freedom to develop international airlines, and that the States adhering to that Convention should impose no unnecessary obstacles on the exercise of traffic rights on the international air routes of the world,

other than the right each nation reserves to itself to carry its cabotage traffic ..... Although Article 15 of the Paris Convention permitted any contracting State to make the exercise of traffic rights conditional on its prior authorisation, the intention underlying this condition seems to have been related more to technical and security requirements than to economic considerations. But the ink of the signatures of the Convention was scarcely dry before the multilateral approach began to give place to bilateral agreements. At the outset these bilateral agreements were confined to arrangements between the signatories and non-signatories to the Convention and were intended primarily to deal with air navigation and other technical provisions of the Convention by which its signatories were bound, so far as practicable, in their relations with non-members as well as members. Later, in the 1920's, there began to appear bilateral agreements exchanging rights to carry traffic on specified routes into and through the territories of the two signatories. When in 1929 a meeting was held in Paris to consider possible amendments of the Paris Convention, the United Kingdom delegation pressed for the most liberal interpretation of Article 15 to permit "unhindered" commercial rights, but the motion was defeated. By this negative vote the growing practice of seeking commercial rights by bilateral negotiations thus received majority endorsement ..... Although a considerable number of these bilateral agreements existed before the 1939 - 45 war, they had not become widespread ..... Although these agreements were all too frequently

difficult to obtain, their form and content were simple. Their main distinguishing features were the designation of the commercial airlines to be granted the rights, the fixing of routes and the invariable provision that any rights granted should be on a basis of complete reciprocity".[5]

In the early years of bilateral agreements establishing the right to operate scheduled services, the chief motive for these agreements seems to have been the desire on the part of many countries to establish beyond dispute, mainly in the context of security, the unassailable rights of sovereignty of each country over the air space above its territory.[6] However since the Second World War the primary purpose of negotiating bilateral air transport agreements has changed. No longer is protection of sovereignty in air space a goal, for the principle of sovereignty in air space is now firmly entrenched in the Law of Nations as is noted in the following section. The main purpose of bilaterals is commercial. With the expansion of international air services after the Second World War, air transport agreements assumed an importance they did not have before the war. That importance was enhanced by the failure of the Chicago Conference to reach an agreement for the multilateral exchange of traffic rights. The vacuum left by the collapse of the movement towards multilateralism was filled by bilateral air transport agreements, a development the probability of which was recognized in Article 6 of the Chicago Convention.[7]

All bilateral air transport agreements, amendments, and arrangements are required to be registered with the International Civil Aviation Organization. At present there are 2668 bilateral air transport agreements registered as of February, 1977.[8]

A- The Sovereignty of the State

The question of the legal status of air space was a subject of lengthy discussions for a long time before a settlement was reached. Many competing theories and different opinions were developed on this subject.[9]

One theory was that air space is entirely free; another theory was that there is a lower zone of territorial air space and a higher unlimited zone of free air space. The third theory was - and it is the one that prevailed - that the air space to an unlimited height is entirely within the sovereignty of the subjacent state. The fourth theory was that the air space is within the sovereignty of the subjacent state subject to a servitude of innocent passage for foreign civil, but not milltary, aircraft.[10]

It became apparent that by the outbreak of World War I that the principle of sovereignty in usable air space over national lands and waters had been accepted by the international community as a customary rule of international law. Not questioned was the right of each state to control the flight of aircraft over its surface territories and to prohibit the entry into its usable space of any foreign aircraft. Events during World War I and the preparation and signature of Paris Convention of 1919 merely acknowledged and restated this already existing rule of customary international air law - namely, the absolute sovereignty of the subjacent state over usable space above its national lands and waters. This rule lies at the base of almost all subsequent

developments in the field of public international air law.[11]

The first formal statement in international air law concerning state sovereignty in air space was Article 1 of the Paris Convention of 1919 which reads as follows:

> "The High contracting parties recognize that each power has complete and exclusive sovereignty over air space above its territory....."

Other international air law conventions followed the same principle. For instance the Madrid (Ibero - American) Convention of 1929 which was signed by Spain and twenty South American States, the Havana (Pan - American) Convention of 1928, and lastly the Chicago Convention of 1944. The Chicago Convention adopted the same principle in Article 1 which is as follows:

> "The contracting states recognize that every state has complete and exclusive sovereignty over the air space above its territory .....".

Article 2 of the Chicago Convention defines the term territory as follows:

> "For the purpose of this convention the territory of a state shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection of mandate of such state".

The principle of state's sovereignty incorporated in the

Charter of the United Nations. Article 2 paragraph 1 of the Charter reads as follows:

> 1. The Organization is based on the principle of the sovereign equality of all its members.

The states' practice followed this principle and it is recognized that the state has sovereignty over the air space above its territory. The principle exists in every national legislation especially the civil aviation codes.[12]

B. The Freedoms of the Air

No airline can operate scheduled or non-scheduled commercial air routes into the air space of the other countries without obtaining authorization from those countries affected. Such an authorization will confer a right. The type of right depends of course upon the authorization. The types of rights are classified in international practice as freedoms of the air, each freedom being descriptive of a right or rights commonly confered by authorization. The freedoms are collectively called the freedoms of air.

What are the freedoms of air?

In the strict sense freedom of air means freedom to fly through air space. The expression, however, is often used in a broader sense as including not only freedom to fly, but also the freedom of aircraft of one nation to land in the territory of other nations and to take on and discharge commercial traffic therein.[13] In this sense the expression means freedom of air commerce.

Prior to the Chicago Conference of 1944 an official document was issued by the British authorities stated that freedom of the air is an undefined term and is variously interpretated as including:

(1) The right of innocent passage.

(2) The right to land for non-traffic purposes (e.g. refuelling, repair, emergency).

(3) The right to land passengers, mails and freight embarked in the country of origin of the aircraft.

(4) The right to embark passengers, mails and freight destined for the country of origin of the aircraft.

(5) The right to convey passengers, mails and freight between two countries, neither being the country of origin of the aircraft.

(6) The right to convey passengers, mails and freight between two points in any one country not being the country of origin of the aircraft.

Here we have the birth of the analysis of the "Freedom of Air" which gave rise to the five freedoms as we know them today, and as they appear in practically all international agreements.[14]

By the time the Chicago Conference met in 1944 the privileges which a state might grant to foreign commercial carriers to operate scheduled international air services to and from its territory were separated into the so-called five freedoms of the air.[15] Each freedom may be defined as follows:

The First Freedom: The privilege to fly across the territory of other state without landing.

The Second Freedom: The privilege to land in the territory of other state for non-traffic purposes -technical reasons only- such as refuelling but not to embark or disembark any passengers, cargo or mail.

The Third Freedom: The right to carry passengers, cargo and mail from the country whose nationality the aircraft possesses to the other contracting party.

The Fourth Freedom: The right to pick up passengers, cargo and mail from the territory of the other contracting party to the territory of the state whose nationality the aircraft possesses.

The Fifth Freedom: The right to put down or take on, in the territory of the other contracting party, passengers, cargo and mail coming from or destined to points in a third country or countries.

Adistinction is made between the freedoms; the first and second freedoms are called and known as "technical rights". The third, fourth and fifth freedoms are known as "commercial traffic rights". For the development and promotion of any international air services between any two states, third and fourth freedoms are essential. Difficulty arises mainly in connection with the fifth freedom. It is in fact possible to distinguish three types of fifth freedom:

a. Anterior - point fifth freedom: This is the right to carry traffic between the grantor - state and a third state or states situated on a given route, at a point anterior to the flag state. The difference between this freedom and the so-called sixth freedom is that this freedom is authorized and

specified on a given route in the annex as a fifth freedom carriage.

b. Intermediate - point fifth freedom: This is the right to carry traffic between the grantor - state and intermediate - point third states en route.

c. Beyond - point fifth freedom: This is the right to carry traffic between the grantor - state and third states situated on a given route beyond the grantor - state.

In addition to these five freedoms of the air, further refinements in classifying air traffic have made their appearance since the Chicago Conference.[16] These freedoms may be classified and defined as follows:

> The Sixth Freedom: The right to carry traffic between two foreign countries via the home state of the carrier.[17] (Different definitions are given to this type of freedom which will be discussed in chapter five).
>
> The Seventh Freedom: The right, for a carrier operating entirely outside the territory of its flag - state, to fly into the territory of the grantor - state and there discharge, or take on, traffic coming from or destined for, a third state or states.[18]

The main difference between these two types of freedoms is that in the sixth freedom case the carrier operates via its home

country, but in the seventh freedom case the carrier operates outside its home country.

The Eight Freedom: The right to carry traffic between two points in the territory of the same state not being the state whose nationality the aircraft possesses. This freedom is called "cabotage". Each state reserves this right to its national carrier (s). This type of traffic is exclusively a domestic carriage and the state's right to reserve if for the national carrier (s) is based on Article 7 of the Chicago Convention of 1944.

These are the freedoms of the air which are used in air transport business and aviation community.[19]

C. The Chicago Conference

Six months before the end of World War II, representatives of fifty-four nations met at Chicago to lay down a new universal system to regulate and govern the international aviation affairs in the post-war phase.

Rapid development in international air transport took place immediately prior to World War II. This development resulted in intense competition between the airlines who operated scheduled air services. This situation created the conflict between national and international interests. Each state interpreted restrictively, to protect its national carrier, the existing multilateral agreements.[20]

Consequently, the need was felt to have a world - wide system to regulate, not only the technical aspects of air navigation, but also economic, political and legal aspects. The international air transport system after the Second World War and the changed conditions of the world's map brought about general agreement among the nations that a truly international conference should be held to establish a new international regime.[21]

In response to the invitation of the United States Government, the Conference convened at Chicago from November 1 to December 7, 1977, to "make arrangements for the immediate establishment of provisional world air routes and services "and to"

set up an interim council to collect, record and study data concerning international aviation and to make ..... recommendations for its improvement". The conference was also invited to discuss the principles and methods to be followed in the adoption of a new aviation convention.[22]

"The general objectives of the conference were of two kinds, technical and economic. The technical aims concerned setting up international arrangements for licensing pilots and mechanics, registering and certifying the airworthiness of aircraft, standarizing and planning for the development of navigational aids, collecting statistics, exchanging technical information, and similar essential technical tasks and procedures. The economic objectives included: the assignment of air routes to nations and to airlines; the arrangements for setting air fares, frequencies, schedules, and capacities; and methods of facilitating interairline fare transfers, customs arrangements, cooperation in servicing and coordination of schedules. An extermely important subgroup of aims at the conference concerned the arrangements for obtaining authority to overfly another nation's sovereign territory and to make stops in foreign territory for technical reasons, that is, for fuel and maintenance. The major air nations needed authority from foreign countries to take passengers at intermediate stops to replace those disembarking prior to the terminus of long-haul flights if the later stages of these flights were to be reasonably economic".[23]

Not all the states of the world, at that time, were represented in the conference. The United States and its allies were at war with the AXIS powers. These were not invited to the conference. In addition some countries were considered as pro - Axis and were not invited. Others withdrew before the conference started.[24]

It was clear that the United States was anxious to have that conference for many reasons. Points beyond Europe with commercial traffic rights were essential to the United States carriers for their long - haul operations. On the other hand the European countries wanted to have gateways in North America and beyond rights as well for their cross Atlantic operations.

For the purpose of re-establishing a new world - wide system to regulate international civil aviation especially the economic regulations, there were four basic proposals before the conference.

The first proposal was submitted jointly by the New Zealand and the Australian Delegations called for international ownership and operation for civil air services on world trunk routes. It was rejected.

The second proposal was submitted by the United States and called for an international aviation authority with powers limited to the technical and consultative matters.

The third proposal was submitted by Canada and called for setting up international authority with power to allocate routes, review routes and determine frequencies of operation.

The fourth proposal was submitted by the United Kingdom and called for more discretionary power for the international authority in allocating routes, fixing rates, and determining frequencies than the Canadian Government proposed.

In the course of the conference it became apparent that none of the proposals were acceptable to the major participants. Thus a compromise was reached under which the parts of the proposals that were generally acceptable were incorporated in one set of treaties and those which were contentious were incorporated in other treaties or instruments.

The conference adopted in its Final Act the following:

1. The Interim Agreement on International Civil Aviation.[25]
2. The Chicago Convention on International Civil Aviation.
3. The International Air Services Transit Agreement.
4. The International Air Transport Agreement.
5. A Standard Form of Bilateral Agreemen, known as Chicago Standard Form, for the exchange of air routes. (This standard was prepared and recommended by the conference as part of its Final Act).

6. Drafts of technical Annexes.[26]

The accomplishments of the conference were less than had been expected. The major economic questions which were in issue were not solved, for no agreement could be reached.[27]

1. Chicago Convention

The Convention on International Civil Aviation, known as "The Chicago Convention of 1944", is one of the outcomes of the Chicago Conference. It was signed by thirty-eight states of those who attended the Conference. The Convention came into force on April, 4, 1947.

The Chicago Convention of 1944, is considered as an international agreement on certain principles and arrangements in order that international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically.[28]

The great importance which the Convention has can be deduced from the fact that one hundred and thirty-six states had ratified or adhered to the Convention as of February, 1977.

In so far as international air services are concerned the major provisions of the convention are as follows:

- Article 1 : about the state sovereignty
- Article 5 : the right of non-scheduled flights
- Article 6 : the scheduled air services
- Article 7 : the cabotage
- Article 9 : the right of each contracting state to establish prohibited areas over which no flights can take place.

- Article 68 : The designation of the routes to be followed and the airports to be used by any international air services.

In spite of the tremendous international acceptance of the Chicago Convention of 1944, there are some major ambiguities in the Convention. For instance the Convention did not define the term "scheduled". Such definition is necessary for the application of Article 5 and Article 6 of the Convention in order to know whether a particular international air service is subject to Article 5 and the privileges stated in this Article, or subject to Article 6, of the Convention, and its restrictions and limitations.[29]

2. The Transit Agreement

The International Air Services Transit Agreement known as the "Two Freedoms Agreement" of 1944, which came into force on 30 January, 1945, was the first multilateral agreement that granted transit rights. Neither the Paris Convention nor the Havana Convention granted transit rights or traffic to scheduled airline services.

The Transit Agreement was found to secure first and second freedoms to scheduled international air services. These freedoms are the following:

1. The privilege to fly across the territory of the other state without landing.
2. The privilege to land for non-traffic purposes.

Article 1 section 1 of the Transit Agreement talks about the granting of the above mentioned privileges. The Agreement authorizes "certain privileges, not rights of flights".[30]

There is a big difference between these two terms. "Whilst rights stricto sensu pertain to the sphere of obligation or compulsion, privileges pertain to the sphere of liberty and free will".[31]

The Transit Agreement is only applicable among the contracting parties. It is a condition that a state in order to derive benefits from the Transit Agreement shall be a member of

the International Civil Aviation Organization. In other words, a state can not be party to the Transit Agreement without being party to the Chicago Convention of 1944.[32]

The Transit Agreement contains certain provisions under which the grant of the privileges can be exercised. These provisions are as follows:

a. The grant of the privileges is only for scheduled international air services.

b. The exercise of the privileges shall be in accordance with the provisions of the Chicago Convention of 1944.

c. The privileges shall not be applicable with respect to airports utilized for military purposes.

d. The right of the granting state to designate the route to be followed within its territory and to designate the airports which may be used.

The Transit Agreement provides for the principle of reciprocal grants of the privileges. The exercise of this privilege by one state does not depend on the exercise of the privileges by the other state. In other words if the grantor - state does not exercise the privileges granted to it, it can not deny the exercise of these privileges by the other state - the grantee.

The most important question which may arise is that whether the prior permission is required to be obtained before exercising these privileges or not? The Transit Agreement is silent. Section 3 of Article 1 of the Transit Agreemen provides that the airlines of the contracting parties may be required to offer reasonable commercial services. Section 4 of Article 1 provides for the right of the granting state to designate the route to be followed and the airports may be used. Section 5 of Article 1 refers to the right of the granting state to withhold or revoke a certificate or permit issued to an air transport enterprise of another state. It could be deduced that before the withholding or revocation of the permit there should be something issued. The issuance of the permit constitutes the prior permission of the grantor-state. The grant of the exercise of the privileges may depend on the prior issue and continued validity of a certificate or permit given to the airline of the other contracting party, which may be withheld or revoked under the conditions stated in section 5 of Article 1 of the Transit Agreement.[33]

Another question of importance that may arise is that in connection with the exercise of the privileges under the Transit Agreement by the contracting parties in case of war between the contracting parties. In such a situation it is clear in section 2 of the Transit Agreement that the exercise of the privileges shall be in accordance with the Chicago Convention of

1944, and the interpretation of the Transit Agreement is to be in accordance with the Chicago Convention. Since the Transit Agreement is silent about the exercise of the privileges in case of war, the Chicago Convention of 1944 gives the answer in Article 89 which provides for the freedom of any of the contracting states to take actions in case of war, and the provisions of the Convention shall not affect that freedom taken by states affected.

However the Transit Agreement is one of the most important multilateral conventionson international air law. This is shown by the fact that ninety-two states are parties to it as of February, 1977.

3. The Five Freedoms Agreement

The International Air Transport Agreement known as the "Five Freedoms Agreement" 1944 came into force on 8 February, 1945.

The Transport Agreement was aimed to be a multilateral agreement for the exchange of commercial traffic rights between the contracting states. This was what the United States wanted when she submitted the draft.

In addition to the first and second freedoms provided by the Transit Agreement, the Transport Agreement provides the following:

- The privilege to put down passengers, mail and cargo taken on in the territory of the state whose nationality the aircraft possesses.

- The privilege to take on passengers, mail and cargo destined for the territory of the state whose nationality the aircraft possesses.

- The privilege to take on passengers, mail and cargo destined for the territory of any other contracting state and the privilege to put down passengers, mail and cargo coming from any such territory.[34]

There are no provisions in the Agreement concerning rates and tariffs or capacity- and frequency-control. Section 3 of

the Agreement says "A contracting state granting to the airlines of another contracting state the privilege to stop for non-traffic purposes may require such airlines to offer reasonable commercial services at the points at which such stops are made ....." Section 4 of the Agreement gives each contracting state the right to reserve the "cabotage" for its airline. Section 5 (1) of the Agreement gives each contracting state the right "to designate the route to be followed within its territory by any international air service, and the airports which any such service may use". Article III of the Agreement provides that "in the establishment and operation of through services due consideration shall be given to the interests of other contracting states so as not to interfere unduly with their regional services or their through services".

The Transport Agreement was intended to be used as the multilateral solution for the problem of the exchange of commercial traffic rights between the contracting parties, but it did not achieve that intention. The Agreement in Article IV section 1 gives any contracting state the right to make a reservation at the time of signature or acceptance or the right not to grant and receive the rights and obligations of Article 1 section 1 para. 5. This means that there would be no exchange of the "fifth freedom" if such reservation is made, and thus the Agreement was not a "five freedoms" agreement but a "four freedoms" agreement. Another significant limitation was the right to withdraw from

the rights and obligations of the Agreement on a six months' notice being given by the state to the Council of the International Civil Aviation Organization.

In spite of the fact that she was the sponsor of the Agreement, the United States denounced it on July, 25, 1946.[35] Mr. Burden stated: "A year and a half ago the United States assumed the responsibility of initiating a multilateral agreement known as the Air Transport Agreement. The passage of time and further study of the problem by many nations led them to reject it for a variety of reasons. In fact it has been accepted by such a small number of countries that it can no longer be considered as the basis of a world wide scheme for international civil aviation".[36]

The Transport Agreement is considered as a dead letter and has no role whatsoever in international civil aviation.

Twelve states only are members to the Agreement.

4. The Chicago Standard Form

The Final Act of the Chicago Conference contained, among other things, Standard Form of Agreement for Provisional Air Routes. This Chicago Form as it came to be called was not binding on states, but it served as a convenient model, and facilitated the conclusion of many bilateral air transport agreements in the post - war period. Some of those concluded contained relatively few restrictions on the types of traffic that were permitted to be carried on the agreed routes.[37]

The Chicago Conference considered that "it is desirable that there should be as great a measure of uniformity as possible in any agreements that they may be made between states for the operation of air services".[38] The conference recommended that (1) "The contracting parties grant the rights specified in the Annex hereto necessary for establishing the international civil air routes and services therein described. Whether such services be inaugurated immediately or at a later date at the option of the contracting party to whom the rights are granted".[39] In so recommending the conference noted that "An Annex will include a description of the routes and of the rights granted whether of transit only, of non-traffic stops or of commercial entry as the case may be, and the conditions incidental to the granting of the rights. Where rights of non-traffic or commercial rights are granted, the Annex will include a designation

of the ports of call at which stops can be made, or as which commercial rights for the embarkation and disembarkation of passengers, cargo and mail are authorized, and a statement of the contracting parties to whom the respective rights are granted".[40]

The standard form of Agreement for provisional air routes, and agreements made in this form are known as "Chicago Type" Agreements. This type has been followed by most ICAO members since the Chicago Conference, and therefore "there is considerable uniformity in the administrative clauses of bilateral agreements".[41]

The pattern of this standard form generally follows some of the provisions stipulated upon the Chicago Convention, such as:

1. Airport and facility charges - Article 15 of the Chicago Convention (national treatment)
2. Customs duties and other charges (national and most-favoured nations treatment) - Article 24 of the Chicago Convention.
3. Recognition of certificates and licences issued by state of registration of aircraft - Article 32 and 33 of the Chicago Convention.
4. Applicability of national laws and regulations of entry, clearance of passengers, crew and cargo - Article 11 of the Chicago Convention and Article 13.

The principle of non-discrimination exists in all of the above-mentioned provisions. The form also gives each state the right to designate its own carrier (s) and states are required to grant permission to the designated carrier (s), Article 2 of the form.

The purpose of this type of agreements is:

1. For establishing international air route (s) and services to be operated on these route (s);
2. The grant of necessary rights for operating these route (s);
3. The designation of airlines entitled to operate such services on the established route (s);
4. Making a concession of these rights dependent upon certain general conditions, those provisions of the conventions supplemented by the annexes of these agreements.[42]

The provisions of the Chicago standard form of agreements provide for administrative clauses only. There are no provisions for capacity, rates, frequencies and specification of traffic rights to be exchanged. In other words the "Chicago Type" does not include the commercial clauses. The absence of the provisions of this kind resulted in the immediate post - war period of the adoption of many different provisions in agreements on these matters. Consequently, the need was felt

for a new form of agreement which would serve as a model in these matters. This new form was the Bermuda Agreement of 1946 between the United Kingdom and the United States of America.

D- Bermuda Conference

The situation of scheduled international air services after the Chicago Conference was unsatisfactory. The Chicago Conference failed to agree on an economic framwork for regulating such services.

After the Chicago Conference the airlines organized the International Air Transport Association - IATA - to regulate the fares problem. On the other hand the governments started to negotiate bilateral air transport agreements to regulate the exchange of routes, fares and rates, capacity and frequencies.[44] The Chicago Conference "had by its failure to agree on an alternative, returned the problem of route assignment, fare determination, and frequencies and capacities to the bilateral arena".[45]

By that time the world was divided into two factions, one led by the United Kingdom and the other by the United States. The United States, after the World War II, wanted complete freedom and adopted a liberal policy towards international air transport. The reason behind this was that the United States, at that time, was in a better position with its aircraft than the United Kingdom. The Uinted States adopted such a policy to have as many traffic rights as possible to operate its long - haul services. On the other hand the United Kingdom adopted and desired predeterminations of capacity and control of the fares.[46]

In view of the differences, both governments agreed to

have a conference to reach a settlement. The negotiations themselves "were focused around a conference between the United States and Great Britain scheduled for Bermuda in January - February 1946".[47]

Delegations from both governments met as scheduled and an agreement was reached. One of the United States Delegation to Bermuda Conference Mr. George P. Baker said "it should be remembered that the major purpose was to get an agreement and that the success of the meeting was due to the earnestness of that desire on the part of the two delegations involved".[48]

The fact that the United Kingdom was in a desperate need for dollars might have been used by the United States as a pressure over the negotiations in order to secure commercial traffic rights which it wanted. According to the U.S. Department of State Bulletin of February, 24, 1946 p. 302, the main purpose of the conference was "To reconcile widely divergent views which were held by the two nations on the extent to which international air transport should be subject to international control".[49]

However the Bermuda Conference was resulted in "The Bermuda Agreement" between the United Kingdom and the United States of America.

Footnotes

1. The Public International Law of Air Transport, Materials and Documents, vol. 1 McGill University 1974 by I. A. Vlasic and M. A. Bradley at pp. 113 - 118 under title Bilateral Agreements by Peter Jack.

2. For further information see Lord McNair, Law of Treaties, London 1961 p. 4.

3. For more details see Ian Brownlie, Principles of Public International Law, 2nd, ed. Oxford 1973 pp. 582 - 584.

4. McWhinney and Bradley, The Freedom of the Air, 1968 ch. 10 pp. 140 - 158 under title Bilateral Agreements.

5. Sir George Cribbett "Some International Aspects of Air Transport", Journal of the Royal Aero. Society p. 669 at pp. 671 - 672 (1950)

6. Ibid. p. 673. The history of the bilateral agreements goes back to 1898 when a treaty concluded between Austria - Hungary to regulate the legal status of military balloons overflying the mutual borders. For more details see Faller, Germany and International Civil Aviation, at p. 35. thesis submitted to the Faculty of Graduate Studies and Research, McGill University, 1965.

In recognition of the principle, adopted by the Institute of International Law in 1911, that aerial circulation is to be free, agreements have been entered into by many nations which embody this principle, and also define the respective rights of each to navigate the air over the other's territory. The first bilateral agreement of this kind was made in 1913 between France and Germany, and provided for the admission of aircraft from either country to the other country. See Fixel on the law of Aviation, 4th, ed., 1967 Virginia p. 30. see also for more detailed information about this agreement Faller at pp. 88 93.

7. See for further information Sir Ronald Edward, British Air Transport in the Seventies, London 1969 ch. 5. see also supra note 4 ch. 11 at p. 159 under title the Balance - Sheet of Bilateralisim. See also, The Record of the Association of the Bar of the City of New York, vol. 19 No. 4 April 1964 pp. 185 - 202 under title Bilateral Air Transport Agreements by O. J. Lissiteyn.

8. Information obtained from the ICAO legal Bureau, as of 22 - Feb. - 1977.

9. For more detailed information about the different theories of state's sovereignty see, McNair The Law of the Air, 3rd. ed. London 1964 pp. 14 - 18, see also Shawcross and Beanmont on Air Law, 2nd. ed. London 1951 at pp. 193 - 198, see also J. C. Cooper, Explorations in Aerospace Law Montreal, 1968 pp. 55 - 102 for a historical survay about Roman Law and the Maxim "Cujus est solum" in international law, see also the same at pp. 126 - 136 under title state sovereignty in space: Developments 1910 - 1914, see also Lycklama A. Nijeholt Air Sovereignty, the Hague 1910 pp. 9 - 44.

10. J. C. Cooper, Explorations in Aerospace Law, Montreal 1963 at pp. 257 - 265 under title High Altitude Flight and National Sovereignty, see also Mattee Nicolas M. Aerospace Law, Toronto 1969 pp. 13 - 17.

11. Ibid. J. C. Cooper at p. 136, see also supra note 5 at pp. 672 - 673.

12. See for example the preamble of the British Air Navigation Act of 1920 which was re-enacted by the Civil Aviation Act of 1949, see the U.S. Federal Aviation Act of 1958. As far as the Hashemite Kingdom of Jordan is concerned, Article 3 of the Civil Aviation Law No 55/1953 reads as follows : "The Kingdom has complete sovereignty over the air space above its territories. The territories of the Kingdom include its territorial waters".

13. See supra note 4 ch. 7 at p. 89. For more illustration see the same pp. 89 - 105.

14. See supra note 5 at pp. 674 - 675

15. See B. Cheng, Law of International Air Transport, London 1962 p. 9.

16. Ibid. pp. 12 - 13.

17. See ICAO, Records for the Commission on Multilateral Agreement on Commercial Rights in International Air Transport, Doc. No. 5230, A2-EC/10 1948 vol. 1 at p. 17.

18. Supra note 15 at p. 15.

19. For more detailed elaboration about the freedoms of the air see supra note 4 ch. 7 pp. 89 - 105, see also supra note 5 p. 674, see also Ralph Azzie, Lectures given at the Institute of Air and Space Law, 1967 and 1973 McGill University, Montreal, see also, British Air Transport in the Seventies: Report of the Committee of Inquiry into Civil Air Transport, London 1969 pp. 2 - 3 and the same at Appendix 4 p. 284, see also supra note 15 pp. 8 - 17, see also supra note 1 at p. 52, see also Lowenfeld, Aviation Law, N. Y 1972 ch. II at 11.6 (diagram)

20. See supra note 5 at p. 673 and 674 under The War - Time and post - war phase, see also J. C. Cooper, The Right to Fly, N.Y 1947 pp. 157 - 196 at p. 160 he wrote "The Minister of Munitions and Supply presenting on March 17, 1944, to the Canadian Parliment, a draft convention outlining a bold scheme for world - wide civil aviation control, said "some countries refused to permit airlines to cross the air space above their territory, necessitating costly detours. Others refused landing rights, as well as, transit rights. The necessity for hard and persistent bilateral bargaining resulted, especially in Europe, in the establishment of so many competing national services that air transport became highly uneconomic, and lines were heavily subsidized at the expense of national tax payers". See also Thornton, International Airlines and Politices, University of Michigan, 1970 at pp. 19 - 20, see Johnson, Right in Air Space, 1965, Manchester University press ch. IV pp. 44 - 57, see also Lowenfeld Aviation Law, N.Y 1970 ch. II at 1.22, see also C. G. Gery The Civil Air War, England, 1945 pp. 107 - 142.

21. See PICAO Documents No. 1 - 99, Doc. 10.

22. See Proceedings of the International Civil Aviation Conference, Chicago, Illinois, the Dept. of State 1944 vol. pp 1, 2, 11 and 12.

23. See Thornton, International Airlines and Politices, University of Michigan 1970 at p. 20.

24. Ibid. pp. 21 - 25 under title Environment of the Conference, see also Shaweross and Beaumont on Air Law 3rd, ed. vol. 1 London 1966 at p. 8.

25. This Agreement was only to cover the period until the main Convention - Chicago Convention - came into force, see for more detailed information Shawcross and Beaumont on Air Law 3rd. ed. London 1966 pp. 39 - 40, see also McNair Law of the Air 2nd, ed, London 1953 p. 4, for the text of the Agreement see supra note 22 pp. 133 - 136.

26. See supra note 22 pp. 1 - 11.

27. See Lowenfeld, Aviation Law, N.Y. 1972 ch. II at 1.22, see also supra note 15 at p. 24, see also J. C. Cooper, The Right to Fly atp. 147, he said "Fundamentally therefore, the legal position since the Chicago Conference and World Wor II continues as before". For the resolutions, the recommendations and the Final Act that were adopted by the conference, see supra note 21 pp. 113 - 183, see also supra note 23 at pp. 33 - 34.

28. The preamble of the Convention of International Civil Aviation signed at Chicago on 7 December 1944 see ICAO Doc. No. 7300/4 1969 p. 1.

29. Because of the difficulties that created by Articles 5 and 6 of the Chicago Convention the ICAO Council was requested to find a definition for the term "scheduled international air services". On March 25, 1952 the Council adopted a definition for the term "scheduled international air services" to be as a guidance for the contracting parties while application Articles 5 and 6 of the Chicago Convention. See ICAO Doc. No. 7278 - c/841 10 15/1952. For more detailed analysis about the major ambiguities in the Chicago Convention see J. C. Cooper supra note 10 ch. 28 pp. 440 - 451.

30. J. C. Cooper, The Right to Fly p. 174. "As to many writers there is a big difference between the term privilege and the term right".

31. See Heller, Grant and Exercise of Transit Rights, Thesis McGill University, 1954 at p. 93.

32. See section 2 of the Transit Agreement.

33. Supra note 31 at p. 76.

34. Article 1 sec. 1 of the "Five Freedoms Agreement".

35. For the denounciation statement see, Department of State press release, No. 510 of July 25, 1946 "withdrawal of the United States of America".

36. Mr. W. Burden, the Chairman of the United States Delegation at the Interim of Assembly of PICAO. See PICAO Doc. No. 1733, EC/21 1946.

37. Supra note 4 ch. 7 at p. 91.

38. Supra note 22. The proceedings, at p. 127. For the text of the "Standard form of Agreement for provisional Air Routes" see the proceedings pp. 127 - 129 or ICAO Doc. 2187 International Civil Aviation Conference, Final Act and Appendices, Chicago, November 1- December 7 1944 p. 7.

39. Ibid. proceedings at p. 128.

40. Ibid.

41. See Shawcross and Beaumont on Air Law 3rd. ed. vol. 1 London, 1960 pp. 280 - 283

42. ICAO Doc. 4798 AT/526 Bilateral Agreements "Chicago Type". Study prepared by the legal studies section, 23, October, 1947, pp. 2 - 3.

43. H. A. Wassenbergh, Post - War International Civil Aviation Policy and the Law of the Air, 2nd. revised ed. Hague, 1962 p. 11.

44. See Lowenfeld, Aviation Law, N.Y 1972 ch. 11 at 1.22.

45. See supra note 23 pp. 34 - 35.

46. Ibid. see also supra note 1 at p. 113

47. See supra note 44

48. Supra note 1 pp. 245 - 261 at p. 251 lecture delivered by George p. Baker at McGill University April 18, 1947

49. Supra note 23 at pp. 35 - 36. There were three conferences held at Bermuda at the same time. One was to negotiate a Bilateral air transport agreement between the U.K. and the U.S.A.

Chapter III

BERMUDA AGREEMENT

The Bermuda Agreement was a compromise between two opposing points of view, the United Kingdom on one hand and the United States on the other hand. It was a balance between the British protectionism and the American liberalism. The compromise was between the two different positions in which the United Kingdom abandoned predetermination of capacity and the United States accepted international control of fares and rates. Thus the Bermuda Agreement introduced changes in policies for the two countries.

At the time of the conclusion of the Agreement both parties officially, expressed their satisfaction with it.[1] But the fact that the Agreement was a compromise between the two opposing philosophies and policies towards international air transport, indicates that there were still important differences concerning "the principles which shall govern commercial air transport". These differences opened the door for various interpretations of the plan by both parties.[2]

However the negotiations of the Bermuda Agreement were the first negotiations of consequence after the World War II in which both contracting parties hoped to develop strong, long -

haul trunk routes. Therefore the Agreement was a very important one. The Agreement "demanded some solution to the problem of the traffic which was referred to in the fifth freedon and was essential for long - haul air transport".[3]

As was mentioned that the agreement introduced changes in policies for the two countries. As the Great Britain "abandoned former insistence on direct international control of economic factors"[4], the United States agreed to accept the international control of fares which "they were most reluctant to concede and parameters within which services could be operated".[5]

The American position reflected their objective which was the same as at the Chicago Conference. They wanted "as much freedom of the air as possible with as little regulation as possible". On the contrary the British position and their objective too, was the same as at the Chicago Conference - obtaining aircraft and facilities, regulation of rates and some sort of check on capacity and frequency of flights in order to prevent and avoid cut - throat, wasteful and uneconomic competition.[6]

It then took several weeks of negotiations at the Bermuda Conference between the two countries, but the results were predictable. The British long - term policy was to establish an equal status with the United States as far as civil aviation is concerned. To achieve this, Great Britain was quite willing to work out a liberal construction of the fifth freedom and capacity problems where they applied to long - haul international operations

since Britain needed pick up traffic too. "The United States "held its hope for the "American dream" - freedom of the air, opportunity for every airline, and no restriction on "honest competition".[7]

The United States wanted a liberal policy towards international air transport because she was in a better position than the United Kingdom by the time the World War II ended. The United States was ready, well-equipped and had "numerous transport aircraft available".[8] Thus unlike Great Britain, the United States and her airlines could compete effectively with any airline in the world.

The dominant feature of the Bermuda Agreement was-and remains -that airlines are free to operate services at the frequency / capacity they consider justified, provided they comply with the general provisions of the Agreement: once a Bermuda - type agreement is signed between two governments and the airlines have been formally designated, the airlines take over.[9]

It was mentioned that the bilateral air transport agreements' main purpose is to exchange commercial traffic rights between the two contracting parties. These rights are to be conferred to the designated airlines of both contracting parties. Some bilaterals provide for the exchange of the first, second, third and fourth freedoms only. Other bilaterals provide for the exchange of the full list of the freedoms - the five freedoms -. The Bermuda Agreement falls in the second category for

it provides the exchange of the five freedoms.

As far as the exchange of the first and second freedoms is concerned, there will be no difficulty if both contracting parties are members to the Transit Agreement for they already exchanged these two freedoms. Furthermore, such a situation will facilitate the negotiations' process. The only problem that will remain is the exchange of third, fourth and fifth freedoms. Indeed there appears to have been no difficulty in exchanging the first and the second freedoms at Bermuda. One writer has suggested that the fact that the United States and the United Kingdom were parties to the Transit Agreement facilitated the conclusion of the Bermuda Agreement.[10]

The United Kingdom and the United States exchanged, in Bermuda Agreement, the first and the second freedoms to be exercised by the designated airlines of both contracting parties on routes anywhere in the world subject to the provisions of the Chicago Transit Agreement. In addition "Each nation also grants to the other commercial privileges (sic) of entry and departure to discharge and pick up traffic (freedoms three, four, and five); but these commercial privileges are valid, in contrast to the transit privileges, only at airports named in the agreement and on routes generally indicated, and in accord with certain general traffic principles and limitations".[11]

There are certain differences between the Bermuda Agreement and the Air Transport Agreement of 1944, known as the "Five

Freedoms Agreement". These differences are in connection with the fifth freedom. Any state, party to the Air Transport Agreement, could contract out of the fifth freedom rights and can, by giving six months' notice, withdraw from such rights and obligations. But under the Bermuda Agreement these rights can not be separated from the rest of the plan. Another difference is that under the Air Transport Agreement the privileges granted are extended only to traffic to and from other states parties to the Agreement; but, the rights under the Bermuda Agreement are granted to each contracting party. The carriers of both contracting parties to the Bermuda Agreement can pick up and discharge at points situated in the territories of both contracting parties, and specified in the Annex, traffic to or from any country on the route. The ports of entry under the Bermuda Agreement are named and can not be changed except by agreement, but the ports of entry under the Air Transport Agreement are fixed by the nation in which they are situated and it is not clear whether the same port of entry had to be made available to all states parties to the Agreement.[12]

The Bermuda Agreement consists of three parts: the "Final Act", the Agreement and the "Annex". Since it was signed, it has been subject to numerous amendments done in the form of exchanges of notes.[13] The Agreement "is expressed to be made by the Government of the United Kingdom and extends to British overseas dependent territories. The general effect of the whole arrangement is that, for the purpose of operating air sirvices

over a number of routes, specified in the Annex, each party grants to the "designated airlines" of the other the use of airports and facilities on these routes, and rights of transit, of stops for non-traffic purposes and of commercial entry and departure for international traffic in passengers, cargo and mail".[14] These rights are to be exercised according to a number of general principles stipulated in the"Final Act". Both parties reaffirmed their acceptance of the general principles of the Chicago Convention of 1944 and agreed on additional principles.

The Bermuda Agreement includes provisions not only for exchanging routes and traffic rights, but also provisions for rates regulation and capacity.[15] The Bermuda plan philosophy can be summarized in the following points:

1. Designated airlines of both countries operate routes which are agreed in negotiations and specified in an Annex to the Agreement.

2. No restrictions upon frequency of services that the designated airlines of both countries may operate and no other limitations upon capacity provided on route sectors directly connecting the territories of both contracting parties.

3. The carriage of fifth freedom traffic is allowed provided that total capacity operated is reasonably related to the end-to-end potential of the route, and to the economical operations of long - haul services and recognition is given

to the requirements of local and regional services.

4. The principle of ex post facto capacity review is provided to be a safeguard against any possibility that any airline of either contracting party may operate excessive capacity. If any party feels that the interests of its designated airline are being unduly affected by the capacity provided by the designated airline of the other contracting party, the principle of ex post facto review is to be applied.

5. The tariffs are regulated by the government approval. The designated airlines reach tariff agreements first, through the International Air Transport Association - IATA - and these agreements on tariffs are subject to the approval of the governments of both contracting parties according to certain procedures.[16]

The Final Act of the Bermuda Conference defined certain principles which were to govern the operation of air services under the Agreement. These principles are known as the Bermuda principles. Basically the principles are intended to regulate competition between the air transport services of the two countries. Four standards are prescribed in the principles. These are regarded as the most important and when incorporated in an agreement, that agreement is classified as a Bermuda type agreement.

The first standard is as follows:

(3) "That the air transport facilities available to the travelling public should bear a close relationship to the requirements of the public for such transport".

This principle pertains to the relationship between the combined capacity of the operators and the total traffic. In other words, the capacity available to the public should be offered according to the public's requirements for such transport and equilibrium is to be maintained between both.

The second standard provides:

(4) "That there shall be a fair and equal opportunity for the carriers of the two nations to operate on any route between their respective territories (as defined in the Agreement) covered by the Agreement and its Annex"

This pertains to the opportunity of the designated airlines of both contracting parties to operate on the specified routes to which they have been designated. The opportunity shall be "fair" and "equal".

The third standard is:

(5) "That in the operation by the air carriers of either Government of the trunk services described in the Annex to the Agreement, the interest of the air carriers of the other Government shall be taken into consideration so as not to affect unduly the services which the latter provides on all or part of the same routes"

This principle is to govern the relations between air carriers competing on trunk services. The interest of the designated airlines of both contracting parties shall be taken into

consideration by the designated airline of either contracting party while providing operations of the trunk services on all or part of the same routes so as to ensure that the interests and services of either designated airline are not unduly affected.

The fourth standard reads as follows:

> (6) ".... services provided by a designated air carrier .... shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country of which such air carrier is a national and the country of ultimate destination of the traffic. The right to embark or disembark on such services international traffic destined for and coming from third countries at a point or points specified in the Annex to the Agreement shall be applied in accordance with the general principles of orderly development to which both Governments subscribe and shall be subject to the general principle that capacity should be related:
>
> (a) to traffic requirements between the country of origin and the countries of destination;
>
> (b) to the requirements of through airline operation; and
>
> (c) to the traffic requirements of the area which the airline passes after taking account of local and regional services"

This principle is to govern and regulate "the comparative roles of primary traffic and secondary or fifth freedom traffic".[17] This provision prescribes that the primary objective of the designated airline is to be the provision of capacity adequate to the traffic demands between the airline's own country and the ultimate destination of the traffic, and that "the right to third country traffic shall be applied in accordance with general principles of orderly development, and subject to the general principles that capacity should be related to traffic requirements between

countries of origin and ultimate destination of the traffic, requirements of through airline operation, and traffic requirements along the route after taking account of local and regional services".[18]

Concerning the principle of "primary objective", if there is such an objective, there should be provisions for other objectives, otherwise the provision of capacity for third and fourth freedoms should have been made the only object to be dealt with.[19]

The right to embark or disembark international traffic destined for and coming from third countries in the territory of the other contracting party - the fifth freedom - is not unlimited. This right is to be applied in accordance with the general principles of "orderly development". These two words seem to be as a compromise between two conflicting attitudes. The word "orderly" represents the protectionism faction and "of proceeding step by step after careful consideration of all aspects and more or less implying something static in this way, whereas the word development on the contrary points into the direction of commercial and dynamic enterprise".[20]

A. The Designation of Airlines

To operate the agreed services specified in Annex to a bilateral air transport agreement, certain procedures should be followed. First of all, there should be a designation of airline (s) i.e each contracting party, through its aeronautical authorities, designates an air carrier or carriers to operate the agreed services specified in the annex of the agreement. Every bilateral air transport agreement contains a provision along these lines subjecting the designated airlines to compliance with certain requirements.

Under the Bermuda Agreement, an airline's designation should be made before the inauguration of the agreed services. Article 2 of the Bermuda Agreement reads as follows:

> "1. The agreed services may be inaugurated immediately or at a later date at the option of the contracting party to whom the rights are granted, but not before (a) the contracting party to whom the rights have been granted has designated an air carrier or carriers for the specified route or routes, and (b) the contracting party granting the rights has given the appropriate operating permission to the air carrier or carriers concerned....."

It is apparent that this Article imposes two conditions for the inauguration of the agreed services, that there should be a designation of air carrier or carriers, and an issuance of an appropriate operating permission by the contracting party other than the designating party.

The designation procedures vary from country to country,

but the purpose of the designation in all bilateral air transport agreements is the same. The purpose of the designation procedure is to ensure:

a. that the airline which will eventually operate is in fact one approved by one of the contracting parties; and

b. that the airline so designated meets the requirements set out in the agreement.

The rights exchanged between the contracting parties are for the benefit of their respective airlines rather than for aircraft of their registration.[21]

The designation procedure of the airline in Jordan is : once a bilateral air transport agreement is signed, the Jordanian Aeronautical Authorities approach, through diplomatic channels, the aeronautical authorities of the other contracting party to the agreement to designate Alia - The Royal Jordanian Airline - as the Jordanian national carrier designated to operate the agreed services on the specified routes.[22]

However the designated airline has to comply with other certain provisions in the agreement. For instance, Article 2 paragraph 2 of the Bermuda Agreement provides the following:

> "2. The designated air carrier or carriers may be required to satisfy the aeronautical authorities of the contracting party granting the rights that it or they is or are qualified to

> fulfil the conditions normally applied by those authorities to the operations of commercial air carriers".

It is apparent that the designated airline (s) in order to inaugurate operations on the specified routes has to be designated. The designated airline should satisfy the other party about if it is qualified to fulfil that party's regulations.[23] The designated airline, in order to obtain the authorization for the inauguration of the agreed services on the specified routes should comply with the other contracting party's regulations. In other words, the airline (s) can not operate once the agreement is signed; but, in order to acquire the authorization a compliance with the other party's laws and regulations must be made. The granting state is under obligation to issue the appropriate operating permission to the designated airline (s) without undue delay after all requirements are fulfiled and that it is so satisfied.

In any case, each contracting party has the right to withhold or revoke the exercise of the granted rights under certain circumstances. In other words, the right that is granted to either contracting party is not an absolute right, it may be withheld, revoked or suspended. Article 6 of the Bermuda Agreement reads as follows:

> "Each contracting party reserves the right to withhold or revoke the exercise of the rights specified in the Annex to this Agreement by a carrier designated by the other contracting party in the event

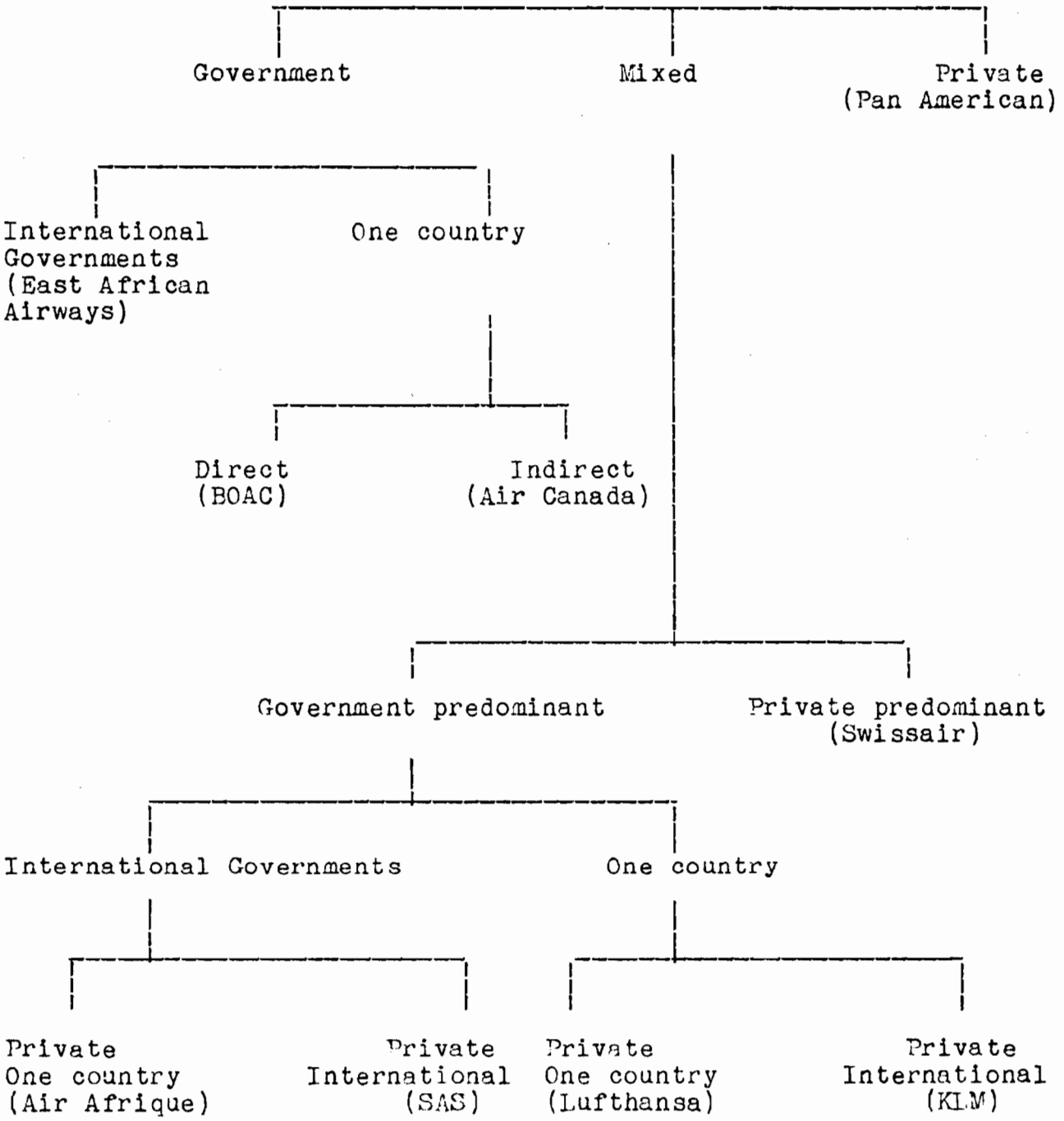
> that it is not satisfied that substantial ownership and effective control of such carrier are vested in nationals of either contracting party or in case of failure by that carrier to comply with the laws and regulations referred to in Article 5 hereof, or otherwise to fulfil the conditions under which the rights are granted in accordance with this Agreement and its Annex".

It is clear that for the contracting party granting the rights in order to issue the authorization to the designated air carrier of the other contracting party, the designated air carrier, inter alia, must be substantially owned and effectively controlled by the nationals of the designating party.

The clause "substantial ownership and effective control" was required by considerations of security. The principle originated at the Lima Conference of 1940 where the intention was to prevent German - owned companies registered in Latin America from conducting their activities near the Panama Canal Zone.[24] However, in the years after the Chicago Conference the purpose of the clause changed. It was included for economic reasons to prevent indirect operation by third states not parties to a bilateral air transport agreement.[25] The clause also prevents airlines and capital investors from circumventing national laws and regulations by acquiring a substantial share in a foreign airline,[26] as well as prohibiting a single state from the acquisition of a far greater share of international air traffic by holding substantial interests in foreign carriers.[27]

There is no minimum percentage required for the substantial ownership and effective control, but it is normally satisfied by a holding of 51 per cent of shares in an airline, although 50 per cent may be considered satisfactory.[28] The question of whether the airline is substantially owned by a state or the nationals of the state depends on the powers granted to such airline under its by - laws. If a tight state control exists, 30 per cent ownership could be considered as substantial.[29]

Except for the United States' carriers, which are all privately owned, the most prevalent form of airline ownership is government ownership. Many approaches to ownership have been adopted by airlines. There are joint ventures, mixed ventures, joint mixed ventures, full public ownership, masked public ownership, private ownership, and government ownership by two different levels of government within the same country.[30] The following diagram shows some of the existing variations in the ownership structure of international airlines.[31]



Ownership Possibilities for International Airlines

As far as the effective control is concerned the situation of the parties to the Bermuda Agreement is different. In practice in Britain Governmental control has been somewhat stronger, for the major British carriers now are state-owned. Carriers in the United States are less restricted by the government for two reasons : the CAB's lack of specific legal authority over international rates at the time of the Bermuda Conference, and the fact that all U.S carriers are privately owned.[32]

The Bermuda Agreement provides that the designated air carriers of one of the contracting parties shall be accorded in the territory of the other contracting party the use of specific and definite routes and airports expressly named, and the traffic shall be governed in compliance with the principles agreed upon.[33]

The Bermuda Agreement defines the designated air carriers in Article 12 paragraph (b) as follows :

> "(b) The term "designated air carriers" shall mean the air transport enterprises which the aeronautical authorities of one of the contracting parties have notified in writing to the aeronautical authorities of the other contracting party as the air carriers designated by it in accordance with Article 2 of this Agreement for the routes specified in such notification".

It is apparent that under the Bermuda Agreement the routes to be operated by the designated air carriers of both parties are specified in the written notification of the designation. In other words there should be separate designation for each route

specified in the annex of the agreement.

The Bermuda Agreement left the door open for many questions that may arise about the designation of the airlines. The Agreement provides, as was mentioned, in Article 6 that the designated airlines of the other contracting party should be substantially owned and effectively controlled by the designating party or its nationals in order to acquire the authorization. The Agreement does not require that the airline designated should be incorporated or domiciled in the territory of the party designating it or that it should operate aircraft registered in that party. The necessity for such clauses has arisen because "states tend to attach increasing importance to the nationality (registration), ownership of and control over the aircraft operated by (designated) carriers on scheduled services, in addition to the substantial ownership of these carriers. This is, among other things, a consequence of the growing practice of carriers to lease or charter aircraft from other airline companies for use on their own services".[34]

It is of importance to shed some further light on the question of "interchange of aircraft" and its relation with the designation of air carrier. The question that may arise is in the case of the grantee state whereby its airline charters or hires an aircraft from foreign airline registered or owned by a state, not party to agreement between the grantee state and the grantor state, to operate the agreed services on a route or

part of a route granted under a bilateral air transport agreement. The question does not arise when the chartered aircraft is registered in the country of the airline using the aircraft and it is less pronounced in the case of an interchanging of aircraft without crew because "the impact of the owner's influnce on the operation with the chartered aircraft is then practically nil".[35] There is another situation when there is a use by an air carrier of an aircraft owned by a foreign air carrier on a route of that foreign air carrier, which is not available to the user. This is not a true interchange, and "such use would normally be irrelevant to the question of the exercise of the traffic rights concerned".[36] The problems that may arise are only in case the route is operated in the name of the user. A clarification should be made to the question whether the air carrier that using on one of its own routes an aircraft with crew belonging to a foreign air carrier, can be considered to "operate" that route and can be called the "operator". "The question is important in as much as it is argued that it is the "operator" who exercises the rights granted under a governmental agreement or authorization".[37] In such a case if that foreign air carrier concerned should be considered as the operator then interchange of aircraft would not be possible on a route which that foreign air carrier has not been authorized to operate, and then can not be designated by the grantee state.[38]

However, the clause which requires that the designated air carrier is to be "substantially owned and effectively controled" by the designating party is arbitrary. This clause can

be more flexible by drafting it as "the designated air carrier should be substantially owned or effectively controlled by the designating party" so as to give more flexibility to the airlines in interchanging of aircraft, for the interchange of aircraft "is meant to provide a means of improving the utilization of the aircraft by offering the possibility to use it on routes of other airlines, such routes not being available to the airline owning the aircraft".[39]

Furthermore, there is no clause in the Bermuda Agreement that refers to the number of airlines to be put into operations. The capacity clause may solve this situation, but even if the overall capacity is identical there will be differences of efficiency and differences in the breakdown of the capacity. Therefore the number of airlines should be limited and likewise the overall capacity.

Another question may arise. Does the designation clause mean that both contracting parties are under an obligation to designate an airline (s)? In case if only one party is proposing to operate, must both parties designate their airline (s)? It can be deduced from the practice that there is no obligation on either party to designate its airline (s) if it does not intend to inaugurate air services on the agreed routes, and there are no provisions that give the granting state the right to refuse the other party's designation because the granting state does not intend

to operate when the other state, designating the airline, intends to start operations.

It is a fact that "the successful negotiation of a bilateral air transport agreement does not itself necessarily permit the air carriers of both parties to exercise the freedoms of the air immediately. The designated air carriers also must satisfy the aeronautical authorities of each of the parties to the agreement as their competence to operate the services agreed upon".[40]

B- The Exchange of The Traffic Rights

The main purpose of any bilateral air transport agreement is to exchange traffic rights, and only in exceptional circumstances do the parties fail to particularize the traffic rights granted.[41]

In the negotiation of the bilateral air transport agreement the main bargaining effort is concentrated on the exchange of traffic rights. Apart from other considerations for the conclusion of a bilateral air transport agreement, the exchange of traffic rights is what is in the minds of the negotiators. The exchange of the traffic rights means the acquisition of the right to pick up and discharge international traffic in each of the territories for their carriers. In other words the exchange of the freedoms of the air. The first and second freedoms are "mutually granted for scheduled international air services by the parties to the International Air Services Transit Agreement".[42] The other freedoms which are the third, fourth and fifth are the ones that are negotiated ultimately. The exchange of the third and fourth freedoms is less difficult than the exchange of the fifth freedom because no third state is concerned. Where there is a third state concerned, if a specified route includes stops in that state, then "the agreement of that third state must be first obtained before such stops may be made".[43]

The fact that each state has its own traffic and on the

other hand that each state has to protect its flag carrier led the states to impose restrictions upon the exchange of the traffic rights. In addition states consider the granting of these privileges and their exercise as a matter related to their sovereignty. The regime of bilateral bargaining has as its justification the promotion of national air transport enterprises and the protection of those enterprises against competition from foreign operators.[44]

As far as the exchange of traffic rights under the Bermuda Agreement is concerned both parties agreed to exchange the five freedoms. Paragraph 1 of the Annex to the Bermuda Agreement refers to the right of the designated air carriers of both contracting parties to operate services on the routes specified, and that "the designated air carriers of one of the contracting parties shall be accorded in the territory of the other contracting party the use on the said routes at each of the places specified therein of all the airports (being airports designated for commercial air services), together with ancillary facilities and rights of transit, of stops for non-traffic purposes and of commercial entry and departure for international traffic in passengers, cargo and mail in full accord and compliance with the principles recited and agreed in the Final Act ....."[45]

Under the Bermuda Agreement it was for the first time in the history of the United States that foreign air carriers were

granted fixed routes and specified agreed services.[46]

The Final Act of the Bermuda Agreement specifies the traffic rights that each designated air carrier may exercise, and the manner in which those rights should be exercised. It was stipulated in paragraph 3 of the Final Act _____ "that the air transport facilities available to the traveling public should bear a close relationship to the requirements of the public for such transport". It was meant by this paragraph "to prevent the continued operation of aircraft at unnecessarily low load factors since it was realized that such activity would be generally detrimental to all lines serving the route".[47] The Final Act also provides for "that there shall be fair and equal opportunity for the designated air carriers of both contracting parties to operate". It also provides that in the operations, the interest of the designated air carrier of the other contracting party shall be taken into consideration so as not to affect unduly the services that the latter provides. The purpose of these two statements, as they were drawn up at Bermuda, is "to protect against "unfair trade practices" ..... it was well understood by all concerned that the freedom of the management of an airline company to put on or take off schedules would be the same as the present freedom of either of two competing bus lines between New York and Washington to experiment with their schedules without restrictions".[48] The principle meant that the airline of any contracting party, which had been properly

certificated by that party should have a fair chance "to show the traveling public the kind of service it could supply but the apportionment of traffic between airlines would be the result of consumer choice".[49]

C. The Capacity Control

The term "capacity" has been defined in many forms in the bilateral air transport agreements. Two examples of the definition of the term "capacity" are as follows:

1. the term capacity in relation to an aircraft means the payload of that aircraft available on the route or section of a route, and in relation to a specified air service means the capacity of the aircraft used on such service, multiplied by the frequency operated by suchaircraft over a given period and route or section of a route.

2. the term "capacity" shall mean the payload which an aircraft is authorized to carry between the point of origin and the point of destination of the service to which it is assigned between the territories of the two contracting parties.[50]

The Bermuda Agreement's provisions relating to capacity deal first with all three of the general principles shown in section II of the Annex. These are followed by a clause (paragraph 6) stating that the services operated by the designated airlines of the two countries shall retain as their primary objective the provision of capacity adequate to meet the requirements of third and fourth freedom traffic in reference to their respective territories. The distinguishing features of the Bermuda provisions are seen in the next sentence which deals with the carriage of fifth freedom traffic, and in the additional clause providing for ex post facto review of capacity

and frequency by the aeronautical authorities of the two countries.[51]

One of the most thorny problems in international civil aviation today is, undoubtedly, the capacity determination.[52] The basis for most of the solutions to this problem have been provided by the Bermuda Agreement, since it was signed with its carefully phrased but general capacity principles.[53]

The airlines, under the Bermuda clauses, are given the freedom to operate services at the frequency / capacity they consider justified, provided they comply with the general provisions of the Agreement, since it is the airlines that control the situation, once the agreement has been reached and the airlines designated.[54]

The Bermuda Agreement, in contrast to predetermination and prior allocation of capacity, has introduced a regime of controlled competition. This regime remains subject to the capacity principles laid down in the respective agreements.[55]

The Bermuda capacity clauses provide a protectionist as well as a liberal approach to capacity control. It was observed that the Bermuda capacity clauses may well be protectionist, but, that in actual practice they will result in a certain amount of control of frequencies and capacities as Lord Winster stated by "expost facto review".[56] It has been further observed that the

Bermuda capacity principles "provide certain safeguards for those countries which fear their more powerful competitors and would prefer to exercise considerable control over the operation of foreign airlines serving their countries".[57] These safeguards are in the form of "general restrictions". The most important principle in the formula is the understanding that the primary objective of a service is to provide "capacity adequate to the traffic demands between the country of which such airline is a national and the country of ultimate destination of the traffic".[58]

If any contracting party felt that the airline of the other contracting party was not conforming to these restrictions, there was to be consultation between the aeronautical authorities of the two contracting parties. This is what the principle of "ex post facto review implies".[59]

The application of the Bermuda capacity clauses is based on the idea of an ex post facto review. To apply such principle, ample consideration should be given to the fact that the presence of transport facilities always tends to stimulate the traffic requirements of the public.[60] The principle of an ex post facto review means that a contracting state, can, under the consultation provision, ask for such review of capacity in the event it feels that the interests of its carriers are being adversely affected. "But such a review comes after and not before the market is tested".[61]

Footnotes

1. See J. C. Cooper The Bermuda plan 25 Foreign Affairs October 1946.

2. Ibid.

3. Thornton International Airlines And Politics , the University of Michigan 1970 p. 35.

4. A. J. Thomas, JR. Economic Regulation of Scheduled Air Transport N.Y 1951 p. 218.

5. Bilateral Agreements Peter Jack

6. Harold A. Jones The Equation of Aviation Policy J.A.L.C vol 27 1960 at p. 230.

7. Ibid.

8. Supra note 5

9. Ibid.

10. Supra note 1 at p. 4.

11. Ibid. at p. 5. In fact the exchange was an exchange of rights not privileges for Article 1 of the Bermuda Agreement says "Each contracting party grants to the other contracting party rights ....."

12. See Shawcross and Beaumont on Air Law London 1966 3rd ed. vol. 1 pp. 283 - 284, see also supra note 1 at page 8.

13. Ibid. at p. 284. The amendments were as follows:

"Exchange of notes dated 20th December 1946 / 27th January 1947, exchange of notes, dated 21st May / 23rd May, 1946: Exchange of notes, dated 14th January, 1948: Exchange of notes, dated 4th August / 16th August 1955, Exchange of notes, dated 17th October / 30 October, 1956: Exchange of notes dated 2nd December / 28 December 1956.

For the text of the Agreement, the Final Act, and the Annex see U.S Department of State Bulletin vol. 14, 1946 pp. 582 - 596. see also Shawcross and Beaumont on Air Law 3rd ed. vol. 2 London issue No. 7, July, 1975 pp. 261 - 273. see also Appendix 1 of this thesis.

14. See supra note 12 at p. 283

15. See supra note 4 at p. 218.

16. See Stephen Wheatcroft Air Transport Policy, London 1964 pp. 70 - 71.

17. McWhinney and Bradley The Freedom of the Air. N.Y 1968 ch. 10 p. 143.

18. Ibid. see also the "Final Act" of Bermuda Agreement.

19. P. Van Der Tunk Adriani "The Bermuda capacity clauses" 22 J.A.L.C. vol. 22 1955 at pp. 407 - 408.

20. Ibid. at p. 408.

21. B. Cheng, The Law of International Air Transport, London 1962, at p. 290.

22. The form which is usually used for designation called written official designation reads as follows:

According to Article ____ of the bilateral air transport agreement signed on (the date) at (the place) between the Government of the Hashemite Kingdom of Jordan and the Government of - (the name of the other contracting party).

We hereby designate Alia / The Royal Jordanian Airline as Jordanian national carrier to operate the agreed services on the specified routes in the above mentioned Agreement.

Director General
of Civil Aviation

23. Section 402 of the Federal Aviation Act of 1958 requires certain provisions and procedures to be followed before the issuance of permits to foreign air carriers. Paragraph (a) of section 402 reads as follows "No foreign air carrier shall engage in foreign air transportation unless there is in force a permit issued by the Board authorizing such carrier so to engage". For the Federal Aviation Act of 1958 see Lowenfeld : Aviation Law Cases and Materials, N.Y 1972.

24. D. Goeduis "The Basis of the present Regime of the Air" Recueil Des Cours (1952) II, p. 209 at p. 213.

25. Ibid.

26. H. A. Wassenbergh, Post War International Civil Aviation Policy and the Law of the Air (The Hague, 2nd. rev. ed. 1962) p. 63.

27. Ibid. pp. 63 - 64.

28. Ibid. p. 62, see also Bin Gheng, The Law of International Air Transport (London 1962), p. 378.

29. Supra note 26, at p. 62.

30. Thornton, International Airlines and Politics, Michigan, 1970, pp. 4 - 5.

31. Ibid, p. 6.

32. Ibid. p. 37.

33. See Section 1 of Annex to Bermuda Agreement. See also J. C. Cooper, The Bermuda Plan : World Pattern for Air Transport, 25 Foreign Affairs, October, 1946 pp. 4 - 5.

34. H. A. Wassenbergh, Aspects of Air Law and Civil Air Policy in the Seventies, The Hague, 1970, pp. 114 - 115.

35. H. A. Wassenbergh, Netherlands Tijdschrift Voor International Recht, 1963, 10. Doc. 7575 - CATE / 1. pp. 275 - 283.

36. Ibid. at p. 276

37. Ibid.

38. Ibid. at p. 276

39. Ibid.

40. McWhinney and Bradley, The Freedom of the Air, Netherlands, 1968 at p. 132. For more detailed illustrations see B. Cheng, supra note 21, at pp. 359 - 360.

41. B. Cheng, supra note 21 at p. 304.

42. O. J. Lissitzyn, Bilateral Agreements on Air Transport, The Record of the Association of the Bar of City of New York vol. 19 No. 4 April, 1964 p. 185.

43. B. Cheng supra note 21 at p. 305, see McGill Law Journal vol. 13, 1967 pp. 303 - 308.

44. See supra note 40 The Freedom of the Air at pp. 97 - 99 see R. Edwards, British Air Transport in the Seventies, London, 1970, p. 4.

45. See Annex to the Bermuda Agreement, para. 1.

46. See supra note 1, J. C. Cooper at p. 7.

47. See, The Public International law of Air Transport, Materials and Documents, I. A. Vlasic and M. A. Bradley, McGill University vol. 1 1974 pp. 245 - 261 Article by George P. Baker, The Bermuda Plan as the Basis for a Multilateral Agreement at p.254.

48. Ibid.

49. Ibid.

50. See ICAO Circular 72 - AT/9.1965 pp. 4 - 5.

51. Ibid. at p. 12.

52. Stoffel, American Bilateral Air Transport Agreements on the Threshold of the Jet Transport Age, 26. J.A.L.C. p. 119 at p. 129.

53. See supra note 34. Wassenbergh, at 22

54. Barry Diamond, The Bermuda Agreement Revisited, 41 J.A.L.C. (1975) p. 419 at p. 447. See also Peter Jack, Bilateral Agreements, 69 J. of the Royal Aeronautical Soc'y 473 1965, see also supra note 40, The Freedom of the Air p. 143, see also supra mote 1 Cooper at p. 12.

55. B. Cheng, supra note 21 at p. 429

56. Supra note 1, J. C. Cooper.

57. Supra note 52 at p. 122

58. Yearbook of Air and Space Law, 1965 McGill University, Canada ch. 10 pp. 184 - 192 at p. 185.

59. Supra note 54, Barry Diamond at p. 449.

60. Adriani, The Bermuda Capacity Clauses, 22 J.A.L.C. p. 406 at p. 409.

61. Supra note 40, The Freedom of the Air at pp. 142 - 144

Chapter IV

BERMUDA PRINCIPLES AS A MODEL FOR THE BILATERAL AGREEMENTS

The importance of the Bermuda Agreement in the world air transport is not simply because it involved an agreement between the two countries which were the major operators of airlines' services, but because it "served as the test case with which other bilateral arrangements could be compared".[1]

The Bermuda Agreement constituted a landmark in international air transport history. Since its signature a large number of states have followed the Bermuda principles in concluding their bilateral air transport agreements.

Both contracting parties', the United States and the United Kingdom, governments undertook to adopt and follow the Bermuda philosophy and its principles in their subsequent negotiation of air transport agreements. Furthermore there were hopes that the Bermuda compromise solution might provide a basis for a multilateral agreement.[2]

In so far as the United States is concerned, it considered that the Bermuda Agreement was a model for all its subsequent bilateral air transport agreements, and has so used it, and "the capacity formula was incorporated, in some cases with minor changes, not only in such agreements, but also, with the consent of

the other parties, in many of the agreements previously made".[3] Under the Bermuda formula many consultations have been held between the United States and other foreign countries.

The situation in the United Kingdom was almost the same. Most of the United Kingdom's bilateral agreements follow the Chicago Standard Form with regard to airport charges, customs duties, inspection fees, certificates of airworthiness and pilots' licences. With regard to traffic rights, the acceptance of the "two Freedoms" Agreement on a wide spread basis was enough, and there has been little need for agreements specifically concerned with transit rights. With regard to commercial traffic rights, and control of the route pattern, almost all the United Kingdom's bilateral air transport agreements have followed the Bermuda plan.[4] It was noted that "with only relatively few exceptions, all United Kingdom bilateral air services agreements entered into after the Joint Anglo - American statement of September 19, 1946, are essentially of the Bermuda pattern".[5]

A. Effect And Influence of Bermuda Agreement

It was not only within the United Kingdom and the United States that the Bermuda pattern was followed. A large number of the bilateral agreements of various types are registered with the International Civil Aviation Organization, and the most widely used form amongst these is that based on the relevant sections of the Bermuda Agreement.[6] The Bermuda Agreement was widely welcomed, and its provisions, especially those dealing with capacity, frequency and rates received almost global acceptance.

During the period that immediately followed the signature of the Bermuda Agreement a number of states, which had been negotiating but had not reached agreement, concluded agreements based substantially on the Bermuda formula.

The principles stipulated in the Bermuda Agreement which envisage no specific limitation or designation of frequencies or capacity, and that each nation is free to decide the capacity or number of frequencies which will be operated, attracted the states to follow them in some fashion or another.

Frequently the subsequent agreements did not follow the exact words of the original Bermuda. There were some variations adopted to meet the demands of each situation between any two contracting states.

Due to failure of some countries to register their bilateral air transport agreements with the International Civil Aviation Organization, it is not possible to give the exact number of the bilateral air transport agreements which were concluded after the conclusion of the Bermuda Agreement and were of the Bermuda type. But it has been said that "about one - third of all the bilateral air transport agreements which are in existence today are based on the Bermuda provisions, and another third are very similar in character. Some of them are of the "light Bermuda" type, i.e. less restrictive. Most of them are, however, of the "heavy Bermuda" type, i.e. containing more restrictive clauses. The additional restrictions concern the nature of the traffic, and especially the preliminary fixing of capacity (depending on the type of aircraft) and frequencies".[7]

What attracted the states to follow the Bermuda principles is that "the so - called Bermuda - type bilateral air agreement still serves as a standard for the exchange of traffic rights for scheduled services".[8] The Bermuda principles appeared to be the solution for the international air transport problems after the World War II and the failure of the International community at Chicago to produce a multilateral solution.

As mentioned that some of the subsequent bilateral air transport agreements followed the Bermuda provisions in toto and some had variations, but "without going here into all

variations, which since 1946 have been, introduced into the Bermuda standard type text, it may be noted that the principle of the 'primary objective' provision of the Bermuda is still of overriding importance"[9]. Another principle provided by Bermuda is the principle of fair and equal opportunity which is favoured by states with small airlines.

The fact is that many governments being reluctant to grant unrestricted freedom since their airlines were too weak to offer effective competition, considered the Bermuda compromise as the solution for their situation.

B. The Bermuda Plan As The Basis For A Multilateral Agreement

It was mentioned that there were hopes after the Bermuda compromise was reached that the compromise solution might provide a multilateral agreement for the exchange of commercial traffic rights desired at the Chicago Conference.

The Anglo - American Joint Statement of September 19th, 1946 concluded that the Bermuda formula should be the foundation for a multilateral agreement.[10]

The question of whether the Bermuda plan can be adopted as a basis for a multilateral agreement is a very important question and is related to the internationalization of air transport.

The subject of multilateralism was discussed by the Air Transport Committee of PICAO. The committee was to study and report to the Assembly on the matters, in particular on the exchange of commercial traffic rights in international air services on a multilateral basis. The committee submitted to the Interim Assembly held in Montreal in May - June 1946, a draft of a multilateral agreement called (the 1946 Draft). This Draft was in its nature pre-Bermuda and was discussed in commission Number 3 of the Interim Assembly.[11]

There were two important points in the draft with respect to the five freedoms and capacity : First, the draft

stated that "the Third, Fourth and Fifth Freedoms are granted only in respect of through air services on routes constituting reasonably direct lines out from and back to the territory of the contracting state whose nationality the aircraft possesses".[1] The second, Article 9 of the Draft stated that provision for the carriage of traffic in the exercise of the fifth freedom shall be made in accordance that the capacity should be related to "the traffic requirements of the area through which the airline passes in so far as these requirements are not being cared for by local and regional airlines".[13]

Not having reached unanimity of the 1946 Draft, the First Interim Assembly of the Provisional International Civil Aviation Organization adopted three resolutions dealing with the desirability of a multilateral agreement on commercial rights in international civil air transport and with the development of such an agreement. The Assembly resolved: That the First Interim Assembly affirms the opinion of its members that a multilateral agreement on commercial rights in international civil air transport constitutes the only solution compatible with the charter of ICAO created at Chicago.[14] The Assembly also resolved: That the discussion resulting therefrom be incorporated into a document which would serve as a basis of further study by the Air Transport Committee of the Council for the purpose of developing a multilateral agreement, which will take into account such a national point of view, for submission to the next annual Assembly.[15]

A Report of the Air Transport Committee on a Multilateral Agreement on Commercial Rights in International Civil Air Transport was submitted to the First Assembly of the International Civil Aviation Organization. The Report included Appendices in which there was a text of the Draft Multilateral Agreement called the 1947 Draft.[16]

The 1947 Draft was discussed by a Commission established by the International Civil Aviation Organization, and comprising thirty three states. The Commission met only once in Geneva from November 4 to 27, 1947. It was unable to reach an agreement on a text of a multilateral agreement for the exchange of commercial traffic rights. Thus the Geneva Conference ended in failure.[17]

The Commission was faced with certain problems while discussing the Geneva Draft. The major problems were related to the capacity and the fifth freedom. A Canadian proposal was submitted regarding the grant of the Five Freedoms. The proposal was that only the first four freedoms should be exchanged on a multilateral basis, and the fifth freedom should be exchanged in bilateral negotiations in accordance with Bermuda principle.[18]

The Commission decided that there was no justification for submitting an agreement in a recommended form for signature

due to the divergence of views on important issues. In short the commission did not achieve its main object to produce a multilateral agreement for the exchange of commercial traffic rights.[19]

The reasons behind the failure of the Geneva Conference are not hard to establish. "The United States and the United Kingdom had concluded the Bermuda Agreement, and, being quite satisfied with its effect in practice, did not want a multilateral agreement to replace it. This attitude was resented by other states. On the other hand, the small countries wanted to reserve their rights to contract out of the "fifth freedom", in order to maintain their bargaining position in bilateral route negotiations. Since the inclusion of a clause to this effect was unacceptable to the United States and the United Kingdom, the draft (multilateral agreement) itself was not accepted".[20]

The Geneva capacity provisions were a compromise between the 1947 Draft capacity principles and the Bermuda principles. "The draft agreement has accepted many of the basic theories of the Bermuda Agreement".[21] A general exchange of traffic privileges is provided; "it does not require or allow preliminary fixing or arbitrary division of operating frequencies or capacity; it provides for general review of economic problems after complaint following inability of the parties to settle a dispute by negotiation".[22]

The impulse to multilateralism still remains alive. To some extent that life is fostered by the success of the existing conventions. The success of the Transit Agreement is one factor. Another is the success of the International Civil Aviation Organization in the technical field in contrast to the relative failure in the air transport field. Furthermore, in the Chicago Convention of 1944 there are provisions which contain basic principles for such a multilateral agreement. For instance it appears in the preamble of the Chicago Convention of 1944, that "the contracting states agreed to grant to one another equality of opportunity".[23] Article 44 (f) of the Chicago Convention of 1944, indicates that states agreed to qualify the understanding of "equality of opportunity" by using the words "fair opportunity". But, in fact, "the contracting states are not equal in wealth, natural resources or in population. In addition to these handicaps some states are underdeveloped and some are located geographically outside the streams of air traffic. As a consequence, they are having difficulty establishing international air services".[24]

The regional approach was suggested by the Council of the International Civil Aviation Organization to the 7th Assembly.[25]

However the support of states for a multilateral approach is spasmodic and scattered. Consequently such an agreement is

far from attainment. Whatever the basic principles adopted in a multilateral agreement, universal acceptance at present is unlikely due to the differences in economic, political, technical development, and commercial levels between nations. But even if agreement could be reached on a universal basis on the basic rules to govern air transport "it would be better to agree on routes bilaterally within the framework of principles to be incorporated in a general agreement".[26]

Plainly it is most improbable that a global multilateral agreement has any chance of success; however the regional approach suggested by the ICAO Council in 1953, referred to above, does offer more hope. Efforts to regulate various aspects of air transport on a regional basis have enjoyed some success in particular in the field of charter air services and in relation to some aspects of scheduled international air transport.

The whole question of multilateralism should be reopened and a decision taken by the appropriate interests, the International Civil Aviation Organization and states, as to whether a multilateral agreement could be concluded as a basis for the operation of air services. However the question should be renewed only after a study of the equality principles. J. C. Cooper wrote " As I said ..... I hope that the missing air transport provisions in the Chicago Convention can be agreed upon and settled. But when settled and accepted, they must,

without question provide a basis for both equality of opportunity and sound and economical air transport operations. One should not be sacrificed for the other. A balance must be found".[27]

However, as submitted earlier in view of the practical obstacles inhibiting the development of multilateral solutions, and the danger that principles will be adopted that are less than just for the less strong aviation states, it is better to continue using the existing bilateral method for exchanging traffic rights. States under the bilateral agreement can make decisions that are appropriate to and advance their interests. The bilateral agreements remain an effective and flexible means of conducting international air services. It provides an appropriate degree of stability and it can be amended with relative ease to adjust to changes in traffic or the position of the parties.

This situation of the bilateral system can be maintained until a regional approach towards the exchange of commercial traffic rights is reached. If such regional approach is attained, then a multilateral approach towards the exchange of commercial traffic rights is not difficult to establish gradually on a fair and equal basis to keep the rich happy and to help the poor to get rich, but not to make the rich get richer and the poor get poorer.

C. Evaluation of the Bermuda Capacity Provisions in Bilateral Agreements

In fact the capacity determination is undoubtedly one of the most thorny problems in international civil aviation these days.[28]

The capacity clauses in the Bermuda Agreement were drafted in general terms, just formulating some broad ideas, and therefore, to a certain extent, vague and flexible, creating possibilities for protection as well as for a necessary amount of freedom.[2] These clauses can be divided into two categories of stipulations. There are some general rules as to competition which state "that the air transport facilities available to the traveling public should bear a close relationship to the requirements of the public for such transportation", "that there should be a fair and equal opportunity for the carriers of the two nations to operate on any route between their respective territories", and "that in the operation by air carriers of either government of the trunk services, the interest of the air carriers of the other government shall be taken into consideration so as not to affect unduly the services which the latter provides on all or part of the same routes".[30]

The Bermuda Agreement has introduced a regime of controlled competition in contrast to predetermination and prior allocation of capacity. This regime is subject to the capacity

principles laid down in the respective agreements.[31] Another clause deals more closely with competition in so far as it sets rules as regards the capacity which the designated air carriers of the contracting parties are allowed to operate. It states that this capacity should, in the first place, have a bearing on third and fourth freedom traffic.[32]

The right to embark or disembark at a point or points an international traffic, in the territory of the other contracting party, destined for and coming from third countries is not unlimited. This right shall be applied in accordance with the general principles of orderly development to which both governments subscribe and shall be related to certain principles stipulated in paragraph 6 of the Final Act of the Bermuda Agreement.[33]

The provision of capacity for the carriage of fifth freedom traffic should be related to that traffic provided for third and fourth freedom traffic, and should not be "excessive" in relation to that capacity, for the primary purpose of the air services is to carry third and fourth traffic and the secondary purpose is to serve other types of traffic. Hence the use of the term "primary justification traffic" to describe third and fourth freedom traffic and its role in post - Bermuda agreements, and the use of secondary traffic to describe all other types of traffic.

Although the Bermuda capacity clauses leave room for fifth freedom traffic being carried, nothing, either in the Final Act or in other parts of the Agreement, offers "a concrete answer to the question of the quantity of fifth freedom allowed in relation to the quantity of third and fourth freedom".[34] It would be contrary to the very spirit of the Bermuda principles to fix such a relation because these principles allow certain amount of latitude and flexibility which are "a condition sine qua non" for the young and dynamic made of transport, civil aviation represents".[35]

As to control of frequencies and capacities a certain amount of such control will result, in actual practice of the Bermuda plan, as Lord Winster stated, by virtue of "ex post facto" review.[36]

The application the Bermuda capacity clauses is based on the idea of ex post facto review. To apply such principle, ample consideration should be given to the fact that the presence of transport facilities always tends to stimulate the traffic requirements of the public.[37] The principle of an "ex post facto" review means that a contracting state, can under the consultation provision ask for a review of capacity in the event it feels that the interests of its carriers are being adversely affected. "But such a review, comes after and not before the market is tested".[38]

It has been observed that the Bermuda capacity principles "provide certain safeguards for those countries which fear their more powerful competitors and would prefer to excercise considerable control over the operation of foreign airlines serving their countries".[39] On the other hand, the question of the adequacy of the Bermuda capacity clauses for capacity control has been increasingly raised. The general and contradictory way in which the Bermuda clauses were couched, making them unsatisfactory from a legal point of view and resulting in little restriction on capacity or frequency, is often criticized.[40] In reply it has been said that the broad framing of the Bermuda principles is an act of wisdom which has a sound basis of reasonableness.[41]

These critisims and praises and their implications are of great importance to be considered in order to better appreciate the problems which have arisen in the operation of the Bermuda principles. To start with "the advantages and difficulties of the Bermuda plan can best be understood by comparing it with other agreements and plans for economic control....".[42] Bermuda has been compared with predetermination as follows:

"Predetermination spelt out what one might do. The Bermuda formula was different. It said that one might operate as many services as one liked within certain rules".[43]

There are reasons for the adoption of one or the other

of these policies. A policy of giving high priority to the interests of the national airline is followed by most countries. It is always aimed in the bargaining process of many of those countries to secure the right for their national airlines to a half - share of the traffic on the routes exchanged. Other countries actually ensure by the terms of their bilateral agreements that foreign carriers are not allowed to offer more capacity than their own carriers on the routes agreed. Others favour a more liberal policy based on the broad principles of "fair and equal opportunity" for the carriers of either side.[44]

However the implementation of any bilateral agreement depends upon the approach to interpretation. Interepretations differ from party to party according to their understanding. What gives the agreement validity is what the parties wish to accord in the agreement.

The language of the Bermuda principles for the essentially self - regulating regime which they comprise is more than adequate. The Bermuda language "would not be precise enough for a system in which an external authority were enforcing them as statutes, the principles are not statutes and there is no external international authority to enforce them".[45]

Footnotes

1. Thornton, International Airlines and Politices, the University of Michigan, 1970 p. 35.

2. S. Wheatcroft, Air Transport Policy, London, 1964 at p. 71.

3. C. J. Lissitzyn, The Record of the Association of the Bar of the city of New York, vol. 19 No. 4 April, 1964 at p. 189.

4. Shawcross and Beaumont on Air Law, London 1966 3rd, ed. vol. 1 pp. 288 - 289.

5. B. Cheng, The Law of International Air Transport, London 1962 pp. 239 - 240. A joint statement was issued on September, 1946 after representatives of the U.K. and the U.S.A met in London.

6. ICAO circular 72 - AT/9 p. 12.

7. P. Sand, G. Pratt, J. Lyon Historical Survey of the Law of the Flight at 35. See Appendix IV of this thesis.

8. H. A. Wassenbergh, Public International Air Transportation Law in A New Era; The Netherlands 1975 p. 39.

9. Ibid.

10. See the Joint Statement by United States and British Governments, International Air Transport Policy, Dept. of state Bulletin, vol. XV, No. 378, 1946, September, 29, pp. 577 - 578.

11. Disscussion on the Development of a Multilateral Agreement on Commercial Rights in International Civil Air Transport, P.I.C.A.O. Doc. 2089 - EC/57.

12. Ibid.

13. Ibid. see para. C of Article 9 of the 1946 Draft at P.I.C.A.O Doc. 2089 - EC/57.

14. Res. IV. see P.I.C.A.O. Doc. No. 2089 - EC/57. at p. ix. Commission No. 3 of the first Interim Assembly October, 1946.

15. Res. V, P.I.C.A.O. Doc. No. 2089 - EC/57 at p. x.

16. P.I.C.A.O. Doc. No. 4014, AI - EC/2. 27/-3 /47, Proceedings of the Air Transport Committee. See also supra note 2 at p. 71, S. Wheatcroft he wrote "The hope of having a multilateral agreement based on Bermuda Agreement "was; however dashed at the Geneva Conference organized by ICAO in 1947 specifically for the purpose of trying once more to negotiate a multilateral agreement on commercial rights".

17. See supra note 2 at p. 71, see also, Yearbook of Air and Space Law, 1965 at p. 184.

18. Records of the Commission, vol. 1, ICAO Doc. 5230 A2-EC/10 at p. 35 and vol. II part 1, ICAO Doc. 5230 A2-EC/10 at p. 39.

19. Annex III, Final Report, Records of the Commission, vol. 1, ICAO Doc. 5230, A2-EC/10 at pp. 133 - 150.

20. Supra note 7.

21. J.C. Cooper, The Proposed Multilateral Agreement on Commercial Rights in International Civil Air Transport, at p. 20, see also J. C. Cooper. The Bermuda Plan; World Pattern for Air Transport, Foreign Affairs, 25 October, 1946 at pp. 1 - 15.

22. Ibid. The Proposed Multilateral Agreement at p. 20

23. McWhinney and Bradley, The Freedom of the Air, the Netherlands 1968 at p. 124.

24. Ibid.

25. A7-WP/7, EC/2 26, March, 1953 ICAO Doc's, for more details see Sir George Cribbett, some International Aspects of Air Transport, Journal of Royal Aero Society p. 669 at pp. 681 - 682 (1950)

26. Supra note 21 at p. 20, see also supra note 2 at p. 71

27. Supra note 21 Cooper at p. 21

28. Stoffel, American Bilateral Air Transport Agreements on the Threshold of the Jet Transport Age, 26 J.A.L.C. p. 119 at p. 129

29. Adriani, The Bermuda Capacity Clauses. 22 J.A.L.C. p. 406

30. Ibid. at pp. 406 - 407

31. Supra note 5, B. Cheng at p. 429

32. Supra note 29 at p. 407. As a matter of fact, the rule in question appears in paragraph 6 of the Final Act of the Bermuda Agreement.

33. For more details and explanation of paragraph 6 of the Final Act see Adriani, supra note 29 at p. 408.

34. Supra note 29, see also Barry Diamond. The Bermuda Agreement Revisited, 41 J.A.L.C. (1975) p. 419 at pp. 447-448.

35. Supra note 29 at p. 408

36. Supra note 21 Cooper, The Bermuda Plan, at p. 12

37. Supra note 29 at p. 409.

38. McWhinney and Bradley. The Freedom of the Air N.Y 1968 at pp. 143 - 144.

39. Stoffel supra note 28 at p. 122

40. R. Thornton, International Airlines and Politices, Michigan University (1970) at p. 37, see Bilateral Study A Ward Planned Aviation Week, January, 28, 1974 at p. 21, see also supra note 32, Barry Diamond at p. 449.

41. Adriani, supra note 29 at p. 411, see G. Seabrooke, Air Law 113 - 16 (1964). see also Diamond supra note 34 at p. 449.

42. J. C. Cooper The Bermuda Plan, 25 Foreign Affairs, October, 1946, at p. 6.

43. P. Jack Bilateral Agreements at p..476

44. Edwards Report at p. 4, British Air Transport in the Seventies, London (1970)

45. Barry Diamond supra note 34 p. 451

Chapter V

THE RECENT DEVELOPMENTS IN APPLICATION OF THE BERMUDA PRINCIPLES

For three decades international civil air transport relations between the countries have been governed and regulated by a vast number of bilateral air transport agreements. Most of these relations have been conducted according to the Bermuda principles which provided a standard form for the exchange of international air transport rights. Today many governments feel that they were too generous to the other governments when they granted those rights and made those arrangements. Now "they seek to protect their own national airlines by stretching the liberal Bermuda principles to suit their purposes or by asking for amendment or renegotiation".[1]

Within the present system of international civil aviation regulation it must be observed that the Bermuda capacity principles serve as a precedent for traffic restrictions.[2] As already mentioned[3] inherent in the Bermuda principles are restrictions on the freedom of airlines to provide capacity.

More restrictive application of the Bermuda capacity clauses are dictated by the fear that strong carriers will make use of the rights granted to them without regard to sound commercial principles and operate services without sufficient

economic justification. The fear of the sixth freedom traffic is another reason to adopt restrictive attitude towards route grants and the capacity permitted on the routes granted.[4]

Restrictions have been imposed. Although those restrictions are made ostensibly within the Bermuda principles framework, they "have in fact gone beyond what the parties to the Bermuda Agreement could reasonably be presumed to have intended".[5] There are numerous examples of these more extreme types of restrictions. Wassenbergh has pointed that "since it is still regarded as more or less a question of 'boni mores' not to go any further than the Bermuda restrictions, the vast majority of the Bermuda type, although in practice more far-reaching restrictions are often in force. Thus the number of route restrictions and frequency limitations is legion, and there are many "no local traffic" sections, i.e. sections on which certain airlines are not allowed to embark local traffic".[6]

Governments can impose restrictions by allowing a limited number of foreign carriers to operate into their territory, by limiting the granting of routes to foreign airlines, limiting the number of frequencies operated by foreign airlines over existing routes, restricting the number of passengers that may be carried on routes or route segments, limiting the operations of all - cargo services or the amount of freight to be carried, limiting the days and hours foreign airlines may operate over

routes also operated by national airlines in order to avoid duplication of services, and restricting the charter flights operations operated by foreign airlines.[7] As one writer has observed, to face "the continued increase of the number of airlines and the expansion of their services, and the introduction of aircraft with ever bigger capacity, governments are inclined to ever further regulate airline competition, as a defensive reflex".[8]

The international air transport relations are facing some structural problems which bear on the Bermuda Agreement. It was said that "the proliferation in the number of international airlines, the rapid changeovers in equipment brought about by new technology, and the problem of over-capacity",[9] are three closely related problems.

A. Bermuda Type Agreement in Operation

Since the Bermuda Agreement was signed, there have occurred many changes in the whole structure of international air transport. Some of these changes such as the traffic increase, the emergence of new markets, the emergence of new airlines, and the introduction of new aircraft changed the whole pattern of international air transport. These changes contrast with the conditions of international air transport in 1946. Other problems such as "noise abatement and other environmental issues, curfews and airport charges and security, unknown in 1946, are steadily imposing restrictions on scheduling and operational liberties".[10] The introduction of the charter services of various and in some case new kinds and the growing of their market into an important segment of the air transport market constituted new phenomena unknown in 1946.

These factors and other matters that have changed in the last twenty years such as the growth of nationalized industries in the United Kingdom, the spread of social welfare in western Europe, the economic strength of West Germany and Japan, the emergence of the Arab countries with their oil resources, and an expansion of the consumer market, all bear on the question of whether the Bermuda principles are still appropriate to and satisfy the needs of international air transport.[11]

As mentioned before, international air transport relations

are regulated on a bilateral basis, and most of these bilaterals are of Bermuda-type. A Bermuda-type agreement is well suited to states of relatively equal bargaining strength. But it is poorly suited to states which are inherently unequal in bargaining strength.[12]

It is of importance to note that two different points of views concerning the interpretation of Bermuda principles are held by the two contracting parties to the original Bermuda Agreement. The British considered that the Bermuda clauses are a guide to the ethical conduct of business or a gentlemen's agreement. The British note that during the original talks each side made concessions, but they argue that such concessions are no longer practical in application and that the loose wording describing these concessions leaves too much room for broad interpretations.[13] Many feel that the United States has bent and twisted the vague terms of the pacts to the advantage and the benefit of the United States' carriers in international operations. It is consistently held by the United States that a Bermuda form of accord promotes free enterprise and open competition, without restrictions on a carriers' resources and operating capability. The United States has always contended that the agreement is a legal paper, and used its own interpretation of Bermuda principles on two occasions in an attempt to reduce frequencies and capacity of transatlantic flights operated by KLM, SAS and Sabena to equalize benefits with Pan American

World Airways. In another instance, the United States charged the Peruvian government with violations of Bermuda concepts when the Peruvians demanded that Braniff international flights between the United States and Lima be reduced to the same number of those flown by Aeroperu.[14]

It would appear that the American notion of the freedom of the air incorporated in the Bermuda principles has been fairly described by one writer as follows:

"The freedom of the stronger (in terms of traffic generating capability and bargaining power) to freely compete with the weaker"[15]

One of the most important principles of the Bermuda Agreement is the principle of fair and equal opportunity. This principle has been interpreted in two diametrically opposed fashions. The United States interprets the principle of fair and equal opportunity to mean that the airlines of each contracting party are having fair and equal opportunity to carry an amount of traffic equal to the amount of traffic that its country generates. It was stated that "out of deference to the Bermuda principles to which it has long been committed, the United States has even been willing to accept situations in which it carries twenty percent less traffic than it generates, but beyond that point the United States is understandably adamant. Since traffic statistics reveal it has already been pushed to this point by the restrictions imposed by foreign governments,

the United States is currently looking for ways in which to redress this adverse balance".[16] The United States is seeking a regulatory system to enable its carriers to carry a traffic amount equal to at least eighty percent of the traffic that is generated in the United States, rather than the preservation of the Bermuda plan itself.[17]

It is apparent that there is a dual objective, at least for those countries that have national carriers, in making the bilateral agreements. The first objective is, the creation of a widespread network of air services under conditions that permit economic and efficient operations for the public's benefit; the second objective is, assurance that the national carriers of the country have a fair opportunity for conducting operations on that network.[18] Certainly that is the dual objective of the Government of the United States.

The main reason why the majority of smaller states prefer tighter economic regulation is that the twenty percent of air traffic available for competitive capture under normal Bermuda would go to the stronger air carrier.[19] It is difficult to determine the effect of a tighter economic control in the development of the international scheduled air services.[20]

Furthermore the review machinery has been inadequate. The agreement clearly envisages close consultation between the parties to ensure the observance of the principles, in particular

the capacity principles. Where one party alleges a breach has occurred the governments under the Bermuda principles consult to ascertain whether there is a breach, and if there is a breach to rectify it. However it has been the United States' policy as part of its larger policy to oppose every prior restraint on capacity in air services to avoid even ex post facto discussion of capacity as much as it could.[21]

On the basis of evidence made available by Britain the commercial advantage to the United States over the United Kingdom of the existing Bermuda Agreement is a factor of three to one. There is a sever imbalance in commercial terms particularly on the North Atlantic. Subsequent statistics suggest that whether the imbalance in favour of the United States is not as great as that suggested above, it is still substantially of an order of two to one. According to the British Government the Bermuda earning balance is as follows:

Bermuda Earning Balance*

Route	£ Million
British airlines	
UK - USA North Atlantic	127
Hong Kong - USA	nil
Bermuda and other dependent territories to USA	3
Fifth freedom services beyond the USA	nil
Total British airlines	130

* British Department of Trade figures.

Route	£ Million
U.S. airlines	
US - UK North Atlantic	183
USA - Hong Kong	51
USA to Bermuda and other dependent territories	20
Fifth freedom services beyond UK	17
beyond Hong Kong	22
Total US airlines	293

The dissatisfaction of the British with this situation and a feeling on their part that the Bermuda Agreement was in any event inappropriate to present conditions resulted in the United Kingdom deciding to terminate the agreement. Notice of termination was given on June, 1976 and it will become effective on June, 22, 1977.[22] The notice was given in accordance with Article 13 of the agreement. At the same time the United States was invited to enter into negotiations for a revised agreement. The negotiations are taking place and are centered on capacity, routes, and fares.

The main objectives of the British in renegotiating the Bermuda Agreement are the establishing of machinery for restricting capacity and securing a bigger share of the market for their airlines.[23]

Clearly the United Kingdom action in terminating the Bermuda Agreement that is the prototype of all U.S. agreements and the basis of its policies is the strongest attack that has been launched on its international airline system since the Bermuda Agreement itself. Furthermore it brings into question the credibility of the Bermuda Agreement as a prototype. Plainly, as has already been noted, doubts have been expressed about the settlement incorporated in it for many years. These doubts surely must crystallize into certitudes now that one of the parties to the prototype finds it unsatisfactory, so unsatisfactory that rather than try to amend it, it has terminated it. Already evidence is growing that other countries have been influenced by the United Kingdom action. The Japanese Government has called for a review of its agreement with the United States. There are indications that Italy has been encouraged and other countries are waiting in the wings.[24]

It was observed that the current negotiations between the United States and the United Kingdom will affect the other governments that have agreements of Bermuda - type. It was also observed that "the current debate between the United States and Britain over a new air agreement points to a trend away from a free market style of international airline operations towards a share-the-business approach".[25]

1. Frequencies

There is no determination under the Bermuda Agreement of the number of flights which may be operated. Each airline designated under it may operate services at a frequency or provide such capacity as it considers justified provided that the general principles are observed.

The number of frequencies to be provided is related to the traffic offering on the route. The more frequencies the airline or airlines operate on a route the lower the utilization of capacity in each aircraft until a stage is reached when operation becomes uneconomic. When that stage is reached the traffic available does not justify that frequency of service. However, if traffic growth takes place then in accordance with the Bermuda formula a frequency increase will be justified.

It will be appreciated that the net effect of the Bermuda principle is to leave the question of provision of capacity to the airlines. They are supposed to be self-regulating and it is assumed that the financial discipline that should flow from them, being basically commercial organizations, will cause them to regulate themselves in a reasonable manner - in the Bermuda context, to provide capacity adequate to carry the international traffic offering. Furthermore, unfair excessive competitive practices would be inconsistent with the principles.

It is highly questionable whether the self-discipline or

self-regulation has indeed worked as a number of factors tending to tempt airlines to provide excessive capacity or causing other airlines to be unable to provide adequate capacity have been overlooked. The effect of this has been overcapacity situations for long periods of time on certain routes and unequal distribution of the commercial benefits from the operation of air services on other routes.

The better solution would be control of frequencies. This would permit the maintenance of a close relationship between traffic offering and the capacity provided by the airlines. Capacity can be adjusted to traffic growth in a given period. The result of creating a balance between traffic and capacity will reduce waste and permit fares to be charged at lower amounts than would otherwise be the case.

Additional frequencies can be operated either by the same designated airline or by designating a new airline. But "many countries with only one national airline have been reluctant to allow operations by more than one airline of another country".[26]

Frequency determination in bilateral air transport agreements is a very serious issue. Some bilaterals do not contain provisions concerning frequencies restrictions or providing for a preliminary fixing of frequencies. Other bilaterals limit

the frequencies that the designated airlines of both contracting parties are allowed to operate and the prior approval of the other state on any frequencies changes is required. "Some bilaterals - usually those which do not provide traffic rights beyond the capitals of the parties merely pre-determine frequencies".[27] Some bilaterals determine the frequencies as well as the number of fifth freedom passengers that can be carried on each flight.[28]

Coming back to the Bermuda Agreement, one notices that the services provided by a designated airline shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country of which that designated air carrier is a national and the countries of ultimate destination of the traffic.[29]

The question which may arise is how it could be possible to determine whether the traffic demands on a given route require additional frequencies? In this connection statistics are needed to determine that relationship. But in light of the fact that not all the countries in the world have developed satisfactory statistics on air transportation so other method should be found. In any event, the determination of frequencies can be fixed by the airlines according to the profitability of the operation on a certain route subject to the governments' approval as the market demands.

The governments can impose additional restrictions concerning the nature of the traffic, "and especially the preliminary fixing of capacity (depending on the type of aircraft) and frequencies".[30]

A crucial factor in determining the number of frequencies that should be operated over a given route for specified period is the load factor. In calculation of capacity and their fare, ultimately the load factor chosen will determine the frequency of the service. The higher the load factor chosen the lower will be the permissible frequency, likewise the lower the load factor chosen the higher the permissible frequency. In fixing a load factor, provision will usually be made for temporary fluctuations and short term growth with the consequence that the load factor will naturally tend to be on the low side. In any event frequency, capacity, and load factor are closely interrelated concepts which must be considered together with such other factors as the volume of frequencies, the type of equipment and the development potential of the route.

Agreements with respect to frequencies usually are stipulated either in the annex to the bilateral air transport agreement or in the memorandum of understanding or in a special arrangement to be made between the concerned airlines subject to government approval.

2. Capacity

With the development of air transport the available capacity increased rapidly. Generally international commercial aviation has been affected by the problem of overcapacity, and almost all carriers have suffered. "Reactions to this economic malaise accompanying the excess capacity have varied".[31] First, a significant rate cut was urged to generate new traffic. Secondly, forms of multinational and interline cooperation have been considered by various lines and countries, particularly in Europe. Thirdly, "the European countries have demanded access to interior American cities, considered by American carriers to be domestic markets. They argue that the United States policy of seeking equal economic value in traffic rights received for American lines in return for the grants given foreign lines is outmoded and that their lines should have the same freedom of access to the United States market that American carriers have to the European market".[32] Finally, a renewed tendency has occurred to resort to capacity restrictions when national carriers are in trouble. "This tendency is noticeable even in the United States when the concern both in the industry and in the government over a sagging share for the market may be leading towards a more restrictive American policy towards commercial freedoms".[33]

Concerning the fifth freedom sections, the only real restriction that the Bermuda clauses provide on through services is

that account must be taken of the interests of local and regional air carriers. "This "taking account" of local and regional services can not, however, mean that the operation for long - distance services are to become illusory; for this would jeopardize the principle of "fair and equal opportunity"."[34]

The principle of fair and equal opportunity was drawn up at Bermuda "to protect against "unfair trade practices"."[35]

Different interpretations have been made concerning the principle of "fair and equal opportunity" and whether it means fair opportunity to compete and operate or to share the market and the operations. The United States interpretation is based on the fact that there shall be fair and equal opportunity for each designated carrier to operate and compete in the market. But the British want a 50-50 share of capacity. The United States wants unrestricted operating rights. "The clause on capacity states in part" that services provided by designated carriers "shall retain as their primary objective the provisions of capacity adequate to the traffic demands between the country of which such air carrier is a national and the country of ultimate destination of the traffic".[36]

At present the traffic share between the United Kingdom and the United States carriers in the North Atlantic is close to equal, and the British wish to see firmer capacity control in that area to insure this relationship will be sustained.

But the British hold that in global markets, where United States and United Kingdom flag carriers compete, the traffic share is about 70% for the U.S and only 30% for the U.K.[37]

The capacity has been the principal competitive medium. However, in recent years, excess capacity, caused by commitment to too many aircraft and by declining traffic, has been a severe economic burden to the aviation industry. There are three principal international capacity issues that require attention. The issues are excess capacity, market share and sixth freedom capacity.[38]

In so far as the excess capacity is concerned the preferred approach is uniliteral reductions by the carriers. Most of the excess capacity resulted from the purchase of aircraft in anticipation of continued traffic growth which did not occur.

The second capacity issue is market share. The United States has traditionally espoused the Bermuda system, under which each carrier determines for itself the level of capacity it believes is warranted, subject only to expost facto review by governments. The United States is faced with increasing criticism of the Bermuda system by foreign governments whose preconceptions of competitive principles differ from the United States preconceptions.

The third issue will be discussed in the following section.

3. The Sixth Freedom Issue

Sixth freedom is a term applied to the carriage of traffic between two foreign countries via the home state of the carrier. It is no longer used to mean the carriage of cabotage traffic.[39]

Many views have been expressed in connection with the sixth freedom traffic. Bin Cheng, in the Law of International Air Transport, defines the sixth freedom as follows:

"The so-called sixth freedom in its present meaning is merely a combination of the third and fourth freedoms secured by the flag - state from two different countries producing the same effect as the fifth freedom vis-a-vis both foreign countries". Another definition is that "6th freedom is a term applied to that type of fifth freedom traffic carried from a point of origin in one foreign country to a point of destination in one foreign country via the country of the nationality of the airline". The American position is that the sixth freedom traffic should be classified for purposes of capacity as fifth freedom traffic, not as third and fourth freedoms traffic. The practical significance of this view is that a carrier which carries a considerable amount of sixth freedom traffic will not be entitled to take that into account when establishing the capacity which it may provide or operate. Indeed the American Government asserts that excessive fifth freedom operations have severely distorted traffic levels and distribution in certain markets and is seeking

bilateral review of foreign carrier operations as a matter of priority.[40]

The foreign airlines most frequently mentioned in connection with the sixth freedom problem are KLM, SAS, and Sabena. According to the American view, most of the capacity operated by these airlines across the North Atlantic is used not for "primary justification", which is third and fourth freedom, traffic between the United States and the nation of the carrier, but for traffic between the United States and third countries via the homeland of the carrier. But most of the European countries have refused to accept the American view of what sixth freedom traffic means. These countries regarded traffic carried via the homeland of the carrier (sometimes called sixth freedom traffic) as merely a combination of third and fourth freedom with respect to the carriers nation, and therefore as not covered by the restrictive Bermuda standards. The "sixth freedom" problem does not appear to have been anticipated at Bermuda.[41]

Although the sixth freedom appears to be little different from the fifth freedom, most countries (the United States is one of the exceptions) make a distinction between the two kinds of freedoms. The opportunity for sixth freedom may be an important consideration in assessing the balance of opportunity in the exchange of traffic rights.[42]

The sixth freedom traffic "developed as national carriers

built their networks around their home countries with their home bases as the hubs of their services. In the home country traffic is transferred from one service of the airline to another for onward international travel".[43]

It may happen that one carrier will always have to make an intermediate stop in its homeland and to change the line number of its service and probably the aircraft as well, while the carrier of the other party may operate direct service to the points concerned under the terms of bilateral agreements concluded with the states where these points are situated. "The carriage of such traffic is thus an advantage derived from the agreement by a carrier flying via its homeland, but it is not an advantage for the carrier flying direct from its homeland".[44]

The sixth freedom problem is related directly to the capacity and the commercial traffic rights which a state is entitled to operate on international air routes.

The air traffic market to which a designated air carrier is entitled consists of traffic to which the air carrier has a primary entitlement and traffic to which it has only a secondary entitlement.[45]

The primary entitlement traffic is that kind of traffic whose initial origin or ultimate destination as shown on the ticket or waybill or combination of waybills, is in the country

of which transporting air carrier is a national, whether or not the traffic passes through, connects at, or stops over for any length of time within the period of validity of the ticket at any point or points en route, and also "the traffic stopping over for twelve hours or more at a point in the country of which the transporting airline is a national".[46]

The secondary entitlement traffic is that kind of traffic having neither its origin or destination (ultimate destination), as shown by the ticket or waybill or combination of tickets or combination of waybills in the country of which the transporting air carrier is a national, irrespective of whether the initial origin or ultimate destination of the traffic is intermediate to (fifth freedom traffic), or beyond (sixth freedom traffic) the terminals of the route over which it is transported and also "the traffic which passes through, connects at or stops over for less than twelve hours at a point in the country of which the transporting airline is a national".[47]

Furthermore the right of one airline to provide capacity for sixth freedom traffic shall not alter the right of the other airline for all traffic whose initial origin or ultimate destination is in the country of the nationality of which the latter airline possesses. The bargaining position, in this situation, of each party is not affected because sixth freedom traffic is regarded as traffic which is the primary entitlement of the airline of the country where it makes stopovers of at least twelve hours.[48]

This comprehensive interpretation is given in an understanding reached between the United States and the Scandinavian countries in June, 1966.[49]

In order to restrict the carriage of sixth freedom traffic either restriction must be placed on the provision of capacity between the territories of the two contracting states, or in the case of the Bermuda-type agreement restrictions can be imposed designed to ensure that the existance of sixth freedom service is not advertised to the traveling public. An example of the second approach is to be found in the U.S.-Canada bilateral air transport agreement of January 17, 1966.[50]

If the sixth freedom traffic is considered as fifth freedom traffic then it is covered and falls under the Bermuda capacity principles which restrict fifth freedom traffic by definition to the role of secondary justification traffic. On the other hand, if the sixth freedom is considered as merely a combination of the fourth and third freedoms, then it constitutes a state's primary justification traffic.

As already noted the United States considers "sixth freedom traffic" as a form of the fifth freedom; therefore, the Bermuda Agreement covers both.[51] The United States is concerned to extend its power over the own traffic market as much as possible for negotiating and trading purposes and at the same time "multiply its efforts to restrict foreign carriers as much as

possible to their traffic market to ensure that the foreign carrier carries a minimum of traffic which cannot be called his own ".[52] The European countries including Belgium, the Scandinavian countries and the Netherlands, who profit from the carriage of such traffic, considered that the sixth freedom is a combination of third and fourth freedoms. It is fourth freedom flight when coming into their home country and third freedom flight when leaving.[53] Therefore it is not covered by the restrictive Bermuda standards.[54]

Part of the sixth freedom problem lies with the statistics concerning origin and destination of traffic. This problem, in turn, is absed on the absence of agreed definitions of the terms origin and destination.[55] In connection with this problem, it was noted that "the sixth freedom problem will remain with us since the Bermuda principles are deliberately vague and their application continues to be not wholly satisfactory to any party to this agreement".[56]

However, considering the sixth freedom as acombination of fourth and third freedoms traffic would be legitimate "since this traffic is carried on two different services which are each subject to their own capacity regulations, being operated along two different routes from the airline's own country, through in opposite directions, each with its own terminal and therefore covered by separate (sets of) aviation agreements".[57]

The right to carry such traffic is based on the rights

secured from other countries. First, the right to carry fourth freedom is secured from one country and second, the right to carry third freedom is secured from other country. The combination of these two freedoms constitutes two freedoms - fourth and third - secured from two different countries. The carriage of such traffic produces "results identical to those produced by grants of fifth - freedom rights obtained from both these countries".[58] Furthermore "the validity of classifying the right to carry such traffic as a privilege distinct from the third and fourth freedoms which has to be separately granted is controversial".[59]

The definition of the sixth freedom traffic as a combination between fourth and third freedoms is the precise definition. Some used the expression "combination between third and fourth freedoms". The latter is not a precise expression for the nature of such traffic is the carriage of the fourth freedom available to one country by its national carrier to the homeland of the transporting carrier. Such right, the fourth freedom, is exercised because it is granted by a bilateral agreement between the two countries. Thus traffic will be carried again to a third country as a third freedom traffic legitimate under a bilateral agreement between the middle country - the country which the transporting carrier bears its nationality -, and the third country - The country of the ultimate destination of the traffic-. Accordingly, it then would be imprecise to use the expression "combination of third and fourth freedoms" because the so-called

sixth freedom can not be so. It is more accurate and precise to use the expression "combination between fourth and third freedoms".

Another aspect is that Sir George Cribbett wrote that "The sixth freedom describes cabotage". This was right because he wrote this according to the documents which were prepared by the United Kingdom in 1944 and which stated the freedoms of the air. The following definition was produced and carried number (6), reading as follows:

(6) The right to convey passengers, mails and freight between two points in any one country not being the country of origin of the aircraft.

This definition, rightly, describes the cabotage, and Sir George Cribbett, when he wrote in the Royal Journal of the Royal Aero, Society in 1950 "The sixth freedom describes cabotage", it is believed that he meant the freedom which bears number (6) as indicated in the United Kingdom's Document mentioned above. Yet another factor was that the sixth freedom, as known today, was not known at the time Sir George Cribbett wrote his statement. It is not right that Sir George Cribbett considered the sixth freedom issue, as it is known today, as cabotage, as some writers like Stoffel assert, when he wrote "some authorities, like Sir George Cribbett, call cabotage the "sixth freedom".

B- The Impact of the New Aircraft, and the Concorde

A completely new era began with the introduction of the widebodied jet aircraft. The introduction of this subsonic aircraft and recently the supersonic aircraft has affected the international civil aviation industry in many ways.

This revolution in the aviation industry began with the introduction of the jet aircraft in air transport. However, the introduction of jet aircraft has brought about such rapid and profound changes in the conditions of the industry.[60] Many aviation regulations, such as safety and air transport regulations, were radically changed to meet the jet revolution.

The history of the introduction of jet aircraft and the development of jet aircraft as transport vehicles goes to the beginning of the 1950's, when work on the development of turbine - powered transport aeroplanes was concentrated almost entirely in Britain because of a conscious attempt by this country to leap - frog into a leading position as a producer of civil aircraft.[61] The real competition between the manufacturing states started, in the mid 1950's to produce a new product of superior characteristics. In the late 1950's several types of jet aircraft were introduced and "the major airlines were faced with the need to replace the whole of their existing fleets with jet aircraft. This has been one of the basic reasons why the transition to jets has been accompanied by a general problem of excess capacity throughout the industry."[62]

The total re-equipment with jet aircraft was due to the major characteristics of the jet revolution. The jet aircraft had an overwhelming competitive appeal, for it flies at speeds in excess of 550 mph and cuts hours of travel time trom long journeys.[63] Besides, the jet aircraft offers vastly superior standards of comfort in comparison with other modes of travel.

The available capacity for the public to travel by air increased rapidly with the introduction of jet aircraft. The use of jet aircraft created a greater number of seats in each aircraft and this meant more capacity for the same number of frequencies.[64] The productivity of each individual aircraft has been vastly increased with the introduction of jet aircraft. The productivity of any transport vehicle is the product of three factors : payload capacity, operating speed, and hours of utilization (per day or year).[65]

It is a fact that the aircraft's productivity increases with speed and the increase in aircraft speed is what commercially attracts the airlines. But two questions may arise in this connection. The first is how much it costs to make the aircraft go faster, and the second is the scheduling problems which may be encountered when an airline introduces a new aeroplane which is very much faster than that being replaced.[66] In this connection, there are certain facts to be taken into consideration.

First, the high speed of jet operations does not necessarily carry with it an inherent penalty of high operating costs. Socondly, the scheduling problem can be alleviated by co-operation between airlines in planning their schedules. "It is for this reason that the large increase in speeds associated with the introduction of jet aircraft must be regarded as the first of several pressures towards increased airline co-operation".[67] The need for co-operation between the airlines with the advent of the jet age has considerably increased, especially for smaller airlines. The advantages of such co-operation are that it reduces the costs of airline operation and, in this case, "it could facilatate the costly change over to jet aircraft operations".[68] The co-operation also can strengthen the competitive, and sometimes the air policy, position of the partners.[69]

Economics of aircraft size is another important issue. It is generally admitted that the operating costs per unit of payload of larger aircraft are lower than the smaller aircraft. It can be regarded that "aircraft operating costs per unit of payload will decrease as size increases".[70] But it must be noted in this connection that the extra seats which the jet aircraft provides must be sold so as to decrease the operating costs arising from the use of a larger aircraft.

Technology will never stop producing more new modes of transport. As far as the new aircraft technology is concerned,

it has taken two alternate directions. The first concentrates on moderate capacity at high speed and is developing the supersonic transport (SST's).[71] The second concentrates on high capacity at moderate speed and is producing the Jumbo Jets (Boeing 747) and the airbuses (Douglas DC-10 and Lockheed 1011).[72]

The British and the French Governments signed on November 29, 1962 an agreement on international collaboration for production of a new supersonic aircraft called the Concorde. Concorde, the first supersonic civil aircraft in the Western World, is jointly built by Aerospatial - French and British Aircraft Corporation. It was granted its French and British certificates of airworthiness respectively October 10, 1975 and December 5, 1975[73] after having complied with the requirements of the most comprehensive ground and flight tests program ever achieved for a commercial airliner.[74] The Concorde started scheduled operations on January 21, 1976 when British Airways flew its first supersonic passenger services from London to Bahrain; on the same day Air France flew its first commercial Concorde flight from Paris to Dakar, Senegal and Rio de Janeiro, Brazil.[75]

Even before the Concorde was completed there was opposition, centered in particular in the United States, to the concept. The main objection to the Concorde was that it had adverse effects on the environment, was wasteful, uneconomic, fuel-hungry, and excessively noisy. When the Concorde came into reality and

existed as ready to start commercial operations the real challenge started against it. There has been an Anti - Concorde project in the United States and the objection has been severe in many terms.[76]

In fact these objections may have been exaggerated. In so far as noise is concerned, the Concorde's noise characteristics have been demonstrated on entry into service to be of the same order as that of current subsonic jets like the Boeing 707. Another fact that is overlooked is that "Concorde's manufacturers have always assumed in their market research that supersonic flight would only be permitted over the seas and over land areas which are relatively uninhabited - which together form a very considerable part of the earth's surface. In fact, around eighty per cent of today's intercontinental seatmiles are flown over oceans or land areas of this kind".[77] It was declared by both the British and the French authorities that the Concorde flights will not fly at supersonic speed over inhabited areas. The Concorde is not different from any other airliner. The The Concorde flights to the United States are "matter - of - factly, handled by us without problem on one daily basis. Our biggest problem is convincing people that the Concorde is not a problem".[78] About the noise abatement - "the airport was also designed with this in mind".[79]

As far as the effect of high altitude flying in the earth's ozone the American Government Climatic Impact Assessment Programme has concluded after three years of the most

thorough investigation that Concorde poses no immediate threat to the environment.[80] The American environment is not different from other environments where the Concorde flys. If the Concorde's flights affect the American environment, the other supersonic activities, for example military supersonic flights which take place every day without any limitations, should not be forgotten. The aerosols and natural volcanic eruptions are also an examples.

Airports facilities are not a problem for the Concorde flights. It was declared that "the simple fact is that Concorde operations don't add to our workload at all. Hundreds of people who visit our airport daily just to see it operate seem pleased to see "the airport of the future" now handling the "aircraft of the future" and I hope we continue to do so because we're made for each other".[81]

The real problem started when British Airways and Air France, respectively, applied on August 29, 1975 and September 21, 1975 to the Federal Aviation Administration for an amendment of their respective operations specifications. The request was for approval of Concorde, and was the first commercial passenger application for the supersonic aviation technology.[82] The issue placed before the United States' Secretary of Transportation was whether to permit the Concorde to operate limited scheduled commercial air services to and from the United States of not more than four flights per day into John F. Kennedy International

Airport, New York, and not more than two flights per day into Dulles International Airport, Virginia.[83] Approvals of the requested amendments to operating specifications are usually automatic if the aircraft involved were produced in the United States and certificated by the Federal Aviation Administration, or the aircraft although produced in a foreign country and certified by that country's counterpart to the Federal Aviation Administration, was substantially the same as aircraft already in service in the United States.[84]

The decision to admit the Concorde was not an easy one to take. Careful evaluation of the applications was made and several public hearings were called.[85] The Secretary finally directed that the Federal Aviation Administration issued the provisional amendments on March 4, 1976.[86] The approval was subject to the following conditions for a period of 16 months:

1. No flights may be scheduled for take-off or landing except between 7 a.m and 10 p.m.

2. The British Airways flights must originate from Heathrow Airport and the Air France flights must originate from Charles de Gaulle Airport.[87]

3. The Concorde would not be allowed to fly at supersonic speed over the United States or any of its territories.

4. The Federal Aviation Administration is authorized to impose

such additional noise abatement procedures as are necessary and technologically feasible to minimize the noise impact, including, but not limited to, the thrust cut - back on departure.

Having reached such a decision, it is of importance to analyse the legal aspects of the Concorde operations. There were several legal questions raised by the Secretary of Transportation about bilateral air transport agreements between the United States and France and Great Britain, the Chicago Convention, the domestic environmental regulations (whether covered by the Chicago Convention and the bilateral agreements), and several other questions.[88]

As far as international obligations are concerned, the most important agreements affecting the decision are the Chicago Convention of 1944, the bilateral air transport agreement between the United States and France, and the bilateral air transport agreement between the United States and the United Kingdom - the Bermuda Agreement of 1946 -.

Under the Chicago Convention of 1944, the aircraft of each contracting country, if certified by that country as being airworthy, are allowed to operate non-scheduled services into the territory of any other contracting party without obtaining prior permission.[89] However, operating scheduled commercial service into a foreign country can not be conducted without

express approval by that country.[90] Thus the United Kingdom and France have treaty rights to operate non-scheduled Concorde flights into the United States. But to operate scheduled commercial services the express prior permission is required.

According to the bilateral air transport agreement between the United States and France, the routes for scheduled international services are fixed, Article 2 of the Bermuda Agreement provides:

> "the designated air carrier or carriers may be required to satisfy the aeronautical authorities of the contracting party granting the rights that it or they is or are qualified to fulfill the conditions presecribed by or under the laws and regulations normally applied by those authorities to the operations of commercial air carriers".

Article II (b) of the bilateral air transport agreement between the United States and France is similar to Article 2 of the Bermuda Agreement. But in both agreements no mention of the type of equipment that may be used.

It is these provisions of the international agreements that also reserve to the United States the authority to deny the Concorde permission to land altogether, or to place restrictions on Concorde operations, if unrestricted permission to operate would be contrary to the policies that are expressed in the environmental or safety laws of the United States.[91]

Under Article 37 of the Chicago Convention the International Civil Aviation Organization has the authority to promulgate international standards for a wide range of aircraft operations, including noise and pollution standards for supersonic transport. But, so far, the International Civil Aviation Organization has not developed standards in this area. Therefore the United States is free to regulate unilaterally Concorde operations, for Article 38 of the Chicago Convention permits a contracting nation specifically to exempt itself and to establish its own regulations.[92]

Neither the international treaties nor the domestic laws or regulations compelled a decision for or against allowing Concorde entry into the United States. Instead the competing policy considerations were balanced to determine the final decision.[93]

Although the Concorde has been permitted to operate into the United States, it is not certain that it will continue after the sixteen month term authorized.

Furthermore a Joint Communique was issued by France and Great Britain on November, 1976 announcing decision not to produce any more Concordes but the 16 planned. Neither do they intend to undertake a "paper study" of advance supersonic transport.[94]

Footnotes

1. A. Stoffel, American Bilateral Air Transport Agreements on the Threshold of the Jet Age, 26, J.A.L.C pp. 199 - 136 at p. 119

2. H. Wassenbergh, Aspects of Air Law and Civil Air Policy in the Seventies, the Hague, 1970 at p. 22, see also supra note 1.

3. See chapter III of this thesis section C- The Capacity Control. See also chapter IV of this thesis section C- Evaluation of the Bermuda capacity provisions in Bilateral Agreements.

4. Ibid. H. A. Wassenbergh at p. 23.

5. B. Diamond, Bermuda Agreement Revisited, 41 J.A.L.C 1975 at p. 459.

6. H. Wassenbergh, Post - War International Civil Aviation Policy, the Hague, 1957 at p. 65

7. Supra note 2 Wassenbergh at p. 17

8. Ibid.

9. Supra note 5 at p. 470, see also A. Stoffel supra note 1 at p. 126.

10. I. Doty Aviation week and Space Technology, October 18, 1976 at p. 44

11. Ibid. at p. 51

12. Supra note 5 at p. 463

13. Supra note 10 at p. 41.

14. Ibid. p. 41

15. Supra note 5 at p. 462.

16. Supra note 5 at p. 462, see also S. Wheatcroft Air Transport Policy, see also R. Thornton, International Airlines and Politics, (1970) at pp. 35 - 39 and 79 - 108 see also McWhinney and Bradley, The Freedom of the Air, the Netherlands 1968.

17. Ibid. at p. 463 see also The Freedom of the Air, see also Wheatcroft.

18. See McWhinney and Bradley. The Freedom of the Air, 1968 ch. 12 p. 174 Article by Frank E. Loy at p. 175.

19. Civil Aviation Agreements of the people's Republic of China 14 Harv. Int'l L.J (1973) at p. 335.

20. Gazdik, co-existance of scheduled and charter services in public air transport, 77 Aeronautical Journal, 34, 1973 at p. 35.

21. A. lowenfeid, 54 Foreign Affairs (1975 Oct. 1) pp. 36-50 at p. 45.

22. See Aviation week and Space Technology June, 28, 1976 at p. 36.

23. See, Flight International 25, September, 1976 pp. 960-961, Bermuda 2 battle lines.

24. See Aviation week and Space Technology, October, 18, 1976 at p. 11.

25. Patrick Finn U.S, Britain Air Pact, Montreal Star August, 14, 1976 at p. B.8.

26. Sir Ronald Edward, British Air Transport in the Seventies London 1969 at p. 89.

27. See supra note 16 The Freedom of the Air at p. 163. For example the U.K - Jordan bilateral agreement of 1968 limits frequencies of both carriers on the route Amman-London to two weekly services. But it was agreed to increase the frequencies on this sector into three frequencies weekly because the growth of traffic demanded such an additional third frequency. Amendments took place at Amman on May, 1975.

28. For example Pakistan - Jordan agreement limits the frequencies up to two weekly services and ninety passengers on each flight.

29. Supra note 1 at p. 131, see also para 6 of the Final Act of the Bermuda Agreement.

30. Sand History Survey of the Law of Flight I.A.S.L., McGill University 1961 at p. 35.

31. John C. McCarrol, The Bermuda Capacity Clauses in the Jet Age, 29 J.A.I.C, 1963 at p. 117.

32. Ibid. See N.Y, Times, Feb. 3, 1957, 2, p. 32, col. 4.

33. Supra note 31 at pp. 117 - 118.

34. H. A. Wassenbergh, Post - War International Civil Aviation Policy, the Hague 1957 at p. 57.

35. George P. Baker, The Bermuda Plan as the Basis for a Multilateral Agreement, The Public International Law of Air Transport Materials and Documents, Vlasic and Bradley, McGill University vol. 1, 1974 pp. 245 - 261 at p. 254.

36. Aviation week and Space Technology, October 18, 1976 at p. 44.

37. See supra note 22.

38. See, International Air Transportation Policy of the United States, September 1976, at pp. 17 - 18. For more details about the excess capacity and market share see at pp. 18-20.

39. See B. Cheng, The law of International Air Transport London, 1962 at p. 13, cf. ICAO Doc. 5230, A2 - EC/10 1948, vol. 1, p. 17.

40. See supra note 38 at p. 20

41. O. Lissitzyn, Bilateral Agreements on Air Transport 30 J.A.I.C at pp. 255 - 256.

42. Supra note 26 at p. 284.

43. Supra note 2 at p. 23.

44. Wassenbergh supra note 2 at p. 19.

45. Ibid. at p. 33.

46. Ibid. at p. 33 .

47. Ibid. at p. 33.

48. Ibid. at pp. 33 - 34.

49. See Agreements between the United States and Sweden, Denmark and Norway, effected by Exchange of Notes signed at Washington, June 7, 1966 TIAS 6026. In the U.S.A - U.S.S.R air agreement of Nov. 4, 1966 the sixth freedom received attention. See the Annex to the Agreement (Art. 3), for more details see supra note 4 at p. 34.

50. Article III (d) of the Canada - U.S bilateral air transport agreement reads as follows:

"the routes specified in the schedules annexed to this agreement shall be operated and promoted as routes between the U.S and Canada. Should a designated airline of either country provide a service to points beyond its home country in connection with such routes, public advertising or other forms of promotion by such airline in the territory of the other country or in third countries may not employ the terms 'single carrier' or 'through service' or terms of similar import, and shall state that such service is by connecting

flights, even when for operational reasons a single aircraft is used. The flight number assigned to services between the U.S and Canada may not be the same as that assigned to flights beyond the home country of the airline performing the service".

51. See, "Bilateralism in the Light of Recent International Air Transport Development" ITA Bulletin No. 36, 12 October, 1964 at 940 C.F. supra note 4 at pp. 23-24. C.F. also supra note 29 at p. 284.

52. See supra note 2 Wassenbergh at p. 35.

53. See supra note 1 Stoffel p. 130. See also "Insoluble Nature of Traffic Rights Problem Confirmed by U.S - Scandinavian Talks" ITA Bulletin Not. 41/ 4 November, 1960, 1058.

54. See supra note 41 at p. 256.

55. See supra note 2 at p. 25, see also supra note 5 at pp. 466 - 467.

56. See supra note 1 Stoffel at p. 130.

57. See supra note 6 Wassenbergh at p. 71.

58. See supra note 39 B. Cheng at p. 313.

59. Ibid.

60. S. Wheatcroft, Air Transport Policy, London 1964 at p. 91

61. Ibid. At that time, military jet developments were under way in America and Russia.

62. Ibid. at p. 95 for the detailed history of the introduction of the different types of jet aircraft see Ibid. pp. 91-95.

63. Ibid. p. 95

64. See supra note 31 at p. 116.

65. See supra note 60 at pp. 95 - 96.

66. Ibid. at p. 97.

67. Ibid. at p. 99.

68. H. A. Wassenberg Interchange of Aircraft on International Routes. 10 Netherlands Tijdschrift Voor International Recht, 1963 pp. 275 - 283.

69. Ibid. at p. 275.

70. Supra note 60 at p. 99.

71. R. Thornton, International Airlines and Politices, the University of Michigan, 1970 at p. 157.

72. Ibid.

73. Aviation week and Space Technology, Dec. 8, 1975 at p. 24.

74. The power plant of the Concorde is : 4 Rolls - Royce (1971) Ltd/Snecma Clymbus 593 MK 6/C Turbojet engines of 38,500 Lb thrust each. Max. take-off weight : 400,000 Lb - cruising speed : 1:370 Mph - cruising altitude 60.000 ft. Range with Max. payload and standard fuel reserves: 3.850 st. miles.

75. Newsweek, February, 2, 1976 at p. 46.

76. For more detailed illustrations about the criticisms of the Concorde see Richard Wiggs, Concorde The Case Against Supersonic Transport, Book published in Great Britain 1971.

77. Brain Cookson, Concorde - What's New, J.A.I.C vol. 42. No. 2 (1976) pp. 1-10 at pp. 6-7.

78. See Supersonic Age, Summer 1976 p. 15 An ATC Viewpoint by Bob Logan, Facility Chief, Dulles Tower Washington.

79. Ibid. at p. 16.

80. Supra note 77 at p. 7

81. Supra note 78 at p. 16.

82. See R. Allen Legal and Enviornmental Ramifications of the Concorde, J.A.I.C. vol. 42 No. 2 (1976) pp. 433 - 446 at p. 433. See also Newsweek, February 2, 1976 at p. 46. The "operations specifications" include a list of the type of aircraft to be flown, the airports to be served, and the routes and flight procedures to be followed. An application for operations specifications must be approved and issued by the FAA before a foreign air carrier may begin commercial service to and from the United States. See 14 C.F.R 129.

83. See the Secretary's Decision on Concorde Supersonic Transport. Dep't of Transportation U.S.A Washington, D.C. Feb. 4, 1976 at p. 1.

84. Ibid. see also supra note 82 R. Allen at p. 433.

85. See supra note 83 at p. 2.

86. The approval was issued on April 20, 1976, see Aviation Daily, April 20, 1976 at p. 293.

87. The reason behind thus condition was that the Secretary believed that the Concorde should be treated in the U.S.A as it is treated at home and the equitable treatment that the foreign citizen be subjected to the Concorde impact in a similar fashion to U.S. citizens.

88. For more details see Aviation Week and Space Technology, Concorde legal Questions Raised, January, 12, 1976 p. 12. See also supra note 83 at pp. 9 - 20.

89. Article 5 of the Chicago Convention. See also supra note 83 at p. 9, see also supra note 82 R. Allen at pp. 436-437.

90. Article 6 of the Chicago Convention of 1944.

91. Supra note 83 at p. 11, see also supra note 82 R. Allen at p. 438.

92. See supra note 82 R. Allen at p. 439

93. Ibid.

94. See Aviation News Digest, November 12, 1976 at p. 6.

Chapter VI

RECOMMENDATIONS AND CONCLUSION

It is noticeable that international civil aviation is now in deep trouble. It is clear that solutions to the causes of this trouble are urgently required, and because of international character of civil aviation solutions must be arrived by the international civil aviation community.

With the continuous developments of civil aviation, of air traffic market and airline operations the whole structure of the air transport industry has changed drastically. This calls for a new concept for this new era.

The decade of 1970's has been characterized by growing recognition of the extent to which nations of the world are economically interdependent. International civil aviation is no exception.

Much has happened in the thirty years since international civil aviation was organized. The major existing norms most of which were adopted thirty years ago have to be continuously adapted to new situations. The principles that served three decades need to be re-examined so as to cope with the new developments and to establish regulations for what was unforeseen three decades ago. What is required is a policy for the world

aviation of today and tomorrow. To reach such a policy it is necessary to consider the deficiencies of the present situation that affect the whole structure of international air transport.

It was mentioned that international air transport relations are governed by a few multilateral conventions and a series of bilateral air transport agreements of different types. It was mentioned also that the most widely followed type is the "Bermuda type of agreement".

The Bermuda Agreement regarded, at the time of its signature, as covering all commercial air transport services except "ambulance and taxi flights and a relatively small number of other genuine ad hoc charters - the total air transport market of today as its signatories perceived it".[1] But today what is needed is a truly updated Bermuda itself to produce a new concept adaptable to the recent developments that have taken place. Although the original Bermuda Agreement does not contain some basic elements that can match today's situation, the recent radical changes in international civil aviation and air transport demand re-examination of these principles.

The world governments have been invited to remove obstacles which place economic burdens on airlines and to give top priority to ensure efficient utilization of capacity as the only way to efficiency and lowest possible fares.[2]

There are three different systems for capacity regulation.

The first system that may be called laissez-faire competition: is a system of non-regulation. The second is predetermination in which the share of the traffic that each designated carrier is allowed to carry is determined in advance. The third system is somewhere in between the other two system. This system is that of the Bermuda Agreement.[3]

Since the Bermuda Agreement was signed the resurgence of economic strength in many nations is prompting governments and airlines alike to charge that such a one-sided advantage no longer reflects today's foreign trade positions realistically.[4] It is necessary to review in depth the weaknesses and the strengths of the Bermuda principles on which the pact is based, and to review the present conflict between the two contracting parties of the original Bermuda Agreement.

The traffic imbalance, the lack of market share, and the misinterpretation of the principle of "fair and equal opportunity" caused Great Britain to consider that the Bermuda Agreement has over the years became out of date and no longer corresponds satisfactorily to the conditions of the 1970's. On the other hand the United States' view is that the present agreement is working well and should not be tampered with. However negotiations between the two countries are underway in order to reach an agreement. But failing an agreement Great Britain is prepared to take unilateral action to regulate capacity.

For a "constructive approach" to the negotiation of the new services agreement, the United Kingdom presented a paper that demonstrated the need for an effective system of capacity regulations. The following are the objectives which the British believed should govern the capacity to be offered by airlines in future:

a. Services at the lowest cost to the travelling public and for the carriage of air freight;

b. a reasonable profitability for the airlines; and

c. economic use of resources of all types.[5]

It was mentioned that the world countries as well as the airlines are watching the current negotiations between U.K and U.S.A, and what the negotiations will come up with, because the Bermuda principles have been questioned seriously for sometime through-out the world.

The present question is either to seek to retain Bermuda system, and attempt to undo the restrictions which have increasingly been imposed under Bermuda Agreement, or to abandon the Bermuda system, de facto or de jure, and adopt measures similar to those of the European nations, imposing restrictions on frequencies and capacity.[6]

To enter the last quarter of this century with a new

concept there are certain occurrences that should be taken into consideration by today's Bermuda negotiators such as the charter flights and their steady increase, the forming of regional blocs, the routes grants and capacity control, and the tariffs issue. There are other disputable terms in the Bermuda Agreement that need to be clarified precisely such as fifth freedom, sixth freedom, fair and equal opportunity, and the multiple designation, which have enmeshed the international air transport industry in a quandary that is not likely to be relieved until a settlement between the U.K. and the U.S.A. sets some course for future relations. In so far as these terms are concerned they should be given clear and precise definitions and need to be standard so as to avoid any future different interpretations by any state.

Charter Flights

The coming into existence of charter or non-scheduled flights as a major force is a major and recognizable event in international air transport, and was almost entirely a de facto creation of the last decade.

The charter or non-scheduled services are methods of providing air transportation at lower prices than on the mere traditional scheduled services.

The growing need for mass air travel was not met adequately by the present system of bilateral control of the scheduled

air traffic market. Therefore enormous development took place in recent years of non-scheduled services using different types of services outside of the bilateral agreement network.[7] Such situation led to the creation of charter carriers who started to compete in the same market with the scheduled carriers to carry the same type of traffic but by different means.

The charter traffic rights are not covered by the majority of the bilateral air transport agreements although they now perform an important part of public transport, and even if these rights were covered by the bilaterals only the scheduled carriers could be designated to operate both scheduled and non-scheduled services.

Governments were under pressure either to protect their national scheduled carriers or to allow the charter operations which provide the public transport at lower fares. Both interests are equal in their value for the government's object is to protect the national carrier and the public. It is not feasible to regulate bilaterally one part of the public transport (scheduled services) and leaving the other part (non-scheduled) unregulated.

Governments started to regulate charter services by seperate bilateral agreements and some countries regulated the operations of the non-scheduled services multilaterally under rigid conditions.[8]

However, there are three alternatives for regulating the operations of non-scheduled services. First: the unilateral regulation in which matters are left as they are. This option is not practical for the growing importance of the charter services will erode scheduled services. Second: to conclude separate bilateral agreements for non-scheduled services which is the practice now. This option is practical especially if there is already a bilateral air transport agreement for scheduled services between the two countries and the situation between them needs regulations for non-scheduled services, then to avoid amendments to the scheduled agreement, the solution is to conclude a new seperate bilateral agreement for non-scheduled services. The third: to conclude bilateral air transport agreement for the operations of scheduled and non-scheduled air services i.e. the same agreement covers the operations of both scheduled and non-scheduled services. This solution is more practical especially if there is no agreement between the two countries and they will conclude an agreement or if renegotiations of the existed bilateral agreement are under-way. Such agreement should allow both route carriers and charter carriers to be designated to operate both scheduled and non-scheduled services and it is the task of each government to organize the time-tables and the operations of its carriers whether it is a charter carrier or scheduled carrier, because it may happen that one government has both kind of carriers and the other does not.

The Regional Blocs

The formation of the regional blocs is a structural problem that merits discussion. The danger that is posed to the bilateral air transport agreements system by these regional blocs is the consequent possibility of crippling cabotage restrictions coming into existence by virtue of the formation of these larger blocs.[9] The formation of regional groupings is a counter - move by a group of states against one state or group of states that are in a stronger position than the states forming the regional bloc.

The question that may arise in this connection is whether the carriage of air traffic between these states, states forming the bloc, can be considered as a cabotage or not? If it is considered cabotage then states outside the group will be prevented from carrying traffic between any pair of cities within the bloc. For example, in the case of the Common Market states, the non-Common Market states will not be allowed to operate fifth freedom routes, just as the United States carriers will be prevented from operating fifth freedom routes such as London-Frankfurt or Paris-Rome.

The carriage of air traffic between these states, forming the bloc, should not be considered as a cabotage, because the cabotage is something different. The cabotage is the right to carry traffic between two points in the territory of the same state. But the regional bloc is not a state.

The formation of the regional blocs can be considered as a step forward for organizing the traffic between the states of the bloc and other states, and regulating the capacity, tariffs and competition. It is more effective for formulating pooling agreements between the airlines of one region and for cooperating with other airlines in the region.

The threat of forming the regional blocs had existed for a long time, to be exact since 1950. "It only became pressing following the recent developments dividing the free world into powerful trading blocs - especially the European common market, the so-called "outer seven" and the British Commonwealth community".[10]

There are certain efficient economic regional blocs in the world but insofar as civil aviation is concerned there were attempts, and there are still, for forming such aviation regional blocs. An example was the proposal to establish Air Union in 1960 by the Common Market states. The Air Union Plan followed the old European cartel concept. The Plan called for pooling and redistributing the revenues between the member airlines. For competitive, political and prestige purposes each airline would preserve its nationality. The rights and privileges that were secured from outside nations would be exercised by that airline. But inside Europe, equipment, frequencies, capacity, fares, losses and earnings would be fixed and controlled by the

combine.[11] There seems to be other potential supernational "common markets" and common air blocs in the making in the Middle East and Latin America. The Arab League tried to establish the "Pan Arab Airline". This airline still does not exist, but there is an agreement between the Arab League states called "The Agreement for the Establishment of Arab Air World Airline of 1961". Attempts are still underway to form the airline. In Latin America negotiations have been going on between five Latin American states namely Colombia, Chile, Ecuador, Panama and Peru for the creation of a single Latin American Airline to be called "Flota Aerea Latino Americana" (FALA). Each nation would participate equally in this consortium.[11 (a)]

Routes Grant and Capacity Control

In the bargaining process of bilateral air transport negotiations the ultimate goal of each party is to secure traffic rights and routes for profitable operations of its national carrier.

It is said that "Route grants and capacity control are both in the hands of the foreign governments of the countries to and via which a state wants its carriers to operate".[12] This conception makes the present system of bilateralism and the exchange of the commercial traffic rights subject to the reciprocity principle, for no state can remain independent if it wants its

national carrier to operate international air routes.

The route exchange takes one of the following methods:

1. Open: that does not contain any specified points such as "from country A via intermediate point or points to point or points in country B and beyond".

2. Specific route description: that identifies each point on the route including the intermediate points and the points beyond.

3. Partially defined: that describes route to an extent which would provide broad, but not complete flexibility of operations.

Each method has its advantages and disadvantages, but the route description should include sufficient number of intermediate points and points beyond and, if possible, alternative points in both countries so as to allow for alternates in order to meet the changes of the market or operational changes.

The routes and traffic rights granted to each of the parties should be equal in value to the ones that that party is giving away in return.

What should determine the routes grant is the traffic demand, and the granted route should be operated profitably according to periodical statistics taking into account the

principle of reciprocity and comparing the revenues derived by each of the designated airlines from the operations of the agreed services on routes that have been granted.

Another related matter is capacity and frequency control. The matter of capacity regulation should be subject to the approval of the governments of both contracting parties. The designated airlines should be given the freedom to establish their schedules. But those schedules should be submitted to the government i.e. each designated airline after establishing its schedules should submit them to its government, and the government after a careful study should either agree or disagree. The study of the proposed schedules must be based on providing capacity adequate to the traffic demands of each route, and providing to the public route flexibility at the lowest fares possible. The submission of the schedules should be made within a reasonable time so as to give the government the ability to study, review, and inform the other government concerned.

Another principle can be considered that of semi-predetermination in which the capacity can be determined prior to the inauguration of the services according to the traffic demands for each route based on reliable statistics. Such predetermination should be flexible i.e. it can be reviewed from time to time to maintain a balance between the traffic demands, public interest, and reasonable load factor to ensure profitable operations of both designated airlines.

Tariffs Issue

The determination of fares and rates left in the original Bermuda Agreement to the airlines' agreement through the International Air Transport Association -IATA- subject to government approval. Most airlines feel that the establishment of rates and fares should be left to the competence of the airlines. But the governments reserve the right to approve or disapprove the published tarrifs.

The airlines follow, in deciding their fares and rates, IATA rate fixing machinery. IATA works through traffic conferences and has divided the world in seven conferences areas and tarrifs are negotiated between those airlines who serve the area.

This system has deficiences for the following reasons:

1. not all the airlines of the world are members of IATA

2. only the scheduled airlines are members of IATA but the charter airlines are not members.

3. there is no direct governmental element in the negotiating machinery i.e in the traffic conferences.

4. IATA machinery does not take sufficient account of the interests of the users of international air transport.

Therefore new machinery is required and should take into consideration and include the following:

1. Airlines presently members of IATA

2. Airlines operating scheduled services which are at present not members of IATA

3. Non-scheduled international air carriers

4. Government representation in the IATA Traffic Conferences during fare and rate-making negotiations for it would put the governments in the picture and accelerate the governments approval procedures.

If the above mentioned are accepted then, the adaptation of the bilateral air transport agreements to such changes is not difficult.

It can be left to the airlines to agree on the tariffs they consider justified in light of the above mentioned changes. Those tariffs should be low but cost related, taking into consideration the public interest, and finally they must be subject to government approval. On the other hand, governments in issuing their approval or disapproval must avoid any undue delay.

The international control of tariffs should have two objects. First: to protect the public against any abuse of

the protected position given to the airlines under a system of controlled entry into the industry. Second: to ensure long term economic stability of the industry by preventing the sort of cut-throat price warfare which can develop in conditions of oligopolistic competition.[13]

The earlier discussion in this paper shows that there are major areas of dispute over the meaning and in the application of the Bermuda Agreement. The principal areas of dispute are the scope of fifth freedom rights, the question of the classification of sixth freedom traffic for purposes of provision of capacity, the application of the clause relating to fair and equal opportunity, and the question of multiple designation. Each of these issues is discussed hereafter.

The Fifth Freedom

It is universally agreed that the fifth freedom is "the right to put down or take on in the territory of the other contracting state passengers, mail and cargo coming from or destined to points in a third country or other countries".

The problem of the Bermuda system concerning the exercise of the fifth freedom traffic rights is that it imposes restrictions on the carriage of such traffic. It subjects that carriage of the fifth freedom to the carriage of third and fourth freedoms. There is no specification as to the allowable quantity of fifth

freedom traffic in relation to the quantity of third and fourth freedom traffic. The carriage of fifth freedom traffic is considered under Bermuda system as a secondary justification traffic.

The carriage of fifth freedom traffic is very important especially for those airlines whose countries do not generate enough national traffic to make the operations of the national carrier economic and profitable. Those carriers are usually called "fifth freedom dependent carriers", for they depend on their operations almost totally on the carriage of the fifth freedom traffic rather than the carriage of third and fourth freedom traffic.

Since the carriage of fifth freedom traffic is a carriage of traffic to or from third countries then it is necessary to negotiate with the third country involved for such traffic rights and acquire that country's consent.

Due to the increasing importance of the carriage of the fifth freedom traffic these days, it should not be considered as a secondary justification traffic and should not be left unregulated. The amount of the fifth freedom traffic should be determined in accordance with the traffic demands on the fifth freedom segments, and where it is common fifth freedom traffic, it should be divided equally between the designated airlines.

The Sixth Freedom Traffic

It was mentioned that the so-called sixth freedom traffic is a combination between fourth and third freedoms, and, therefore, not covered by the restrictive Bermuda standards. The dispute over this problem can be solved by accepting the concept mentioned above about the definition of such traffic and ignoring the concept of considering the sixth freedom as a sort of fifth freedom.

In case of any dispute over this kind of carriage and if there is already an existing agreement between the two countries, they can add to the agreement a provision such as that reached in 1966 between the United States and the Scandinavian nations through exchange of diplomatic notes and reads as follows:

> ".....add to the primary objective of the designated airline the provision of capacity adequate to the demands of passenger traffic stopping over for 12 hours or more at points in the country of which such designated airline is a national. This addition to the primary objective does not extend to the provision of capacity for the demands of any passenger traffic which passes through, connects at, or stops over for less than 12 hours at a point in the country of which the transporting designated airline is a national".14

Such provision allows the designated airline of one country to carry traffic between two foreign countries via its homeland, provided that those passengers stop over for a period of 12 hours or more in the home land of the transporting airline. But if those passengers stopped over for less than

the period specified, then they would be considered a fifth freedom traffic and then would be restricted under the general principles of the Bermuda Agreement.

In the case where there is no agreement between the two countries and negotiations are held to reach an agreement, the aforesaid provision ought not to be disregarded. The length of stop over can be agreed upon between the two parties as the situation may require. This also should be considered if renegotiations are in course.

Fair and Equal Opportunity

The original Bermuda Agreement provides in paragraph 4 of the Final Act the following:

> 4. That there shall be a fair and equal opportunity for the carriers of the two nations to operate on any route between their respective territories (as defined in the Agreement) covered by the Agreement and its Annex.

This principle received different interpretations, and several questions have been raised in this connection. But the most important debate is whether this principle gives the carriers of both sides the opportunity to operate under a free competition conditions, or there should be fair and equal opportunity for both carriers to operate, compete and share

the market. The first conception is led by the United States, and the second conception is led by the United Kingdom.

If the principle of fair and equal opportunity has the first concept that allows carriers to operate under free competition conditions then this will lead to one result, that the stronger carrier only will remain in the market.

The new concept of fair and equal opportunity should carry the concept of fair and equal opportunity to operate, compete, and share, and that the exchange of the commercial traffic rights should be of an equal value for each side. A fair route exchange requires an equitable exchange of economic benefits having equal market value by ensuring that each designated carrier is acquiring an appropriate share of the traffic available at an economic load factor.

The provision that should be incorporated in bilateral air transport agreement in this connection is suggested to be as follows:

> "There shall be a fair and equal opportunity for the designated air carriers of both contracting parties to operate, compete, participate and share in the traffic on all their networks and the routes covered by the agreement".

Such provision will give satisfaction to newly-emerged countries and countries with newly-emerged airlines. Those countries are very reluctant to accept the Bermuda principles

with the American interpretation of the principle of fair and equal opportunity and they should direct their air transport policies towards ensuring that their national carriers should be guaranteed a reasonable share of the traffic on the routes which they operate. That also applies to sharing the frequencies.

For sufficeint application of the principle of fair and equal opportunity each designated air carrier should get half the traffic on the routes it operates, if this is not so then the conditions are not fair and equal.

Multiple Designation

The term multiple designation refers to the designation of more than one national airline by a country to operate on individual international routes.[15]

The Bermuda Agreement in Article 2 provides for the right of each contracting party to designate "an air carrier or carriers" to operate the services on the specified routes. This means that the Agreement allows the designation of more than one carrier i.e. multiple designation.

The problem of such a provision appears in the negotiations process of the bilateral agreements and causes difficulty in negotiating and implementing the bilateral air transport agreements respecting the designation of the airlines.

Only a few states have more than one carrier. The majority of the states have only one national carrier. Where the

agreement is being negotiated with a multiple carrier state then two alternative solutions are available. Either not to allow the multiple designation under the provisions of the agreement i.e. to exclude such provision, or to allow the multiple designation but to consider the frequencies issue i.e. to have equal frequencies for both contracting parties' national carriers. An example may illustrate this concept. If country A who has more than one national carrier and country B who has one national carrier enter into bilateral air transport agreement for the operation of air services between and beyond their territories, then the situation of the designation of the airlines of both countries will be as follows: country A is allowed to designate more than one national carrier to operate the same number of frequencies that the designated national carrier of country B, which is the only national carrier for country B, will operate. This conception can be followed so long as the designated air carriers of both parties, no matter what there number is, operate at a reasonable load factor and the principle of capacity adequate to traffic demands is met.

Conclusion

In conclusion it should be recognized that international civil aviation and especially the international air transport system today are not in the same situation as they were three decades ago.

International civil aviation has become one of the most important activities in the world, an activity which is now notorious for the rapidity with which changes are taking place in it. This places an obligation on the international civil aviation community to carry out a constructive review with the object of improving relations between the members of the civil aviation community as the first and essential step towards ensuring and improving the machinery for consultation as the first essential step towards revising the international order of civil aviation.

Governments are urged to establish their policies and, in particular, their bilateral relations to cope with the new developments, and to cover all the gaps that have been left unregulated. Usually governments give effect to their policies on international commercial air transport through bilateral air transport agreements concluded between them. It does not matter that these bilaterals may take different forms. Bilateral air transport agreements may follow restrictive form or liberal form as each individual case may require. A state may have a liberal agreement with one state and a restrictive agreement

with an other state. The situation itself determines what type of bilateral should be followed. But there should be one principle, that the bilateral air transport agreement should stand on its own i.e. the top priority should be given to the commercial traffic rights and the exclusive aviation factors. The market status and the traffic demands between any pair of countries determine the pattern that should be followed. There should be also general agreement between the two parties to the bilateral agreement as to the meaning of the terms of the agreement which should be clear and precise enough so as to avoid any future misinterpretation for the agreement to work satisfactorily.

As was mentioned, most of the bilateral relations between the countries follow the Bermuda-type agreement which almost became a standard for the exchange of commercial air traffic services between states. Renegotiations are underway between the United Kingdom and the United States to settle the dispute between them over the original Bermuda Agreement and its subsequent amendments that no longer could serve their bilateral aviation relations satisfactorily. New agreement is sought which may take a compromise form to solve the controversial issues between them. It is predicted that any compromise i.e. the new agreement, may rigidly enforce capacity control on all flights between the two countries and require that on some routes only a single designated carrier should operate between the two countries.

The expected new agreement will constitute a new landmark and new rules for bilateral civil aviation and international air transport relations. It is not necessary that the new outcome will be followed in toto between other countries. It is not necessary that the new concept will be followed by the two states, the United Kingdom and the United States in their bilateral civil aviation with other countries, for the bilateral aviation relations depend in their determination upon each individual case.

The Bermuda - type of agreements can not be wholly disregarded. They are still considered by some countries as the best approach for their bilaterals.

The question of whether Bermuda-type of agreement and its implication for Jordan depends upon air transport situation, and the government's policy towards the bilaterals.

Generally speaking, there are two possible ways for government regulations of civil aviation: First, to adopt common general principles and apply these principles to the operation of international air services. This policy requires both approaches; the multilateral approach, and the bilateral approach so as to implement the common agreed principles and to apply these to the particular situation. The second policy is: the individual states try to enlarge their sphere of infuence in international civil aviation by any available means. This policy is effected in the first instance through the bilateral system.[16] The latter policy should be followed.

The Jordanian policy should be based on the concept of the conclusion of the bilateral air transport agreements. For this concept constitutes the practical manner in dealing freely with each individual situation separately. It is, therefore, suggested to conclude as many as bilaterals with as many as commercial traffic rights, and keep them as "rights in the bank" for future needs in establishing a world widespread net-work. But conducting air services should be based on a profitable operations basis. In other words, new services and routes should not be inaugurated, unless there is a real justification, and the traffic demands and the market require such services.

The bargaining process should take into consideration that two goals must be met: first, the protection of the national carrier (s); second, the public interest, and any grant of traffic rights should be based on the principle of reciprocity.

The pattern that should be followed is that in which a grant of all of the freedoms is made. The acquisition of all freedoms of commercial traffic rights, especially the fifth freedom, is essential to provide sound, economic, and profitable operations by the national Jordanian air carriers.

The Jordanian Government ought to insist on the principle of fair and equal opportunity to operate, compete, and share the market. But in providing operations there should be a "reasonable load factor" maintained by the designated air carriers of both contracting parties.

Capacity and frequencies can be determined in flexible manner in which any future increase or decrease must be allowed according to the traffic demands. It is preferable to allow the operation of a specified number of frequencies based on the amount of traffic available in a given period.

The national carrier should be given the opportunity to conclude "pooling arrangements" with other foreign air carriers, but these arrangements must be subject to the government approval.

Finally it is the beginning of a new era in international civil air transport in which it is absolutely necessary that the members of the international civil aviation community cooperate all together and work together - "all for one and one for all" - for the betterment of mankind, for the world always works better if we all work together.

Footnotes

1. Knut Hamarskjold, IATA Review, vol. 11, No. 9. Sept.- Oct.- 1976 at p. 2.

2. Seawell Pan Am. Chairman, Aviation News Digest, No. 46 Nov. 12, 1976.

3. See B. Diamond, Bermuda Agreement Revisited, 41 J.A.L.C. at p. 460.

4. L. Doty. Aviation week and Space Technology Oct., 18, 1976 at p. 41.

5. Aviation Daily, Tue., Oct., 26, 1967 on back of p. 291 U.K. paper Reviewing Bermuda Agreement.

6. See supra note 3 at p. 487.

7. H. A. Wassenbergh, Aspects of Air Law and Civil Air Policy in the Seventies, the Hague, 1970 at p. 51.

8. The United States concluded some bilateral air transport agreements with other countries for the purpose of establishing non-scheduled air services between their respective territories. Examples are these bilaterals:United States - Yugoslavia non-scheduled air services agreement of 1973, United States - France air charter services agreement of 1973 and United States - Jordan non-scheduled air services agreement of 1974.

   For those countries who regulated the non-scheduled services on a multilateral basis see Paris Agreement, Multilateral Agreement on non-scheduled services of April, 1956. For more information about the charter flights see H. A. Wassenbergh Public International Air Transportation Law in a New Era, the Netherlands 1975 at pp. 51 - 58, see also J. Gazdik Co-existence of scheduled and charter services in public air transport, Aeronautical Journal, vol. 77, No. 745 p. 32 - 40 (Jan. 1973), see also J.A.L.C. vol. 42, No. 2 (1976) Charter Air Travel, by Gerald Reamey at pp. 405 - 432. See also J.A.L.C. vol. 39 (1973) pp. 1 - 28. Charters the New Mode, see also supra note 7 at

p. 51 ch. 3 entitled Non-scheduled and scheduled Air Carriers. See also McWhinney and Bradley, The Freedom of the Air, Netherlands, 1968 ch. 7 at p. 89 scheduled and non-scheduled air services.

9. B. Diamond, Bermuda Agreement Revisited, 41 J.A.L.C. (1975) at p. 473.

10. Harold Jones, The Equation of Aviation Policy 27 J.A.L.C. (1960) p. 221 at p. 235.

11. Ibid. at p. 238

11(a). Ibid.

12. Supra note 7 at p. 13.

13. See S. Wheatcroft, Air Transport Policy London, 1964 at p. 75.

14. U.N.T.S. vol. 578 (1966) at p. 152.

15. See A. Stoffel American Bilateral Air Transport Agreements on the Threshold of the Jet Age. 26 J.A.L.C. 1959 p. 119 at p. 131.

16. For more details see H. A. Wassenbergh, Public International Air Transportation Law in a New Era, the Netherlands 1976 at p. 12.

APPENDIX

I

THE BERMUDA AGREEMENT, THE ANNEX, AND THE FINAL ACT

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNITED KINGDOM RELATING TO AIR SERVICES BETWEEN THEIR RESPECTIVE TERRITORIES.

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

Desiring to conclude an Agreement for the purpose of promoting direct air communications as soon as possible between their respective territories,

Have accordingly appointed authorised representatives for this purpose, who have agreed as follows:—

ARTICLE 1

Each Contracting Party grants to the other Contracting Party rights to the extent described in the Annex to this Agreement for the purpose of the establishment of air services described therein or as amended in accordance with Section IV of the Annex (hereinafter referred to as "the agreed services").

ARTICLE 2

(1) The agreed services may be inaugurated immediately or at a later date at the option of the Contracting Party to whom the rights are granted, but not before (a) the Contracting Party to whom the rights have been granted has designated an air carrier or carriers for the specified route or routes, and (b) the Contracting Party granting the rights has given the appropriate operating permission to the air carrier or carriers concerned (which, subject to the provisions of paragraph (2) of this Article and of Article 6, it shall do without undue delay).

(2) The designated air carrier or carriers may be required to satisfy the aeronautical authorities of the Contracting Party granting the rights that it or they is or are qualified to fulfil the conditions prescribed by or under the laws and regulations normally applied by those authorities to the operations of commercial air carriers.

(3) In areas of military occupation, or in areas affected thereby, such inauguration will continue to be subject, where necessary, to the approval of the competent military authorities.

ARTICLE 3

(1) The charges which either of the Contracting Parties may impose, or permit to be imposed, on the designated air carrier or carriers of the other Contracting Party for the use of airports and other facilities shall not be higher than would be paid for the use of such airports

and facilities by its national aircraft engaged in similar international air services.

(2) Fuel, lubricating oils and spare parts introduced into, or taken on board aircraft in, the territory of one Contracting Party by, or on behalf of, a designated air carrier of the other Contracting Party and intended solely for use by the aircraft of such carrier shall be accorded, with respect to customs duties, inspection fees or other charges imposed by the former Contracting Party, treatment not less favourable than that granted to national air carriers engaged in international air services or such carriers of the most favoured nation.

(3) Supplies of fuel, lubricating oils, spare parts, regular equipment and aircraft stores retained on board aircraft of a designated air carrier of one Contracting Party shall be exempt in the territory of the other Contracting Party from customs duties, inspection fees or similar duties or charges, even though such supplies be used by such aircraft on flights within that territory.

ARTICLE 4

Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by one Contracting Party and still in force shall be recognised as valid by the other Contracting Party for the purpose of operation of the agreed services. Each Contracting Party reserves the right, however, to refuse to recognise for the purpose of flight above its own territory, certificates of competency and licenses granted to its own nationals by another state.

ARTICLE 5

(1) The laws and regulations of one Contracting Party relating to entry into or departure from its territory of aircraft engaged in international air navigation or to the operation and navigation of such aircraft while within its territory shall apply to aircraft of the designated air carrier or carriers of the other Contracting Party.

(2) The laws and regulations of one Contracting Party relating to the entry into or departure from its territory of passengers, crew, or cargo of aircraft (such as regulations relating to entry, clearance, immigration, passports, customs and quarantine) shall be applicable to the passengers, crew or cargo of the aircraft of the designated air carrier or carriers of the other Contracting Party while in the territory of the first Contracting Party.

ARTICLE 6

Each Contracting Party reserves the right to withhold or revoke the exercise of the rights specified in the Annex to this Agreement by a carrier designated by the other Contracting Party in the event that

it is not satisfied that substantial ownership and effective control of such carrier are vested in nationals of either Contracting Party, or in case of failure by that carrier to comply with the laws and regulations referred to in Article 5 hereof, or otherwise to fulfil the conditions under which the rights are granted in accordance with this Agreement and its Annex.

ARTICLE 7

This Agreement shall be registered with the Provisional International Civil Aviation Organisation set up by the Interim Agreement on International Civil Aviation signed at Chicago on December 7, 1944.[1]

ARTICLE 8

Except as otherwise provided in this Agreement or its Annex, if either of the Contracting Parties considers it desirable to modify the terms of the Annex to this Agreement, it may request consultation between the aeronautical authorities of both Contracting Parties, such consultation to begin within a period of sixty days from the date of the request. When these authorities agree on modifications to the Annex, these modifications will come into effect when they have been confirmed by an Exchange of Notes through the diplomatic channel.

ARTICLE 9

Except as otherwise provided in this Agreement or in its Annex, any dispute between the Contracting Parties relating to the interpretation or application of this Agreement or its Annex which cannot be settled through consultation shall be referred for an advisory report to the Interim Council of the Provisional International Civil Aviation Organisation (in accordance with the provisions of Article III Section 6 (8) of the Interim Agreement on International Civil Aviation signed at Chicago on December 7, 1944) or its successor.

ARTICLE 10

The terms and conditions of operating rights which may have been granted previously by either Contracting Party to the other Contracting Party or to an air carrier of such other Contracting Party shall not be abrogated by the present Agreement. Except as may be modified by the present Agreement, the general principles of the air navigation arrangement between the two Contracting Parties, which was effected by an Exchange of Notes dated March 28 and April 5, 1935, shall continue in force in so far as they are applicable to scheduled international air services, until otherwise agreed by the Contracting Parties.

[1] [Executive Agreement Series 469.]

ARTICLE 11

If a general multilateral air Convention enters into force in relation to both Contracting Parties, the present Agreement shall be amended so as to conform with the provisions of such Convention.

ARTICLE 12

For the purposes of this Agreement and its Annex, unless the context otherwise requires:

(a) The term "aeronautical authorities" shall mean, in the case of the United States, the Civil Aeronautics Board and any person or body authorised to perform the functions presently exercised by the Board or similar functions, and, in the case of the United Kingdom, the Minister of Civil Aviation for the time being, and any person or body authorised to perform any functions presently exercised by the said Minister or similar functions.

(b) The term "designated air carriers" shall mean the air transport enterprises which the aeronautical authorities of one of the Contracting Parties have notified in writing to the aeronautical authorities of the other Contracting Party as the air carriers designated by it in accordance with Article 2 of this Agreement for the routes specified in such notification.

(c) The term "territory" shall have the meaning assigned to it by Article 2 of the Convention on International Civil Aviation signed at Chicago on December 7, 1944. [1]

(d) The definitions contained in paragraphs (a), (b) and (d) of Article 96 of the Convention on International Civil Aviation signed at Chicago on December 7, 1944 shall apply.

ARTICLE 13

Either Contracting Party may at any time request consultation with the other with a view to initiating any amendments of this Agreement or its Annex which may be desirable in the light of experience. Pending the outcome of such consultation, it shall be open to either Party at any time to give notice to the other of its desire to terminate this Agreement. Such notice shall be simultaneously communicated to the Provisional International Civil Aviation Organisation or its successor. If such notice is given, this Agreement shall terminate twelve calendar months after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by agreement before the expiry of this period. In the absence of acknowledgment of receipt by the other Contracting Party notice shall be deemed to have been received fourteen days

[1] [*International Civil Aviation Conference, Chicago, Illinois, November 1 to December 7, 1944, Final Act and Related Documents*, pp. 59–86.]

after the receipt of the notice by the Provisional International Civil Aviation Organisation or its successor.

ARTICLE 14

This Agreement, including the provisions of the Annex hereto, will come into force on the day it is signed.

IN WITNESS whereof the undersigned, being duly authorised thereto by their respective Governments, have signed the present Agreement.

DONE in duplicate this eleventh day of February Nineteen-hundred-and-forty-six at Bermuda.

For the Government of the United States of America

GEORGE P. BAKER
HARLLEE BRANCH
STOKELEY W. MORGAN
GARRISON NORTON
L. WELCH POGUE
OSWALD RYAN.

For the Government of the United Kingdom of Great Britain and Northern Ireland

A. H. SELF
W. P. HILDRED
W J BIGG.
L. J. DUNNETT
PETER G. MASEFIELD

ANNEX

I

For the purposes of operating air services on the routes specified below in Section III of this Annex or as amended in accordance with Section IV hereof, the designated air carriers of one of the Contracting Parties shall be accorded in the territory of the other Contracting Party the use on the said routes at each of the places specified therein of all the airports (being airports designated for international air services), together with ancillary facilities and rights of transit, of stops for non-traffic purposes and of commercial entry and departure for international traffic in passengers, cargo and mail in full accord and compliance with the principles recited and agreed in the Final Act of the Conference on Civil Aviation held between the Governments of the United States and of the United Kingdom at Bermuda from January 15 to February 11, 1946, and subject to the provisions of Sections II and V of this Annex.

II

(a) Rates to be charged by the air carriers of either Contracting Party between points in the territory of the United States and points in the territory of the United Kingdom referred to in this Annex shall be subject to the approval of the Contracting Parties within their respective constitutional powers and obligations. In the event of disagreement the matter in dispute shall be handled as provided below.

(b) The Civil Aeronautics Board of the United States having announced its intention to approve the rate conference machinery of the International Air Transport Association (hereinafter called "IATA"), as submitted, for a period of one year beginning in February, 1946, any rate agreements concluded through this machinery during this period and involving United States air carriers will be subject to approval by the Board.

(c) Any new rate proposed by the air carrier or carriers of either Contracting Party shall be filed with the aeronautical authorities of both Contracting Parties at least thirty days before the proposed date of introduction; provided that this period of thirty days may be reduced in particular cases if so agreed by the aeronautical authorities of both Contracting Parties.

(d) The Contracting Parties hereby agree that where:

(1) during the period of the Board's approval of the IATA rate conference machinery, either any specific rate agreement is not

approved within a reasonable time by either Contracting Party or a conference of IATA is unable to agree on a rate, or

(2) at any time no IATA machinery is applicable, or

(3) either Contracting Party at any time withdraws or fails to renew its approval of that part of the IATA rate conference machinery relevant to this provision,

the procedure described in paragraphs (e), (f) and (g) hereof shall apply.

(e) In the event that power is conferred by law upon the aeronautical authorities of the United States to fix fair and economic rates for the transport of persons and property by air on international services and to suspend proposed rates in a manner comparable to that in which the Civil Aeronautics Board at present is empowered to act with respect to such rates for the transport of persons and property by air within the United States, each of the Contracting Parties shall thereafter exercise its authority in such manner as to prevent any rate or rates proposed by one of its carriers for services from the territory of one Contracting Party to a point or points in the territory of the other Contracting Party from becoming effective, if, in the judgment of the aeronautical authorities of the Contracting Party whose air carrier or carriers is or are proposing such rate, that rate is unfair or uneconomic. If one of the Contracting Parties on receipt of the notification referred to in paragraph (c) above is dissatisfied with the new rate proposed by the air carrier or carriers of the other Contracting Party, it shall so notify the other Contracting Party prior to the expiry of the first fifteen of the thirty days referred to, and the Contracting Parties shall endeavour to reach agreement on the appropriate rate. In the event that such agreement is reached each Contracting Party will exercise its statutory powers to give effect to such agreement. If agreement has not been reached at the end of the thirty day period referred to in paragraph (c) above, the proposed rate may, unless the aeronautical authorities of the country of the air carrier concerned see fit to suspend its operation, go into effect provisionally pending the settlement of any dispute in accordance with the procedure outlined in paragraph (g) below.

(f) Prior to the time when such power may be conferred by law upon the aeronautical authorities of the United States, if one of the Contracting Parties is dissatisfied with any new rate proposed by the air carrier or carriers of either Contracting Party for services from the territory of one Contracting Party to a point or points in the territory of the other Contracting Party, it shall so notify the other prior to the expiry of the first fifteen of the thirty day period referred

to in paragraph (e) above, and the Contracting Parties shall endeavour to reach agreement on the appropriate rate. In the event that such agreement is reached each Contracting Party will use its best efforts to cause such agreed rate to be put into effect by its air carrier or carriers. It is recognised that if no such agreement can be reached prior to the expiry of such thirty days, the Contracting Party raising the objection to the rate may take such steps as it may consider necessary to prevent the inauguration or continuation of the service in question at the rate complained of.

(g) When in any case under paragraphs (e) and (f) above the aeronautical authorities of the two Contracting Parties cannot agree within a reasonable time upon the appropriate rate after consultation initiated by the complaint of one Contracting Party concerning the proposed rate or an existing rate of the air carrier or carriers of the other Contracting Party, upon the request of either, both Contracting Parties shall submit the question to the Provisional International Civil Aviation Organisation or to its successor for an advisory report, and each Party will use its best efforts under the powers available to it to put into effect the opinion expressed in such report.

(h) The rates to be agreed in accordance with the above paragraphs shall be fixed at reasonable levels, due regard being paid to all relevant factors, such as cost of operation, reasonable profit and the rates charged by any other air carriers.

(j) The Executive Branch of the Government of the United States agrees to use its best efforts to secure legislation empowering the aeronautical authorities of the United States to fix fair and economic rates for the transport of persons and property by air on international services and to suspend proposed rates in a manner comparable to that in which the Civil Aeronautics Board at present is empowered to act with respect to such rates for the transport of persons and property by air within the United States.

[No. 1507] 10

III

(a) ROUTES TO BE SERVED BY AIR CARRIERS OF THE UNITED KINGDOM

(In both directions; stops for non-traffic purposes omitted)

POINT OF DEPARTURE (Any one or more of the following)	INTERMEDIATE POINTS (Any one or more of the following, if desired)	DESTINATION IN U. S. TERRITORY (Any one or more of the following, if desired)	POINTS BEYOND (Any one or more of the following, if desired)
1. London		New York	San Francisco and the points on Route 7.
2. London Prestwick	Shannon Iceland Azores Bermuda Gander Montreal	New York Chicago Detroit Philadelphia Washington Baltimore Boston	
3.*London Prestwick	Shannon Iceland Azores Bermuda Gander Montreal	New York	(a) New Orleans Mexico City (b) Cuba Jamaica Panama A point in Colombia A point in Ecuador Lima Santiago
4. Bermuda		Baltimore Washington New York	Montreal
5.*Trinidad British Guiana Jamaica British Honduras	Tobago Barbados Grenada St. Vincent St. Lucia Antigua St. Kitts St. Thomas San Juan Ciudad Trujillo Port au Prince Jamaica Cuba Nassau Bermuda	Miami	
6. Nassau Cat Cay		Miami Palm Beach	
7. Singapore Hong Kong	Manila Guam Wake Midway Honolulu	San Francisco	

*Notice will be given by the aeronautical authorities of the United Kingdom to the aeronautical authorities of the United States of the route service patterns according to which services will be inaugurated on these routes.

(b) ROUTES TO BE SERVED BY AIR CARRIERS OF THE UNITED STATES

(In both directions; stops for non-traffic purposes omitted)

POINT OF DEPARTURE (Any one or more of the following)	INTERMEDIATE POINTS (Any one or more of the following, if desired)	DESTINATION IN U. K. TERRITORY (Any one or more of the following, if desired)	POINTS BEYOND (Any one or more of the following, if desired)
1.*Chicago Detroit Washington Philadelphia New York Boston Baltimore	Gander Greenland Iceland Shannon	London Prestwick	Amsterdam Helsinki Copenhagen Stavanger Oslo Stockholm Warsaw Berlin Frankfurt Moscow Leningrad Points in the Baltic countries
2.*New York Chicago Philadelphia Baltimore Washington Boston Detroit	Gander Greenland Iceland Shannon	London Prestwick	Brussels Munich Prague Vienna Budapest Belgrade Bucharest Istanbul Ankara A point in Iran Beirut A point in Syria A point in Iraq A point in Afghanistan Karachi Delhi Calcutta
3.*Chicago Detroit Washington New York Boston Baltimore Philadelphia	Gander Shannon Greenland Iceland Paris A point in Switzerland Rome Athens Cairo	Lydda	A point in Iraq Dhahran Bombay Calcutta A point in Burma A point in Siam A point or points in Indo-China A point or points in China
4. Chicago Detroit Washington New York Boston Baltimore Philadelphia	Gander Azores Lisbon (a) / (b) Algiers / Madrid Tunis / Rome Tripoli / Athens Benghazi / Cairo Cairo	Lydda	From Lydda to points beyond as described in Route 3.

*Notice will be given by the aeronautical authorities of the United States to the aeronautical authorities of the United Kingdom of the route service patterns according to which services will be inaugurated on these routes.

POINT OF DEPARTURE (Any one or more of the following)	INTERMEDIATE POINTS (Any one or more of the following, if desired)	DESTINATION IN U. K. TERRITORY (Any one or more of the following, if desired)	POINTS BEYOND (Any one or more of the following, if desired)
5. New York Chicago Detroit Washington Philadelphia Boston Baltimore	Gander Bermuda Azores	London	(From the Azores) Lisbon Barcelona Marseilles
6.*San Francisco Los Angeles	Honolulu Midway Wake Guam Manila	Hong Kong	Macao A point or points in China A point or points in Indo-China A point or points in Siam A point or points in Burma Calcutta
7.*San Francisco Los Angeles	Honolulu Midway Wake Guam Manila A point or points in Indo-China	Singapore	Batavia
8. New York Washington Baltimore		Bermuda	
9. Miami Palm Beach		Cat Cay Nassau	
10. Miami	Points in Cuba	Jamaica	(a) Baranquilla via South American points to Balboa (b) Baranquilla via South American points to Trinidad
11. New Orleans Houston	Points in Cuba	Jamaica	Aruba South American points
12. New York Miami	Camaguey Port au Prince Cuidad Trujillo San Juan Saint Thomas Point a Pitre Fort de France	Antigua St. Lucia Trinidad British Guiana	Via South American points to Buenos Aires

*Notice will be given by the aeronautical authorities of the United States to the aeronautical authorities of the United Kingdom of the route service patterns according to which services will be inaugurated on these routes.

POINT OF DEPARTURE (Any one or more of the following)	INTERMEDIATE POINTS (Any one or more of the following, if desired)	DESTINATION IN U.K. TERRITORY (Any one or more of the following, if desired)	POINTS BEYOND (Any one or more of the following, if desired)
13. New York	(a) Azores Dakar Monrovia (b) San Juan Trinidad British Guiana Belem Natal Monrovia Ascension Island	Accra or Lagos	Leopoldville Johannesburg

IV

(a) Amendments made by either Contracting Party to the routes described in Section III of this Annex which change the points served in the territory of the other Contracting Party will be made only after consultation in accordance with the provisions of Article 8 of this Agreement.

(b) Other route changes desired by either Contracting Party may be made and put into effect at any time, prompt notice to that effect being given by the aeronautical authorities of the Contracting Party concerned to the aeronautical authorities of the other Contracting Party. If such other Contracting Party finds that, having regard to the principles set forth in paragraph (6) of the Final Act of the Conference referred to in Section I of this Annex, the interests of its air carrier or carriers are prejudiced by the carriage by the air carrier or carriers of the first Contracting Party of traffic between the territory of the second Contracting Party and the new point in the territory of a third country it shall so inform the first Contracting Party. If agreement cannot be reached by consultation between the Contracting Parties, it shall be open to the Contracting Party whose air carrier or carriers is or are affected to invoke the provisions of Article 9 of this Agreement.

(c) The Contracting Parties will, as soon as possible after the execution of this Agreement and from time to time thereafter, exchange information concerning the authorisations extended to their respective designated air carriers to render service to, through and from the territory of the other Contracting Party. This will include copies of current certificates and authorisations for service on the routes which are the subject of this Agreement, and for the future such new certificates and authorisations as may be issued, together with amendments, exemption orders and authorised service patterns.

V

(a) Where the onward carriage of traffic by an aircraft of different size from that employed on the earlier stage of the same route (hereinafter referred to as "change of gauge") is justified by reason of economy of operation, such change of gauge at a point in the territory of the United Kingdom or the territory of the United States shall not be made in violation of the principles set forth in the Final Act of the Conference on Civil Aviation held at Bermuda from January 15 to February 11, 1946 and, in particular, shall be subject to there being an adequate volume of through traffic.

(b) Where a change of gauge is made at a point in the territory of the United Kingdom or in the territory of the United States, the smaller aircraft will operate only in connection with the larger aircraft arriving at the point of change, so as to provide a connecting service which will thus normally wait on the arrival of the larger aircraft, for the primary purpose of carrying onward those passengers who have travelled to United Kingdom or United States territory in the larger aircraft to their ultimate destination in the smaller aircraft. Where there are vacancies in the smaller aircraft such vacancies may be filled with passengers from United Kingdom or United States territory respectively. It is understood however that the capacity of the smaller aircraft shall be determined with primary reference to the traffic travelling in the larger aircraft normally requiring to be carried onward.

(c) It is agreed that the arrangements under any part of the preceding paragraphs (a) and (b) shall be governed by and in no way restrictive of the standards set forth in paragraph (6) of the Final Act.

A. H. S.	G. P. B.
W J B.	H. B. OR
W. P. H.	S M.
L. J. D.	G. N.
P. G. M	L W P

FINAL ACT OF THE CIVIL AVIATION CONFERENCE, HELD AT BERMUDA 15TH JANUARY TO 11TH FEBRUARY, 1946.

Bermuda, 11th February, 1946.

THE Governments of the United States of America and of the United Kingdom of Great Britain and Northern Ireland,

Having decided to hold between themselves a Conference on Civil Aviation,

Appointed their respective delegates who are listed below:—

United States of America.

George P. Baker (Chairman of Delegation), Director, Office of Transport and Communications Policy, Department of State.
Harllee Branch, Member, Civil Aeronautics Board.
John D. Hickerson, Deputy Director, Office of European Affairs, Department of State.
Josh B. Lee, Member, Civil Aeronautics Board.
Stokeley W. Morgan, Chief, Aviation Division, Department of State.
George C. Neal, General Counsel, Civil Aeronautics Board.
Garrison Norton, Deputy Director, Office of Transport and Communications Policy, Department of State.
L. Welch Pogue, Chairman, Civil Aeronautics Board.
Oswald Ryan, Member, Civil Aeronautics Board.
John Sherman, Liaison Consultant, Civil Aeronautics Board.

United Kingdom.

Sir Henry Self, K.C.M.G., K.B.E., C.B., (Chairman of Delegation), Director-General designate of Civil Aviation, Ministry of Civil Aviation.
Sir William P. Hildred, Kt., C.B., O.B.E., Director-General of Civil Aviation, Ministry of Civil Aviation.
W. J. Bigg, Colonial Office.
N. J. A. Cheetham, Foreign Office.
L. J. Dunnett, Ministry of Civil Aviation.
Peter G. Masefield, Civil Air Attaché, British Embassy, Washington.

Who met in Bermuda on the 15th January, 1946.

At the first plenary session, Sir Henry Self was elected Chairman of the Conference and the Conference was divided into two Committees. The members of the Committees and of the Sub-Committees, appointed by the respective Chairmen of the Delegations, are listed below:—

COMMITTEE I.

RATES AND TRAFFIC.

Chairman : Sir Henry Self (United Kingdom).

Members:

United States.	*United Kingdom.*
Delegates.	*Delegates.*
George P. Baker.	Sir William Hildred.
Harllee Branch.	N. J. A. Cheetham.
Josh B. Lee.	L. J. Dunnett.
Stokeley W. Morgan.	P. G. Masefield.
George C. Neal.	
L. Welch Pogue.	
Oswald Ryan.	
Advisers.	*Advisers.*
Colonel S. E. Gates.	M. E. Bathurst.
W. John Kenney.	Major J. R. McCrindle.
Major-General L. S. Kuter.	Vernon Crudge.
Livingston Satterthwaite.	
Consultants.	
Harold Bixby.	
Terrell Drinkwater.	
Julius C. Holmes.	
John Leslie.	
John E. Slater.	
James H. Smith, Jun.	

SUB-COMMITTEE 1.—POLICY.

Chairman : Sir Henry Self (United Kingdom).

Members:

Delegates.	*Delegate.*
George P. Baker.	Sir William Hildred.
Stokeley W. Morgan.	
L. Welch Pogue.	

SUB-COMMITTEE 2.—DRAFTING.

Chairman : Stokeley W. Morgan (United States).

Members:

Delegate.

George C. Neal.

Delegates.

L. J. Dunnett.
P. G. Masefield.

Adviser.

Colonel S. E. Gates.

Adviser.

M. E. Bathurst.

SUB-COMMITTEE 3.—ROUTES.

Chairman : L. Welch Pogue (United States).

Members:

Delegates.

Harllee Branch.
Josh B. Lee.
Stokeley W. Morgan.
George C. Neal.
Oswald Ryan.
John Sherman.

Delegates.

W. J. Bigg.
N. J. A. Cheetham.
L. J. Dunnett.
P. G. Masefield.

Advisers.

William Fleming.
Colonel S. E. Gates.
Major-General L. S. Kuter.
Commander S. Jurika.
Livingston Satterthwaite.

Advisers.

M. E. Bathurst.
Major J. R. McCrindle.
Vernon Crudge.

Consultants.

Harold Bixby.
Terrell Drinkwater.
Julius C. Holmes.
John Leslie.
John E. Slater.
James H. Smith, Jun.

COMMITTEE II.

AD HOC.

Chairman : L. J. Dunnett (United Kingdom).

Delegates.

John D. Hickerson.
Stokeley W. Morgan.

Delegate.

N. J. A. Cheetham.

The Final Plenary Session was held on the 11th February, 1946.

As a result of the deliberations of the Conference there was formulated an Agreement between the Government of the United Kingdom and the Government of the United States relating to air services between their respective territories, and Annex thereto. (Attached hereto as Appendix I.)[1]

The following resolution was adopted:—

Whereas representatives of the two Governments have met together in Bermuda to discuss Civil Aviation matters outstanding between them and have reached agreement thereon,

Whereas the two Governments have to-day concluded an Agreement relating to air services between their respective territories (hereinafter called "the Agreement"),

And whereas the two Governments have reached agreement on the procedure to be followed in the settlement of other matters in the field of Civil Aviation,

Now therefore the representatives of the two Governments in Conference resolve and agree as follows:—

(1) That the two Governments desire to foster and encourage the widest possible distribution of the benefits of air travel for the general good of mankind at the cheapest rates consistent with sound economic principles; and to stimulate international air travel as a means of promoting friendly understanding and good will among peoples and ensuring as well the many indirect benefits of this new form of transportation to the common welfare of both countries.

(2) That the two Governments reaffirm their adherence to the principles and purposes set out in the preamble to the Convention on International Civil Aviation signed at Chicago on the 7th December, 1944.

(3) That the air transport facilities available to the travelling public should bear a close relationship to the requirements of the public for such transport.

(4) That there shall be a fair and equal opportunity for the carriers of the two nations to operate on any route between their respective territories (as defined in the Agreement) covered by the Agreement and its Annex.

(5) That, in the operation by the air carriers of either Government of the trunk services described in the Annex to the Agreement, the interest of the air carriers of the other Government shall be taken into consideration so as not to affect unduly the services which the latter provides on all or part of the same routes.

(6) That it is the understanding of both Governments that services

[1] [*Ante* p. 1.]

provided by a designated air carrier under the Agreement and its Annex shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country of which such air carrier is a national and the country of ultimate destination of the traffic. The right to embark or disembark on such services international traffic destined for and coming from third countries at a point or points on the routes specified in the Annex to the Agreement shall be applied in accordance with the general principles of orderly development to which both Governments subscribe and shall be subject to the general principle that capacity should be related:

(*a*) to traffic requirements between the country of origin and the countries of destination;

(*b*) to the requirements of through airline operation; and

(*c*) to the traffic requirements of the area through which the airline passes after taking account of local and regional services.

(7) That, in so far as the air carrier or carriers of one Government may be temporarily prevented through difficulties arising from the War from taking immediate advantage of the opportunity referred to in paragraph (4) above, the situation shall be reviewed between the Governments with the object of facilitating the necessary development, as soon as the air carrier or carriers of the first Government is or are in a position increasingly to make their proper contribution to the service.

(8) That duly authorised United States civil air carriers will enjoy non-discriminatory "Two Freedom" privileges and the exercise (in accordance with the Agreement or any continuing or subsequent agreement) of commercial traffic rights at airports located in territory of the United Kingdom which have been constructed in whole or in part with United States funds and are designated for use by international civil air carriers.

(9) That it is the intention of both Governments that there should be regular and frequent consultation between their respective aeronautical authorities (as defined in the Agreement) and that there should thereby be close collaboration in the observance of the principles and the implementation of the provisions outlined herein and in the Agreement and its Annex.

In witness whereof the following Delegates sign the present Final Act.

Done at Bermuda the eleventh day of February, 1946.

This Final Act shall be deposited in the Archives of the Government of the United Kingdom and a certified copy shall be transmitted

by that Government to the Government of the United States of America.

United States of America.	*United Kingdom.*
GEORGE P. BAKER.	A. H. SELF.
HARLLEE BRANCH.	WM. P. HILDRED.
STOKELEY W. MORGAN.	W. J. BIGG.
GEORGE C. NEAL.	L. J. DUNNETT.
GARRISON NORTON.	PETER G. MASEFIELD.
L. WELCH POGUE.	
OSWALD RYAN.	
JOHN SHERMAN.	

APPENDIX

II

THE JORDANIAN STANDARD

FORM OF AGREEMENTS

AIR TRANSPORT AGREEMENT BETWEEN
THE GOVERNMENT OF THE HASHEMITE KINGDOM
OF JORDAN AND THE GOVERNMENT OF .....
.....

The Government of the Hashemite Kingdom of Jordan and the Government of the .....

Being parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944,

Desiring to conclude an Agreement, supplementary to the said Convention, for the purpose of establishing scheduled and non-scheduled air services between and beyond their respective territories,

Have agreed as follows:

Article (1)

Definitions

For the purpose of the present Agreement unless the context otherwise requires:-

a) The term "The Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on the seventh day of December, 1944, and includes any Annex adopted under Article 90 of that Convention and any amendment of the Annexes or of the Convention under Articles 90 and 94 thereof so far as those Annexes and amendments have been adopted by both Contracting Parties;

b) The term "Aeronautical Authorities" means in the case of the Government of The Hashemite Kingdom of Jordan, Civil Aviation Department/ Ministry of Transport and in case of the Government of .....
.....
and or any other authority legally empowered to perform the functions excercised now by the said authorities;

c) The term "Designated Airline or airlines" means airlines which have been designated and authorized in accordance with Article 3 of the present Agreement;

d) The term "Territory" in relation to a State means the land areas and territorial waters adjacent there to under the sovereignty of that State;

e) The term "Air Service" means any scheduled or non-scheduled air service performed by aircraft for the public transport for passengers, mail or cargo;

f) The term "International Air Service" "Airlines" "and" stop for non-traffic purposes "have the meanings respectively assigned to then in Article 96 of the Convention;

g) "Capacity" in relation to an aircraft "means the payload of that aircraft available on a route or section of a route; and

h) "Capacity" in relation to "agreed service" means the capacity of the aircraft used on such service multiplied by the frequency operated by such aircraft over a given period and route or section of a route.

Article (2)

Traffic Rights

1. Each Contracting Party grants to the other Contracting Party the rights specified in the present Agreement for the purpose of establishing scheduled and non-scheduled international air services on the routes specified in accordance with the schedule to the present Agreement. Such services and routes are hereafter called "the agreed services" and the "specified routes" respectively. The airline or airlines designated by each Contracting Party shall enjoy for the conduct of air services the following rights:-

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

   b) To make stops in the said territory for non-traffic purposes, and

   c) To make stops in the said territory at the points on the specified routes for the purpose of putting down and taking on international traffic in passengers, cargo and mail.

2. (Nothing in paragraph 1) of this Article shall be deemed to confer on the airline or airlines of one Contracting Party the privilege of taking on, in the territory of the other Contracting Party, passengers, cargo and mail carried for remuneration or hire and destined for another point in the territory of that other Contracting Party;

Article (3)

Necessary Authorizations

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

2. On receipt of such designation, the other Contracting Party shall, subject to the provisions or paragraphs 4 and 5) of this Article, without delay grant to the airline or airlines designated the appropriate operating authorizations.

3. Each Contracting Party shall have the right, by written notification to the other Contracting Party, to withdraw the designation of the airline or airlines and to designate another airline or airlines.

4. The aeronautical authorities of one Contracting Party may require the airline or airlines designated by the other Contracting Party to satisfy them that it is or they are qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by such authorities in conformity with the provisions of the Convention.

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

6. When an airline or (airlines) has been so designated and authorized, it may at any time begin to operate the agreed services, provided that a tarrif established in accordance with the provisions of Article 10 of the present Agreement is in force and an agreement in accordance with the provisions of Article 5) of the present Agreement has been reached in respect of that service.

Article (4)

Suspension and Revocation

1. Each Contracting Party shall have the right to revoke the operating authorization or to suspend the exercise of the rights specified in Article 2 of the present Agreement by the airline or airlines designated by the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of these rights:

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

the airline or airlines or in nationals of such Contracting Party, or

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

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

2. Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph 1 of this Article is essential to prevent further infringements of laws or regulations, such right shall be exercised only after consultation with the other Contracting Party. In such a case the consultations shall begin within a period of twenty (20) days from the date of request made by either Contracting Party for consultations.

Article (5)

Capacity regulations

1. Scheduled air services

1. The designated airline or airlines shall enjoy fair and equal opportunities to operate the agreed services between the territories of the Contracting Parties.

2. The designated airline or airlines of each Contracting Party shall take into consideration the interests of the designated airline or airlines of the other Contracting Party so as not to affect unduly the agreed services of the later airline or airlines.

3. The capacity of transport offered by the designated airline or airlines shall be adapted to traffic demands.

4. The main objective of the agreed services shall be to provide capacity corresponding to traffic demands between the territory of the Contracting Party which has designated the airline or airlines and the points served on the specified routes.

5. The right of the designated airline or airlines to carry international traffic between the territory of the other Contracting Party and the territories of third countries

shall be exercised in conformity with the general principles of normal development to which both Contracting Parties subscribe and subject to the condition that the capacity shall be adapted:

a) to traffic demands from and to the territory of the Contracting Party which has designated the airline or airlines

b) to traffic demands of the areas through which the service passes, local and regional services being taken into account;

c) to the requirements of an economical operation of the agreed services.

11. Non-scheduled air services

1. The traffic volume shall be agreed between the designated airline or airlines of the Contracting Parties so as to ensure an equal share of the offered capacity.

2. Agreements according to para 1 above shall be reached between the designated airline or airlines:

a. For series of non-scheduled flights at the latest three (3) weeks before the commencement of the pertaining summer - and winter period.

b. For non-scheduled single flights at the latest three (3) days before the commencement of the operation (s).

c. The airline or airlines designated by each Contracting Party may assign the whole or part of its share of the non-scheduled services program to other airline or airlines registered in the territory of the territory of one of the Contracting Parties.

Article (6)

Applicability of Laws and Regulations

1. The laws and regulations of one Contracting Party relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of the airline or airlines designated by the other Contracting Party and shall be complied with by such aircraft upon entrance into

or departure from and while within the territory of the first Contracting Party.

2. The law and regulations of one Contracting Party relating to admission to or departure from its territory of passengers, crew or cargo of aircraft, including regulations relating to entry, clearance, immigration, passports, customs and quarantine, shall be complied with by or on behalf of such passengers, crew or cargo of the airline or airlines of the other Contracting Party upon entrance into or departure from and while within the territory of the first Contracting Party.

Article (7)

Recognition of Certificates and Licenses

Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by one Contracting Party, and still in force, shall be recognized as valid by the other Contracting Party for the purpose of operating the agreed services. Each Contracting Party reserves the right, however, to refuse to recognize. For the purpose of flight above its own territory, certificates of competency and licenses granted to its own nationals or rendered valid by another State.

Article (8)

Exemption from customs and other duties

1. Aircraft operated on international services by the airline or airlines designated by each Contracting Party, as well as their regular equipment, supplies of fuels and lubricants and the aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempt from all custom duties, inspection fees and other duties or taxes on arriving in the territory of the other Contracting Party, provided such equipment and supplies shall remain on board the aircraft up to such time as they are re-exported.

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

a) Aircraft stores taken on board in the territory of either Contracting Party, within limits fixed by the authorities of said contracting Party, and for use on board the aircraft engaged on a specified route of the other Contracting Party;

b) Spare parts entered into the territory of either Contracting Party for the maintenance or repair of aircraft used on a specified route by the designated airline or airlines of the other Contracting Party;

c) Fuel and lubricants destined to supply aircraft operated on a specified route by the designated airline or airlines of the other Contracting Party, even when these supplies are to be use on the part of the journey performed over the territory of the Contracting Party in which they are taken on board.

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

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

Article (9)

Direct Transit Traffic

Passengers in transit across the territory of either Contracting Party shall not be subject to control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.

Article (10)

Transport Tariffs

1. The tariffs to be charged by the airline or airlines of one Contracting Party for the carriage to or from the territory

of the other Contracting Party shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, reasonable profit, characteristics of service (such as standards of speed and accomodation).

2. The tariffs referred to in paragraph 1) of this Article shall be agreed by the designated, airline or airlines of both Contracting Parties.

3. Agreements according to para 2 above may, where possible, be reached through the rate-fixing machinery of the International Air Transport Association.

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

5. If the designated airline or airlines can not agree on any of these tariffs or if for some other reason a tariff can not be fixed in accordance with paragraph 2) of this Article, or if during the first fifteen (15) days of the thirty (30) days period referred to in paragraph 4) of this Article one Contracting Party gives the other Contracting Party notice of its dissatisfaction with any tariff agreed in accordance with the provisions of paragraph 2) of this Article, the aeronautical authorities of the Contracting Party shall endeavour to agree upon the tariffs.

6. Subject to the provisions of paragraph 4) of this Article, no tariff shall come into force if the aeronautical authorities of either Contracting Party have not approved it.

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

Article (11)

Transfer of net revenues

Each Contracting Party grants to the designated airline or airlines of the other Contracting Party the right to remit to its head office the excess over expenditure of receipt earned in the territory of the first Contracting Party without restrictions at the prevailing rate of exchange. The procedure

for such remittance, however, shall be in accordance with the foreign exchange regulations of the Contracting Party in the territory of which the revenue accrued.

Article (12)

Airport and Similar Charges

The charges imposed by either Contracting Party for the use of airports and other aviation facilities by the aircraft of the designated airline or airlines of the other Contracting Party shall not be higher than those paid by its national aircraft operating international services.

Article (13)

Representation, Ticketing and Sales Promotion

1. The designated airline or airlines of each Contracting Party shall have an equal opportunity to employ, subject to the laws and regulations of the other Contracting Party, the technical and commercial personnel for the performance of the agreed services on the specified routes and to establish and operate offices in the territory of the other Contracting Party.

2. The designated airline or airlines of each Contracting Party shall further have an equal opportunity to issue all kinds of documents of carriage and to advertise and to promote sales in the territory of the other Contracting Party.

Article (14)

Consultations and Modifications

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

2. If either of the Contracting Parties considers it desirable to modify any provisions of the present Agreement, it may request consultation with the other Contracting Party, such consultation, which may be between the aeronautical authorites and which may be through discussion or by correspondence, shall begin within a period of sixty (60) days of the date of request.

   Any modifications so agreed shall come into force thirty (30) days after they have been confirmed by an exchange of diplomatic notes.

3. Modifications to the schedule shall be agreed between the appropriate authorities of the Contracting Parties and shall come into force ten (10) days after the date of an exchange of diplomatic notes.

Article (15)

Settlement of disputes

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

2. If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body, or the dispute may at the request of either Contracting Party be submitted for decision to a tribunal of three arbitrators, one to be nominated by each Contracting Party and the third to be appointed by the two so nominated. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other of a notice through diplomatic channels requesting arbitration of the dispute and the third arbitrator shall be appointed within afurther period of sixty days. If either of the Contracting Parties fails to nominate an arbitrator within the period specified, or if third arbitrator is not appointed within the period specified, the president of the Council of the Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case requires. In any case, the third arbitrator shall be a national of a third state and shall act as president of the arbitral body.

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

Article (16)

Termination

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

Article (17)

Registration

This Agreement and all amendments thereto shall be registered with the International Civil Aviation Organization.

Article (18)

The present Agreement shall be applied provisionally from the date of its signature; it shall enter into force when the Contracting Parties will have reciprocally notified the fulfilment of their Constitutional Formalities with regard to the conclusion and entering into force of international agreements.

In witness where of; the undersigned, being duly authorized thereto by their respective Governments, have signed this agreement.

Done in duplicate at ..... this.....day of ....., 19, in the English and Arabic languages.

For the Government of the Hashemite Kingdom of Jordan,	For the Government of .....
.....	.....
.....	.....

APPENDIX III

Information From Jordan's AIP About

1. AMMAN AIRPORT
2. AQABA AIRPORT
3. JERUSALEM AIRPORT

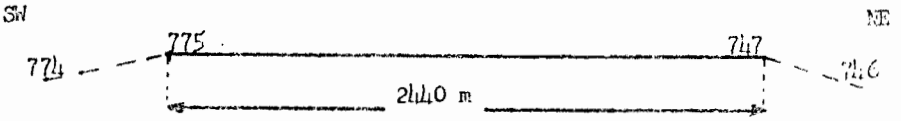
2	REF: POINT LAT. 31°58'11"N LONG. 35° 59'05"E SITE: Centre of Runway	1	CITY/AERODROME: AMMAN/Amman
3	DISTANCE AND DIRECTION FROM CITY: 2.77 NM (5 km) North East	18	FUEL GRADES: JET A-1 only
4	ELEVATION: 2548 ft.	19	OIL GRADES: available
5	AERODROME REFERENCE TEMPERATURE: 27.8°C		
6	MAGNETIC VARIATION: 2E Annual Change: 3' Increase	20	OXYGEN AND RELATED SERVICING: NIL
7	TRANSITION ALTITUDE: 6500 ft.		
8	OPERATIONAL HOURS: H 24	21	REFUELLING FACILITIES & LIMITATIONS: H 24
9	AERODROME OPERATOR OR ADMINISTRATIVE AUTHORITY: Department of Civil Aviation, Ministry of Transport.	22	HANGAR SPACE AVAILABLE FOR VISITING AIRCRAFT: 2502 sq. mtres. PPR. Unheated. Door 55 x 15 mtres.
10	POSTAL ADDRESS: Department of Civil Aviation, P.O. Box 7547, Amman, Jordan.	23	REPAIR FACILITIES NORMALLY AVAILABLE: Cessna 150 PA 28 B727 LR25 SC3 B707 & B720.
11	TELEGRAPHIC ADDRESSES (AERONAUTICAL) : OJAMYA (COMMERCIAL) : Civilair Amman/Telex Civair JO 1325	24	CRASH EQUIPMENT: Required Cat. VII available Cat. VII Trained Personnel - 32.
12	TELEPHONE NUMBERS: Amman 51401-10		
13	OVERNIGHT ACCOMMODATION: Nil Unlimited Accommodation in city Hotels.	25	SEASONAL AVAILABILITY: All Seasons
		26	LOCAL FLYING RESTRICTIONS: Aircraft landing on rwy 06 or taking off rwy 24 are to avoid Royal Palace and Broadcast Station. No right hand circuits.
14	RESTAURANT ACCOMMODATION: Restaurant 150 meals per hr. available during operational hrs.of the AD.		
15	MEDICAL FACILITIES: First Aid Treatment, Ambulances, Hospitals in Amman 1 NM.		
16	TRANSPORT AVAILABLE: Buses & Taxis to Amman.		
17	CARGO FACILITIES AVAILABLE: Fork Lift 3 and 6 tons 14 ft. High Loader 7 tons Belt Conveyor sufficient vehicles and handling equipment.	27	PRE-FLIGHT ALTIMETER CHECK POINT(S) & ELEVATION Holding point rwy 06 elev. 2544 ft. (775m) Holding point rwy 24 elev. 2452 ft. (747m)

28 **METEOROLOGICAL DATA**

MEAN DAILY MAXIMUM AND MINIMUM TEMPERATURES (CENT.)

Temperature	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
Maximum (a)	12.5	14.0	17.2	22.7	28.0	30.8	32.0	32.6	32.5	27.5	20.8	14.7
Minimum (b)	3.9	4.5	6.2	9.6	13.7	16.3	18.4	18.4	16.3	13.9	9.8	5.4
Monthly mean pressure in (MB) at approximately the times of max: (a) and min (b) temperatures												
(a)	926.3	925.2	925.3	924.1	923.7	922.3	920.1	920.6	923.4	926.4	926.0	927.8
(b)	927.7	926.5	925.7	925.2	924.8	923.3	920.8	921.6	924.7	928.0	928.0	928.9
Absolute humidity (G/M³) at approximately the times of max: (a) and min: (b) temperatures												
(a)	5.4	5.6	6.0	6.6	6.8	7.6	9.0	9.8	9.5	8.7	6.8	5.8
(b)	6.1	6.0	6.7	6.8	7.0	7.6	9.0	9.6	9.2	9.3	7.6	6.6

29 **SLOPES:** LONGITUDINAL PROFILES OF RUNWAYS, STOPWAYS AND CLEARWAYS.



Declared Distances	RWY	TORA m	ASDA m	TODA m	LDA m
	06	2440	2560	2560	2440
	24	2440	2560	2560	2440

AIP JORDAN AGA 2-2

30 PHYSICAL CHARACTERISTICS

RUNWAY		DIMENSIONS (M.)				STRENGTH	SURFACE	
Designation	True Brg.	Runway	Stopway	Clearway	Strip	Runway	Runway	Stopway
a	b	c	d	e	f	g	h	j
06 / 24	064 / 244	2440x45	60x45 / 120x45		2620x300	LCN 75	Asphalt	Rolled Earth
		8000+3500= 11500 ft.						

REMARKS:

31 MOVEMENT AREAS

APRONS: 200 x 160 m and 100x107 m
Surface : Asphalt + concrete
Strength : LCN 75

TAXIWAYS: Width : 15M with 5M Nonload-Bearing Shoulders either side.
Surface: Asphalt Strength: LCN 75

HELICOPTER ALIGHTING AREA:

VISUAL GROUND AIDS

32 TAXYING GUIDANCE SYSTEM:

33 VISUAL AIDS TO LOCATION:

34 INDICATORS AND GROUND SIGNALLING DEVICES: WDI's (Lgtd)

35 LIGHTING AIDS

APPROACH LIGHTS:

Runway 06 - Nil

Runway 24

VASIS

914 m White uni-di 5 bars

427 m Red L.I. omni-di 1 bar

VASIS

THRESHOLD LIGHTS: H.I. Green + green wing bars for 24

RUNWAY LIGHTS: White H.I. elevated bi-di

TAXIWAY LIGHTS: Blue/Amber

OTHER LIGHTING: Apron Floods

36 EMERGENCY LIGHTING: Electric Standby

37 OBSTRUCTION MARKING AND LIGHTING:
Red lights at night

38 MARKING AIDS Threshold - Runway Designators - Centre Line White - Taxiway Centre Line Yellow Taxi Holding Positions

39 OBSTRUCTIONS IN APPROACH AND TAKE-OFF AREAS

Runway designation	Type of Obstruction	Elev. (ft.)	From Runway Threshold Dist. (M.)	From Runway Threshold Mag.	Runway designation	Type of Obstruction	Elev. (ft.)	From Runway Threshold Dist. (M.)	From Runway Threshold Mag.
a	b	c	d	e	a	b	c	d	e
06	Radio Receiving Stn*	935	4300	228	24	Locator & Bcn*	770	2250	063
	Tomb of King Abdullah	840	2750	254		High Ground	866	2800	092
	Mosque	860	4620	245		Radio Mast *	866	900	128
	Mosque	875	5060	260					
	Radio Mast*								

REMARKS: * Obstruction Lighted.

2	REF: POINT LAT. 2939 N LONG. 3501 E SITE: Mid Point of Runway	1	CITY/AERODROME: AQABA/Aqaba International
3	DISTANCE AND DIRECTION FROM CITY: 9 km. North	18	FUEL GRADES: JET A-1 only.
4	ELEVATION: 175 ft. (53 m)	19	OIL GRADES: available
5	AERODROME REFERENCE TEMPERATURE: 35°C		
6	MAGNETIC VARIATION: 2E	20	OXYGEN AND RELATED SERVICING: Nil
7	TRANSITION ALTITUDE: 7500 ft.		
8	OPERATIONAL HOURS: 0500 to Sunset.	21	REFUELLING FACILITIES & LIMITATIONS: Operational hours.
9	AERODROME OPERATOR OR ADMINISTRATIVE AUTHORITY: Director General of Civil Aviation, Hashemite Kingdom of Jordan.	22	HANGAR SPACE AVAILABLE FOR VISITING AIRCRAFT: None.
10	POSTAL ADDRESS: Department of Civil Aviation, Aqaba Airport, AQABA, Jordan.	23	REPAIR FACILITIES NORMALLY AVAILABLE: None.
11	TELEGRAPHIC ADDRESSES (AERONAUTICAL) OJAQYD (COMMERCIAL) CIVILAIR AQABA	24	CRASH EQUIPMENT: Required Cat. VII available Cat. VII Trained Personnel - 20.
12	TELEPHONE NUMBERS: AQABA 2111		
13	OVERNIGHT ACCOMMODATION: Limited accommodation in town hotels.	25	SEASONAL AVAILABILITY: All Seasons.
14	RESTAURANT ACCOMMODATION: None at airport.	26	LOCAL FLYING RESTRICTIONS: Right Hand Circuit RWY 02 Left Hand Circuit RWY 20 Pilots to use caution to remain within Jordanian airspace.
15	MEDICAL FACILITIES: First Aid; Hospital in town.		
16	TRANSPORT AVAILABLE: Taxis.		
17	CARGO FACILITIES AVAILABLE: None.	27	PRE-FLIGHT ALTIMETER CHECK POINT(S) & ELEVATION Holding point RWY 02 - 176 ft. Holding point RWY 20 - 113 ft.

28 **METEOROLOGICAL DATA**

MEAN DAILY MAXIMUM AND MINIMUM TEMPERATURES (CENT:)

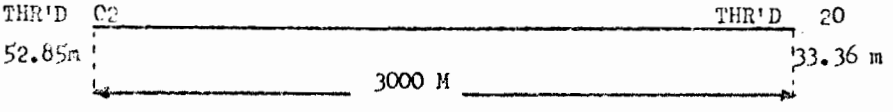
Temperature	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
Maximum (a)	21.7	23.0	26.6	30.9	35.4	39.5	39.7	40.1	36.8	33.3	28.5	23.5
Minimum (b)	9.3	10.3	12.9	16.4	20.5	23.7	24.8	25.3	22.8	19.7	15.4	11.1

Monthly mean pressure in (MB) at approximately the times of max: (a) and min (b) temperatures

1200Z (a)	1016.0	1014.7	1012.5	1010.3	1008.7	1006.6	1004.5	1004.3	1007.5	1011.5	1013.9	1015.5
0600Z (b)	1018.0	1017.3	1015.1	1013.1	1011.3	1009.6	1006.9	1007.1	1010.6	1014.2	1016.7	1013.0

Absolute humidity (G/M³) at approximately the times of max: (a) and min: (b) temperatures

29 **SLOPES:** LONGITUDINAL PROFILES OF RUNWAYS, STOPWAYS AND CLEARWAYS.



	RWY	TORA	ASDA	TODA	LDA
Declared Distances	02	3000	3400	3400	3000
	20	3000	3000	3000	3000

AIP JORDAN

AGA 2-4

30 PHYSICAL CHARACTERISTICS

RUNWAY		DIMENSIONS (M.)				STRENGTH	SURFACE	
Designation	True Brg.	Runway	Stopway	Clearway	Strip	Runway	Runway	Stopway
a	b	c	d	e	f	g	h	j
02	015	3000 x 45	400	-	3300 x 300	LCN 67	Asphalt	Rolled Earth
20	195		Nil					

REMARKS:

31 MOVEMENT AREAS

APRONS: Surface - Concrete

TAXIWAYS: (Incl. loops)
Asphalt width 23m

HELICOPTER ALIGHTING AREA:

VISUAL GROUND AIDS

32 TAXYING GUIDANCE SYSTEM:

33 VISUAL AIDS TO LOCATION: Identification sign: - I Bcn Flg Grn "AQ"

34 INDICATORS AND GROUND SIGNALLING DEVICES: Indicators & Ground signalling devices: WDI lighted

35 LIGHTING AIDS

APPROACH LIGHTS:
R/W 02 simple approach
420 m - one cross bar L. I.

THRESHOLD LIGHTS

RUNWAY LIGHTS H.I. White Threshold Grn.
Wing Bars 02

TAXIWAY LIGHTS L.I. Blue

OTHER LIGHTING VASI - RWY 02 only
Apron Floods

36 EMERGENCY LIGHTING:

37 OBSTRUCTION MARKING AND LIGHTING:
Red lights at night

38 MARKING AIDS Threshold and runway designators, Centre line, taxiway centreline Holdingpoint.

39 OBSTRUCTIONS IN APPROACH AND TAKE-OFF AREAS

Runway designation	Type of Obstruction	Elev. (ft.)	From Runway Threshold		Runway designation	Type of Obstruction	Elev. (ft.)	From Runway Threshold	
			Dist. (M.)	Mag.				Dist. (M.)	Mag.
a	b	c	d	e	a	b	c	d	e

REMARKS:

AIP JORDAN AGA 2-5

2	REF. POINT LAT. 31°52'N. LONG. 35°13'E SITE: Centre of runway	1	CITY/AERODROME: JERUSALEM/Jerusalem
3	DISTANCE AND DIRECTION FROM CITY: 8 Kms. north.	18	FUEL GRADES: 100/130 & Avtur
4	ELEVATION: 2460 ft. (750 M).	19	OIL GRADES: Shell 100, 120, W 100.
5	AERODROME REFERENCE TEMPERATURE: 26.4°C		
6	MAGNETIC VARIATION: 2° E.	20	OXYGEN AND RELATED SERVICING: Not available.
7	TRANSITION ALTITUDE: 5500 ft. (1675 M).		
8	OPERATIONAL HOURS: H.J.	21	REFUELLING FACILITIES & LIMITATIONS: 100/130: 1 truck 100 Gal/min, 1 truck 50 Gal/min Avtur: 1 truck 120 Gal/min.
9	AERODROME OPERATOR OR ADMINISTRATIVE AUTHORITY: Director General of Civil Aviation.	22	HANGAR SPACE AVAILABLE FOR VISITING AIRCRAFT: Nil.
10	POSTAL ADDRESS: Department of Civil Aviation, Jerusalem Airport.	23	REPAIR FACILITIES NORMALLY AVAILABLE: Nil.
11	TELEGRAPHIC ADDRESSES (AERONAUTICAL) OJJRYD (COMMERCIAL) CIVILAIR JERUSALEM	24	CRASH EQUIPMENT: 2 Water/foam tenders: 440 gallons water 44 gallons foam compound 420 lbs. CO_2 500 gallons water 40 gallons foam compound 80 lbs. dry powder
12	TELEPHONE NUMBERS: 6,26,27,38.	25	SEASONAL AVAILABILITY: All Seasons.
13	OVERNIGHT ACCOMMODATION: Hotels in city, heavily booked at Easter and Christmas.	26	LOCAL FLYING RESTRICTIONS: No flying permitted close to Armistice line, Left hand circuits unless otherwise instructed.
14	RESTAURANT ACCOMMODATION: At Airport.		
15	MEDICAL FACILITIES: First Aid room at airport, hospitals in city.		
16	TRANSPORT AVAILABLE: Taxis at airport, Local bus service to Jerusalem and Ramallah.		
17	CARGO FACILITIES AVAILABLE: By arrangement with contractors in Jerusalem.	27	PRE-FLIGHT ALTIMETER CHECK POINT(S) & ELEVATION Parking apron opposite terminal building. 2460 ft. (750 m)

28 **METEOROLOGICAL DATA**

MEAN DAILY MAXIMUM AND MINIMUM TEMPERATURES (CENT.)

Temperature	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
Maximum (a)	12.7	14.0	15.8	20.8	25.7	28.2	29.5	30.0	28.3	26.0	19.5	14.5
Minimum (b)	4.6	5.0	6.2	9.4	12.4	15.5	17.1	18.0	16.4	14.2	10.0	6.2

Monthly mean pressure in (MB) at approximately the times of max: (a) and min (b) temperatures

Absolute humidity (G/M^3) at approximately the times of max: (a) and min: (b) temperatures

29 **SLOPES:** LONGITUDINAL PROFILES OF RUNWAYS, STOPWAYS AND CLEARWAYS.

NW STWY _____ 1850 M _____ STWY SE

1 : 25		1.3%	0.9%	0.9%	1.14%	1 : 45
	50 M	720 M	360 M	360 M	410 M	90 M
Elevations	757.6	748.16	751.53	748.17	752.87	

AIP JORDAN

AGA 2-6

30 **PHYSICAL CHARACTERISTICS**

RUNWAY		DIMENSIONS (M.)				STRENGTH	SURFACE	
Designation	True Brg.	Runway	Stopway	Clearway	Strip	Runway	Runway	Stopway
a	b	c	d	e	f	g	h	j
11	115.5	1850	90 M	2000 M	2000	-	ASPHALT	ROLLED EARTH
29	295.5	x 43 M	50 M	-	x 175 M			

REMARKS:

31 **MOVEMENT AREAS**

APRONS: 210 x 95 M Surface : Asphalt
110 x 65 M Strength : Unknown

TAXIWAYS: none.
Surface n/a
Strength n/a

HELICOPTER ALIGHTING AREA:

VISUAL GROUND AIDS

32 TAXYING GUIDANCE SYSTEM: None.

33 VISUAL AIDS TO LOCATION:

34 INDICATORS AND GROUND SIGNALLING DEVICES: Name JERUSALEM in concrete letters north side of runway. Windsocks near runway thresholds and in centre of airfield.

35 **LIGHTING AIDS** Nil. Airfield closed at night.

APPROACH LIGHTS:

THRESHOLD LIGHTS

RUNWAY LIGHTS

TAXIWAY LIGHTS

OTHER LIGHTING

36 EMERGENCY LIGHTING: Nil.

37 OBSTRUCTION MARKING AND LIGHTING:

38 **MARKING AIDS** Rway thresholds and centre line and runway designations painted white.

39 **OBSTRUCTIONS IN APPROACH AND TAKE-OFF AREAS**

Runway designation	Type of Obstruction	Elev. (ft.)	From Runway Threshold Dist. (M.)	From Runway Threshold Mag.	Runway designation	Type of Obstruction	Elev. (ft.)	From Runway Threshold Dist. (M.)	From Runway Threshold Mag.
a	b	c	d	e	a	b	c	d	e
11	Radio mast (Ramallah)	1112	5000	353	29	Rway L. masts.	786	2103	113.5
	Water tower(Ramallah)	908	4200	346		High ground			
	High ground	845	2100	305		Qalundia refugee			
	High ground at Qalu-ndia.	809	1200	250		camp.	789	800	000
	Mosque at Nabi Samwil	865	4800	213		High ground at Kafr Aqab.	860	2000	355

REMARKS: High ground exists north and west of the runway above the horizontal surface of the airport.

APPENDIX IV

Tabulation of States' Reply to a questionair distributed by ICAO Concerning the Bilateral Agreements and the Means of Regulating Capacity.

APPENDIX I

TABULATION OF STATES' REPLIES TO QUESTIONS 1, 2, 3 AND 6

STATES		QUESTION 1		QUESTION 2								
		Bilaterals reported		Means of regulating capacity not specified in bilateral agreements								
		with capacity clauses	without capacity clauses	a) Airline pooling			b) Route Licensing			c) Other means		
				Yes	No	No. Com.	Yes	No	No Com.	Yes	No	No Com.
AFRICA (7 of 40)	Ghana	22	6	+				-			-	
	Madagascar	7	0	+					0			0
	Malawi	8	0	+			+				-	
	Niger	6	0	+				-			-	
	Rwanda	11	0			0			0			0
	Senegal	29	0			0			0	+		
	Tunisia	31	0	+			+				-	
ASIA AND PACIFIC (4 of 23)	Australia	24	0	+				-			-	
	Korea, R.O.	12	0			0			0	+		
	Philippines	23	2	+			+					0
	Singapore	40	0	+				-		+		
EUROPE (18 of 28)	Austria	44	0	+					0			0
	Cyprus	18	4	+					0			0
	Czechoslovakia	47	3	+			+			+		
	Denmark	45	9	+			+				-	
	Finland	19	3	+			+					0
	France	84	0	+			+					0
	Germany, F.R.	47	0	+			+			+		
	Ireland	9	7	+				-		+		
	Italy	76	0	+			+				-	
	Netherlands	65	11	+			+				-	
	Norway	43	13	+			+				-	
	Poland	44	0	+			+			+		
	Portugal	31	0	+			+				-	
	Romania	29	8	+			+					0
	Spain	50	0	+				-			-	
	Sweden	44	14	+			+				-	
	Switzerland	82	2	+			+				-	
	United Kingdom	76	0	+			+				-	
LATIN AM. & CARIB. (8 of 25)	Argentina	17	0	+			+				-	
	Barbados	7	2		-		+			+		
	Brazil	23	0	+					0			0
	Chile	16	0	+			+				-	
	Colombia	20	0	+					0			0
	Mexico	20	0	+			+					0
	Trinidad and Tobago	12	0		-			-			-	
	Uruguay	9	1			0			0			0
MIDDLE EAST (6 of 15)	Iraq	37	5	+			+				-	
	Israel	16	2			0			0			0
	Jordan	33	7	+					0			0
	Lebanon	30	0	+					0			0
	Saudi Arabia	26	0	+					0			0
	Syria	14	0			0			0			0
NORTH AMERICA (2 of 2)	Canada	27	4	+				-			-	
	United States	55	2		-		+			+		
Total States: 45		1 428	105	36	3	6	23	8	14	9	19	17

Symbols: + = Yes
* = Yes with qualifications
- = No
/ = No with qualifications
0 = No comment

TABULATION OF STATE REPLIES TO QUESTIONS 1, 2, 3 and 6

STATES		QUESTION 3 Capacity policies favoured in bilateral agreements		
		a) No predetermined regulation (Bermuda Principles)	b) Regulation only of numbers of airlines and flights	c) Regulation of actual capacity (predetermination)
AFRICA (7 of 40)	Ghana	+ (favoured)	+ (sometimes)	
	Madagascar			+
	Malawi		+	+
	Niger			+
	Rwanda	+ (no airline)		
	Senegal		+	
	Tunisia			+
ASIA AND PACIFIC (4 of 23)	Australia			+
	Korea, R.O.		+	
	Philippines			+
	Singapore			+
EUROPE (18 of 28)	Austria		+	
	Cyprus		+	+
	Czechoslovakia		+	
	Denmark	+		
	Finland			+
	France	+ (favoured)		+ (sometimes)
	Germany, F.R.			+
	Ireland	+ (1 airline)		
	Italy			+
	Netherlands	+		
	Norway	+		
	Poland			+
	Portugal		+	+
	Romania	+ (varies)	+ (varies)	+ (varies)
	Spain		+ (normal)	+ (exceptional)
	Sweden	+ (1 airline)		
	Switzerland	+ (favoured)		
	United Kingdom		+	+
LATIN AM. & CARIB. (8 of 25)	Argentina		+	+
	Barbados		+ (normal)	+ (exceptional)
	Brazil			+
	Chile	+ (before 1965)		+
	Colombia			+
	Mexico		+	+
	Trinidad & Tobago			+
	Uruguay		+	+
MIDDLE EAST (6 of 15)	Iraq		+	+
	Israel	+		
	Jordan			+
	Lebanon		+	+
	Saudi Arabia		+	
	Syria			
NORTH AMERICA (2 of 2)	Canada			+
	United States	+		
Total States: 45		11	16	25

Symbols: + = Yes
* = Yes with qualifications
- = No
≠ = No with qualifications
0 = No comment

APPENDIX 3 (Cont'd.)

TABULATION OF STATES' REPLIES TO QUESTIONS 1, 2, 3 AND 6

STATES		QUESTION 6 Data required from all carriers operating international air services to and from your country				
		Capacity offered	Passengers uplifted & discharged	Freight uplifted & discharged	Mail uplifted & discharged	Origin & destination of traffic
AFRICA (7 of 40)	Ghana	*	+	+	+	*
	Madagascar	*	*	*	*	*
	Malawi	+	+	+	+	+
	Niger	+	+	+	+	+
	Rwanda	-	+	+	+	+
	Senegal	-	+	-	-	+
	Tunisia	+	-	-	-	-
ASIA AND PACIFIC (4 of 23)	Australia	+	+	+	+	*
	Korea, R.O.	-	+	+	-	+
	Philippines	-	+	+	-	+
	Singapore	+	+	+	+	+
EUROPE (18 of 28)	Austria	+	+	+	+	-
	Cyprus	+	+	+	+	+
	Czechoslovakia	-	-	-	-	-
	Denmark	*	+	+	+	-
	Finland	*	+	+	+	-
	France	*	*	*	*	-
	Germany, F.R.	+	+	+	+	*
	Ireland	≠	≠	≠	≠	≠
	Italy	+	-	-	-	-
	Netherlands	-	+	+	+	-
	Norway	*	*	*	*	-
	Poland	≠	≠	≠	≠	≠
	Portugal	+	+	+	+	-
	Romania	-	-	-	-	-
	Spain	0	0	0	0	0
	Sweden	*	+	+	+	≠
	Switzerland	+	+	+	+	≠
	United Kingdom	*	*	*	*	*
LATIN AM. & CARIB. (8 of 25)	Argentina	0	0	0	0	0
	Barbados	+	+	+	+	+
	Brazil	+	+	+	+	+
	Chile	0	0	0	0	0
	Colombia	-	+	+	+	+
	Mexico	+	+	+	+	+
	Trinidad & Tobago	+	+	+	+	-
	Uruguay	0	0	0	0	0
MIDDLE EAST (6 of 15)	Iraq	+	+	+	+	-
	Israel	+	+	+	+	-
	Jordan	+	+	+	+	-
	Lebanon	+	+	+	+	+
	Saudi Arabia	+	+	+	-	+
	Syria	0	0	0	0	0
NORTH AMERICA (2 of 2)	Canada	+	+	+	+	+
	United States	-	-	-	-	*
Total States: 45		+* 29	33	32	29	21
		-≠ 11	7	8	11	19
		0 5	5	5	5	5

Symbols: + = Yes
* = Yes with qualifications
- = No
≠ = No with qualifications
0 = No comment

SELECTED BIBLIOGRAPHY

Books

Abidi — Jordan, A Political Study 1948 - 1957. London, 1965.

Aruri — Jordan: Political Development 1921 - 1965. The Hague, 1972.

A. Lowenfeld — Aviation Law. Cases and Materials. N.Y. 1972.

Air Laws and Treaties of the World: prepared by the committee on commerce, U.S. Senate, vol. 2, 1965.

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

Burns E. McNall — Western Civilization: Their History and Their Culture. 5th ed. N.Y. 1958.

C. G. Gery — The Civil Air War. England, 1945.

D. Goeduis — The Basis or the present Regime of the Air, Recueil Des Cours, 1952 II

Eliyahu Kanovsky — The Economic Impact of the Six - Day War. London, 1970.

Encyclopedia Britannica, 1968 under Jordan.

H. A. Wassenbergh — Post - War International Civil Aviation Policy. The Hague 1957.

Post - War International Civil Aviation Policy and the Law of the Air. The Hague, 2nd, revised ed. (1962).

H. A. Wassenbergh — Aspects of Air Law and Civil Air Policy in the Seventies. The Hague, 1970

Public International Air Transportation law in a New Era. The Netherlands, 1976.

Harris — Jordan Survey of World Culture. New Haven, 1958.

Ian Brownlie — Principles of Public International Law. Oxford, 1972.

I. A. Vlasic and M. A. Bradley — The Public International Law of Air Transport. Materials and Documents vol's 1 and 2, McGill University 1974.

Supplement 1, 1976

J. C. Cooper — The Exploration in Aerospace Law. Edited by I. A. Vlasic McGill University, 1968

The Right to Fly. N.Y, 1947

The Bermuda Plan. 25 Foreign Affairs 59, 1946

The Proposed Multilateral Agreement on Commercial Rights in International Air Transport. Cooper's Collections. Law Library McGill University.

Johnson — Right in Air Space. Manchester University Press, 1965

Johns Hopkins Press — The Economic Development of Jordan. Baltimore, 1957

J. Warford — Public Policy Toward General Aviation. Washington D.C. 1971

Kane and Vose — Air Transportation. 5th ed. Iowa, 1975

Lilienthal M. Alfred — There Goes the Middle East. N.Y. 1958

lissitzyn — International Air Transport and National Policy·N.Y. 1942

Little — Civil Aviation Development. U.S.A, 1972

Lycklama A. Nijeholt — Air Sovereignty. The Hague, 1910

Marvin L. Fair — Transportation Regulation. 7th ed. U.S.A. 1973

Matte N. Mateesco — Aerospace Law. Toronto, 1969
Aerospace Law. Toronto, 1977

McNair — The Law of the Air. London, 1953. 2nd. ed.

The Law of the Air. London, 1964. 3rd ed.

The law of Treaties. Oxford, 1961

McWhinney and Bradley — The Freedom of the Air. The Netherlands, 1968

Mogannam E. Theodore — Development in the Legal System of Jordan. The Middle East Journal vol. VI, 1952

Mudhokkirate Al-Malek Abdullah ben Al-Hussain. San-Paulo 1953

Pepin Eugue — Development of the National legislation on Aviation since the Chicago Convention. Institute of International Air Law. McGill University, 1957.

Peter Jack — Bilateral Agreements. Journal of the Royal Aeronautical Society. vol. 39 No. 655. 1965

Proceeding of the International Civil Aviation Conference. Chicago, Illinoise, The Department of State, 1949 vol's 1 and 2.

Richard Wiggs — Concorde, The Case Against Supersonic Transport. Great Britain, 1971

Richard Worcester — Roots of the British Air Policy. Great Britain, 1966.

Ronald Edwards — British Air Transport in the Seventies. London, 1969.

Rowland W. Fixel — The Law of Aviation. Virginia, 1967.

Sand — History Survey of the Law of Flight. Institute of Air and Space Law, McGill University, Montreal, 1961

Shawcross and Beaumont — Air Law. 2nd, ed. London 1951. Air Law 3rd. ed. vol's 1 and 2, London 1966.

Thomas — Economic Regulations of Scheduled Air Transport. N.Y. 1951

Thornton — International Airlines and Politics. Michigen University, 1970

Wheatcroft S. — Air Transport Policy. London, 1964

William W. Selfert — Air Transportation 1975 and Beyond: A Systems Approach. The Massachusetts Institute of Technology 1968.

Willson and Bryan — Air Transportation. N.Y., 1949

Yearbook of Air and Space Law, McGill University, 1965

Theses

Al-Jassani — Iraq's Air Transport Bilateral Agreements. Institute of Air and Space Law, McGill University, 1971

Baqain H. — Civil Aviation In Jordan. Institute of Air and Space Law, McGill University, 1971

Faller — Germany and International Civil Aviation. Institute of Air and Space Law, 1965.

Heller — Grant and Exercise of Transport Rights. Institute of Air and Space Law, McGill University, 1954.

Kanaan Isam — Bilateralism in the Arab World. Institute of Air and Space Law, McGill University 1970.

Vlasic Ivan — Air Transport, Passage and Commercial Rights. Institute of Air and Space Law. McGill University, 1955.

Journals

Journal of Air Law and Commerce:

Vol. 17 Lissitzyn — The Legal Status of Executive Agreements on Air Transportation.

Vol. 18 Lissitzyn — The Legal Status of Excutive Agreements on Air Transportation - part II -

Vol. 22 Adriani — The Bermuda Capacity Clauses.

Vol. 24 Pepin — Development of the National Legislation on Aviation Since the Chicago Convention.

Vol. 26 Stoffel — Bilateral Agreements

Vol. 27 Harold A. Jones — The Equation of Aviation Policy.

Vol. 29 John McCarroll — The Bermuda Capacity Clauses in the Jet Age.

Vol. 30 Lissitzyn — Bilateral Agreements on Air Transport.

Vol. 33 Michel Pourcelet	The International Element in Air Transport.
Vol. 41 B. Diamond	Bermuda Agreement Revisited.
Vol. 42 No. 1, Brian	Concorde - What's New?
Vol. 42 No. 2, Robert M. Allen	Legal and Environmental Ramifications of the Concorde.
McGill Law Journal No. 13 R. Azzie	Specific Problems Solved by the Negotiations of Bilateral Air Agreements.
Journal of the Royal Aero. Society Sir George Cribbette	Some International Aspects of Air Transport

Annals of Air and Space Law vol. 1, 1976 Toronto, Canada Fransisco M. Troncoso, Progress Report on the Concorde Litigation in New York.

The Record of the Association of the Bar of the City of New York vol. 19, No. 4, 1964 Lissitzyn.

International Air Transport Policy of the United States September, 1976.

Department of Transportation, United States of America. The Secretary's Decision on Concorde Supersonic Transport. Washington, D.C. Feb., 4, 1976.

54 Foreign Affairs 1975 Oct., Nov. 1

Andreas F. Lowenfeld A New Takeoff for International Air Transport

Internationalization of Air Transport. By J. C. Cooper 1949 Air Affairs 546.

Difficulties and Advantages of Supersonic Civil Transport - A Discussion. Journal of the Royal Aeronautical Society vol. 69. No. 658 October, 1965.

Why the Concorde had to be saved? by R. Vergnaud, Icare, No. 34, 1965.

U.S. Dept. of State Bulletin Vol. 16 Nos. 392 - 417, and vol. 17 Nos. 418 - 443, 1947.

Interchange of Aircraft on International Routes. by H. A. Wassenbergh. 10 Netherlands TIJDSCHRIFT Voor International Recht 1963.

Governments and Airlines. by R. Thornton, 25 International Organization Journal, 1971 P. 541

I.C.A.O. Documents

Circular 72 - AT/9 1965

ICAO Records. Doc., No. 5230, A2 - EC/10 1948 vol. 1

P.I.C.A.O. Doc's. No. 1 - 99

I.C.A.O. Doc. No. 1733, EC/21 1946

I.C.A.O. Doc. No. 2187

I.C.A.O. Doc. No. 4798 AT/526

P.I.C.A.O. Doc. No. 2089 - EC/57

P.I.C.A.O. Doc. 4014 A1 - EC/1 1947

I.C.A.O. Doc. A7 - WP/7, EC/2

I.C.A.O. Report of the First meeting of the Panel of Experts on the Machinary for the Establishment of International Fares and Rates-FRP/1-Report. Montreal 6-17 December, 1976 (The author of this theses was one of the attendance)

Working papers and Materials prepared for the Special Air Transport Conference which will be held at Montreal, 13 - 26 April 1977

- Working papers No. 1-19
- SATC Information paper No. 1, Tariff Inforcement prepared by the Secretariat of ICAO.
- SATC Information paper No. 2, Policy Concerning International Non-Scheduled Air Transport prepared by the Secretariat of ICAO.

-SATC Information paper No. 3,Regulation of Capacity in International Air Transport Services. Prepared by the Secretariate of ICAO.

Magazines

Aviation week and space technology.

Issues:

July 9, 1973	Foreign Restriction Align U.S. Reaction. p. 26
November 19, 1973	The Crisis of Credibility p. 7
December 17, 1973	More North Atlantic Capacity cuts urged. p. 26
January 28, 1974	North Atlantic Passenger Traffic. p. 30
May 27, 1974	North Atlantic Studies Intensify. pp. 22-23
June 17, 1974	Atlantic Aid Plans Start to Converge. p. 31
June 28, 1976	U.K. Seeking Revised Bermuda Agreement.
July 5, 1976	Special Panel to Study Bermuda. pp. 29-31
July 26, 1976	British Ready to renegotiate on Bilateral. p. 29
August 16, 1976	Concorde.
September 6, 1976	U.S., British Compromise Seen. p. 48

October 18, 1976 — P. 11. Bilateral Battles.
pp. 26 - 29. Bermuda Agreement Renegotiation Set.
pp. 41 - 51. British Action Forces Bermuda Review.

November 1, 1976 — pp. 25-26 British Ready focus on Capacity.

December 13, 1976 — U.K., U.S. Continue Bilateral talks. p. 34

January 3, 1977 — White paper Confirms Cap on Bilateral.
pp. 26 27

January 10, 1977 — p. 31

Flight International.

Issues:

October 23, 1967 — Bermuda 2: Back to Basis. p. 1235

November 6, 1976 — Bermuda Renegotiations. p.. 1349

November 13, 1976 — Bermuda 2 must include Charters. p. 1400

November 27, 1976 — Bermuda 2 the British Model. pp. 1540 - 1541

December 4, 1976 — The North Atlantic: a 30 year decision.
pp. 1621 - 1622

December 18, 1976 — U.S. Low profil Marks Bermuda 2 third round. p. 1759

Aviation Daily

October 26, 1976 — The U.K. paper Reviewing Bermuda

Agreement. Back on pp. 291 - 295

November 15, 1976 p. 85

Interavia No. 8619 October 28, 1976 p. 3, Little progress so far in US/UK Bilateral Talks.

Aviation News Digest. November, 12, 1976 p. 6

IATA Review Vol. 11- No. 9 Sep.- Oct., 1976 pp. 2 - 3

ITA Bulletin:- No. 40/22 Nov., 1976 p. 877 - 881
- No. 42/13 Dec., 1976 p. 931 - 935

The Montreal Star: - August 14, 1976 p. B-8·U.S.-Britain Air Pact
- August 26, 1976 U.S. May suspend Flights to Britain
- August 30, 1976 Outdated Agreement.

Term Papers

Guido Rinaldi Baccelli	Standarisation of Bilateral Agreements Institute of Air and Space Law, McGill University, 1962
Jack O. Padrick	Capacity Bermuda and the Multilateral Institute of Air and Space law, McGil University, 1957
Masakane Hamajima	Study of the Development in Bilateral or Multilateral Agreements of the pr vision of the Bermuda Agreement Conc ning Frequency and Capacity Institut

of Air and Space Law, McGill University, 1957.

M. E. Ritchie — The Bermuda Agreement·Institute of Air and Space Law, McGill University, 1955

Mumtaz Ahmad — The Bermuda Agreement· Institute of Air and Space Law, McGill University, 1955

Y. M. El-Zoubi — The procedures of concluding a Bilateral Air Transport Agreement in Jordan. Institute of Air and Space Law, McGill University, 1976.