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Control of International Air Transport in Thailand

THE CONTROL OF INTERNATIONAL AIR TRANSPORT
IN THAILAND

A Thesis

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by

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PREFACE

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It must also be indicated here that the views expressed in this thesis are entirely my own and do not necessarily represent or reflect the official views, opinions or policy of the Thai Government or any of its Ministries or Departments.

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ABBREVIATIONS

ALITALIA	ALITALIA - Linee Aeree Italiane
Art.	Article
B. E.	Buddhist Era
BOAC	British Overseas Airways Corporation
CAB	Civil Aviation Board; Civil Aeronautics Board
CAT	Civil Air Transport
Cong.	Congress
CPA	Cathay Pacific Airways Ltd.
CSA	Ceskoslovenske Statni Aerolinie N. P.
Dep't State	Department of State
Dep't State Bull.	Department of State Bulletin
DLH	Deutsche Luft Hansa
Doc.	Document
Dom.	Domestic
ECAC	European Civil Aviation Conference
GARUDA	P. N. Garuda Indonesian Airways
Geo. Wash. L. Rev.	George Washington Law Review
GJAL	Greater Japan Air Lines (Dai Nippon Air Lines)
Harv. L. Rev.	Harvard Law Review
IATA	International Air Transport Association

ICAN	International Commission for Air Navigation
ICAO	International Civil Aviation Organization
ICAO Bull.	ICAO Bulletin
Int'l	International
Int'l Org.	International Organization
J. Ae. Soc'y India	Journal of the Aeronautical Society of India
J. Air L. & Com.	Journal of Air Law and Commerce
J. Ro. Ae. Soc'y	Journal of the Royal Aeronautical Society
JAL	Japan Air Lines Company Ltd.
KLM	Royal Dutch Airlines
LoN	League of Nations
LUFTHANSA	Deutsche Lufthansa (1954)
MAL	Malaysian Airways Ltd. (formerly Malayan Airways Ltd.)
No.	Number
PAA	Pan American World Airways Inc.
PAL	Philippine Air Lines Inc.
para.	Paragraph
PICAO	Provisional International Civil Aviation Organization
POAS	Pacific Overseas Airlines (Siam), Ltd.

Pub.	Publication
QANTAS	Qantas Empire Airways Ltd.
RAL	Royal Air Lao
Reg.	Registration
SAC	Siamese Airways Company, Ltd.
SAFE	Braathens South American & Far East Airtransport
Sect.	Section
Sess.	Session
SWISSAIR	Swiss Air Transport Company Ltd.
TAAS	Trans-Atlantic Airlines (Siam), Ltd.
TAC	Thai Airways Company, Ltd.
TAI	Compagnie de Transports Aériens Intercontinentaux
THAI	Thai Airways International Ltd.
TWA	Trans World Airlines Inc.
UAA	United Arab Airlines
UBA	Union of Burma Airways
UK	United Kingdom
UN	United Nations
US	United States
USA	United States of America
UTA	Union de Transports Aériens
Va. L. Rev.	Virginia Law Review
v.v.	vice versa

INTRODUCTION

It has been universally recognized since the end of World War I that every state has complete and exclusive sovereignty over the airspace above its territory. Therefore, it may grant or refuse to aircraft of other states the right to fly into its airspace. Attempts were made by nations to agree on a multilateral basis for the exchange of air transport rights, but no common solution was reached. Bilateral negotiations between nations have become the only means of obtaining in foreign countries the appropriate rights for scheduled international air services. Although Thailand is a small country and has only two small air carriers, it has entered into bilateral negotiations with several states and concluded as many as twenty bilateral air transport agreements.

This thesis deals with the exercise of jurisdiction over the control of international air transport by the Government of Thailand. Special attention is drawn to the bilateral agreements which it concluded with foreign governments. The work consists of three chapters. Chapter I deals with the evolution and legal regulation of civil aviation in Thailand.

It introduces as factual background the development of civil aviation, starting with the first power flight. It also discusses the application of national legislation to international air transport, the constitutional allocation of authority and the responsibilities of various government organs. Chapter II covers the control of international air transport in retrospect, as well as Thailand's participation in the making of international air transport law. Bilateral air transport agreements concluded by Thailand are noted in Chapter III. The differences in clauses and phraseology used in the existing bilaterals and the problem of the implementation of such bilaterals are also examined.

CHAPTER I

CIVIL AVIATION IN THAILAND:
ITS EVOLUTION AND LEGAL REGULATION1. The Growth of Civil Aviation(1) Before World War II

Early in the twentieth century Thailand considered it necessary to establish its air power. Three officers of the Ministry of Defence were sent to France in February of 1912 to learn how to fly airplanes. During the years 1912-1913 Thailand ordered 7 airplanes: 3 Breguets and 4 Nieuports. On December 29, 1913, the first flight was made in Bangkok and was found to be satisfactory.

In February of 1915, one Nieuport-type airplane was built in Thailand by Thai engineers and of local materials. A Breguet-type plane was also built and its first flight on May 24, 1915, was successful. A new type of airplane was designed by an officer of the Ministry of Defence and was built in 1927. Its first flight was successfully made on June 23 of that year. Many airplanes of this type were put into service during the following years.

Air transportation in Thailand started when an arm of the Ministry of Defence was assigned to operate air transport services. An experimental air mail service began operation on February 17, 1920. Three air mail flights were made in the same year, but on different routes.

On June 1, 1922, the first air transport service was operated in the Northeast on the route Nakhon Ratchasima (known as Korat)-Roi Et-Ubon Ratchathani (known as Ubon).¹ In 1923 a new route, Nakhon Ratchasima-Roi Et-Udon Thani (known as Udorn)-Nong Khai, was opened. In 1924 a civil unit of the Ministry of Defence was established to operate air transport services. Its headquarters were located at Nakhon Ratchasima. Six years later the Nakhon Ratchasima-Roi Et-Ubon Ratchathani service was suspended, since the railway already served Ubon.

More than twenty airfields were built in all parts of the country during these years.

In July of 1931, the Aerial Transport Company, Limited was established to extend the regular air transport services started nine years earlier. It operated under control of the Ministry of Commerce and

Communications.² Three pilots were loaned from the Ministry of Defence. The Company served major cities throughout the country. It also provided air extensions to the Thai railway system. The Company was operated by Thai citizens only. It did not owe its existence to any sort of connection with a foreign airline. It did not, however, operate any international air service.

After the end of World War I it appeared that more and more foreign aircraft were flying into and through Thailand,³ but no regular air service had yet been introduced into Thailand.

In 1929 Thailand was approached by many foreign governments desiring the inclusion of Bangkok into their airlines' route networks, e.g. KLM's route to Java (now Indonesia), Imperial Airways' route to Australia and Air Union's route to French Indo-China. The French company, Air Union, was the first to apply for landing rights from Thailand. The Thai Government, in order to protect its national interests, refused to give authorization to Air Union.⁴ The French Government later asked for authorization for Air Orient.

Thailand was first served by a foreign airline in January of 1931 when Air Orient established a regular international service to Saigon. This service became part of Air France's network when the French airlines merged in 1933.⁵ KLM was the second foreign airline to begin operations into Thailand. It inaugurated a regular service to Bangkok in October of 1931 on the route from Amsterdam to Batavia. Imperial Airways opened its services via Bangkok to Australia in April of 1935, and to Hong Kong in March of 1936. BOAC was designated by the British Government to replace Imperial Airways in April of 1940. A German airline, DLH, began its scheduled services to Bangkok in July of 1939. However, there was time for only few flights before the outbreak of World War II. GJAL, a Japanese airline, commonly known as Dai Nippon, started a Tokyo-Bangkok service in June of 1940 and maintained its services almost throughout World War II. Dai Nippon was the only foreign company operating scheduled services to Thailand during the war.⁶ British, French, Dutch and German airlines ceased operating to Thailand in the early years of the war and resumed their services afterwards.

(2) After World War II

During the years following the Second World War, civil aviation was rapidly becoming an important industry in Thailand as it had already become in other countries. It was a partner to all basic industries. Thailand felt that its national interests (economic, military and political) required a strong air transportation system which would serve both domestic and international routes. It was also believed that by showing the flag of Thailand abroad national pride and prestige would be enhanced.

As early as 1946, the Siamese Airways Company, Limited (SAC) was formed by the Government to operate both domestic and international air transport services. Domestic service began in March of 1947. Shortly thereafter, in May of 1947, Pacific Overseas Airlines (Siam), Limited (POAS) was formed, with about 40% American shareholding, to operate long-haul international air services to the United States. A third Thai airline, Trans-Atlantic Airlines (Siam), Limited (TAAS) was established in April of 1948 to operate long-haul international air services to Europe. Both POAS and TAAS encountered technical difficulties in their operations and were not able to secure the necessary

traffic rights from certain governments along the routes planned. Until it suspended all activities in late 1952, TAAS operated a great number of international charter flights.

Although POAS failed to operate to the United States as planned, both SAC and POAS established in 1948 a regional network to most of the neighboring countries, including India, Burma, French Indo-China, Hong Kong, China (Taiwan), Japan, Malaya (now Malaysia) and Singapore. Unnecessary duplication was eliminated by an amalgamation of these two airlines to form Thai Airways Company, Limited (TAC) in November of 1951.

TAC operated both domestic and international air services with various types of aircraft over different routes, serving twenty points throughout the country and ten points abroad in the Far East. The authorized capital of TAC was gradually increased till it reached 300 million baht (approximately 15 million US dollars), with the majority of shares owned by the Government. Thus the effective control of this company was in the hands of the Thai Government.

In 1957 TAC introduced three Super Constellations (L-1049G) into service. It was soon found, however, that

operation with this type of aircraft was not profitable because of the high costs of operation and maintenance. Moreover, the percentage of load factor in international carriage was becoming lower: it dropped rapidly from 46% in 1957 to 27% in January of 1958, climbed a little during the season (March-May) and then dropped again, to 23%, in September.⁷ TAC thus withdrew all L-1049Gs from its operations and shortly afterwards suspended most of its international services, route by route, in late 1958.⁸ In these circumstances SAS offered to help TAC in disposing of the L-1049Gs and to cooperate with TAC in other ways. Finally, TAC decided to sell all L-1049Gs, arranged and guaranteed by SAS, and to cease operating all international routes.⁹ An agreement incorporating this arrangement was therefore signed between TAC and SAS in 1959, and a new airline, Thai Airways International Limited (THAI), was established to operate international air services. Under the terms of this agreement TAC was to own 70% of shares and SAS, besides acquiring a 30% shareholding, agreed to supply to the newly established company technical and administrative assistance, flight crews and modern equipment.¹⁰ THAI started its services with DC-6Bs to Hong Kong, Taipei and Tokyo on May 1, 1960, and within a week it was already serving other points in the region,

including Rangoon, Calcutta, Phnom Penh, Saigon and Singapore. Its services were later expanded to Dacca, Djakarta, Kuala Lumpur, Manila and Osaka. The service to Phnom Penh was suspended in October of 1961 because the Cambodian Government broke off diplomatic relations with Thailand. Since THAI had suspended operation to Vientiane and Penang, TAC continued its international services to these two points.

In summary, there are at present two Thai airlines operating both domestic and international air services as national flag-carriers over different routes. With DC-3s and Avro 748s, TAC serves eighteen points throughout the country and two points abroad. With Caravelles¹¹ THAI operates only international services serving thirteen points in the Far East. The following operational statistics¹² for the period of 1962-1964 illustrate the continuing growth of these two airlines:

SCHEDULED FLIGHTS (REVENUE)

	Passengers Carried	Passenger Load Factor	Ton-Kilometer Performed	Weight Load Factor
	(Number)	(%)	(Thousand)	(%)
<u>TAC</u>				
<u>Int'l</u>				
1962	12,952	63	862	76
1963	14,080	66	873	77
1964	13,655	60	893	67
<u>Dom.</u>				
1962	45,335	60	1,723	64
1963	46,844	58	1,823	60
1964	55,829	58	2,266	59
<u>THAI</u>				
<u>Int'l only</u>				
1962	92,258	42	11,238	39
1963	103,515	49	14,224	46
1964	129,720	57	15,592	55

Due to its fortunate geographical location, Thailand has naturally become the center of international civil aviation in Southeast Asia. There are at present twenty foreign airlines¹³ operating scheduled air services to and through Thailand from all continents. They are:

<u>Country</u>	<u>Airline</u>
Australia	QANTAS
Burma	UBA
China (Republic of)	CAT
France	Air France
	UTA (formerly TAI)
Germany (Federal Republic of)	LUFTHANSA
India	Air India ¹⁴
Indonesia	GARUDA
Italy	ALITALIA
Japan	JAL
Laos	RAL
Malaysia	MAL
Netherlands	KLM
Scandinavia (Denmark, Norway ¹⁵ and Sweden)	SAS
Switzerland	SWISSAIR
United Kingdom	BOAC
Hong Kong	CPA

<u>Country</u>	<u>Airline</u>
United States	PAA
	TWA
Viet-Nam (Republic of)	Air Vietnam

In addition, a number of air charter companies are operating freight and live-cargo services to and through Thailand. The result is a large number of passengers and a tremendous amount of luggage and cargo entering and leaving Thailand every day. The following figures show traffic movements at Bangkok Airport during 1962¹⁶-1963¹⁷:

AIRPORT TRAFFIC

Total Commercial Air Transport

	<u>Aircraft Movements</u>	<u>Passengers</u>		<u>Freight & Mail</u>	
		<u>Embarked</u>	<u>Disembarked</u>	<u>Loaded</u>	<u>Unloaded</u>
		(Number)		(Tons)	
1962	17,334	177,757	181,094	3,135	3,384
1963	18,470	199,657	201,077	3,516	3,954

Total International Air Transport

	<u>Aircraft Movements</u>	<u>Passengers</u>		<u>Freight & Mail</u>	
		<u>Embarked</u>	<u>Disembarked</u>	<u>Loaded</u>	<u>Unloaded</u>
		(Number)		(Tons)	
1962	13,411	132,931	132,094	2,267	2,756
1963	14,635	153,880	152,833	2,645	3,435

It is anticipated that Bangkok Airport, which is the joint civil-military airport, will be able to serve international civil aviation only until 1970. In order to serve the tremendous increase in air traffic, as well as the supersonic airliners to be introduced in the early 1970's, the Thai Government is preparing to build a new civil airport, leaving the present one for the use of the military.

2. Government Control of Civil Aviation

(1) Constitutional Allocation of Authority

To understand the mechanics of governmental control of civil aviation in Thailand, at least a brief outline of its constitutional arrangements is necessary.

The present form of Government of Thailand is a Constitutional Monarchy, with the King as Chief of State. Until June 24, 1932, the King had virtually absolute power. Since the adoption of the Constitution, the King exercises his legislative power by and with the advice and consent of the National Assembly (called the "Assembly of the People's Representatives"¹⁸), his executive power through the Council of Ministers¹⁹ and his judicial power through the Courts, which are independent in the administration of justice.

The Assembly of the People's Representatives is composed of members who are elected by the people. The Council of Ministers is appointed by the King, consisting of one President, commonly known as the Prime Minister, and a certain number of other Ministers of State.

Statute may become law only by and with the advice and consent of the Assembly of the People's Representatives. A Bill can be presented only by the Council of Ministers or by members of the People's Representatives. When the Assembly has completed a Bill, the Prime Minister submits it to the King for signature, and it will be enforceable as law after its formal publication in the Government Gazette.

The Council of Ministers must perform its duties with the confidence of the Assembly of the People's Representatives. A Minister of State who is appointed to take charge of a Ministry must be constitutionally responsible for his duties to the Assembly. However, every Minister of State, whether appointed to take charge of a Ministry or not, must be jointly responsible for the general policy of the Government. At meetings, every member of the Assembly has the right to put questions to a Minister of State on any matter relating

to the work within his duties. The Assembly may under certain circumstances open a general debate in the Assembly, so that the Council of Ministers may make statements of fact or express views on questions relating to the execution of State affairs. A general debate may also be opened in order to pass a resolution of non-confidence in the Ministers of State individually or as a body.

The King holds the Royal prerogative to make treaties of peace and armistice and to make other types of treaties with foreign countries. Such treaties, except those which provide for any change in the Thai territory or require the issuance of an Act to implement them, need not receive the approval of the Assembly of the People's Representatives. Under this provision it is clear that the Constitution does not limit the power of the Executive Branch in entering into bilateral air transport agreements with foreign governments.

(2) Legislation

Air Navigation

After ratifying the Convention Relating to the Regulation of Aerial Navigation of 1919 (known as Paris Convention), in 1922, in accordance with the Convention,

Thailand enacted its first legislation on air navigation, the Aerial Navigation Act, B. E. 2465.²⁰ This Act provided in some detail for the regulation of air navigation in accordance with the principles established by the Convention. It was divided into chapters along the lines of the Convention and its Annexes. The Act also contained provisions relating to liability for damage to third parties on the surface and to passengers and cargo. The last chapter dealt with violations and penalties.

Although the Act of 1922 was silent on the question of sovereignty over the national airspace, a provision was made that no foreign civil or military aircraft should fly over, or land in, Thailand unless authorized in writing to do so by the competent authorities. This provision governed both scheduled and non-scheduled flights. However, there was no penalty provided for the violation of this requirement.

From time to time the Act of 1922 was amended in minor detail. It was entirely revised in 1938, with a view to improvement and compliance with the International Convention, to which Thailand was a party, and with the rules adopted by the International Commission for Air Navigation.²¹ The revised version was named the "Air Navigation Act, B. E. 2480".²²

The Act of 1938 followed the principles contained in the Act of 1922, though it was less detailed than its predecessor, e.g. provisions dealing with nationality and registration marks, rules for air traffic and aerodromes, were laid down in the regulations issued by the competent authorities. This simple form permitted the up-dating of regulations, without submitting to the National Assembly for approval the frequent modifications which naturally resulted from the progress of aviation. It recognized the right granted to foreign aircraft under the International Convention or Regulations on air navigation.²³ However, it did not apply to air navigation in the service of the national defence forces.

The ratification of the Convention on International Civil Aviation, done at Chicago on December 7, 1944, made it necessary to reappraise the existing legislation on civil aviation. It became evident that the Act of 1938, as amended,²⁴ should be revised. Finally, new legislation on air navigation, the "Air Navigation Act, B. E. 2497", was passed in 1954.²⁵

The Act of 1954 repealed (1) the Act of 1938, as amended, and (2) all laws, rules and regulations in so far as they are repugnant to, or inconsistent with, its provisions. The Act follows the simple form of

the Act of 1938, essentially consisting of a delegation of power for the issuance of regulations.²⁶ It does not apply to the air navigation in the services of the military and police units.²⁷ While the Act of 1938 recognized the right of foreign aircraft granted under the International Convention or Regulations on air navigation, the Act of 1954 refers to the right of entry of foreign aircraft in accordance with the Chicago Convention or bilateral agreements.²⁸ Its last chapter, following what seems to be the usual form of Thailand's statutes in the field of public law, deals with violations and penalties.

The Act of 1954 makes no provisions with respect to liability. In this regard the provisions of the Civil and Commercial Code shall apply.

Although the Act was named the "Air Navigation Act", it does cover, to a certain extent, air transport services.²⁹ The lack of precision occasionally raised questions of interpretation, discussed below.

Air Transport

The Act of 1922 did not make any provision for the regulation of air services or rates and charges of air transport enterprises, i.e. the regulation of

economic activity of air transport operators. Due to the commercial and industrial development of the country the Thai Government faced a number of problems on various kinds of commercial undertakings in the field of public utility, which included the operating of air transport services. The Government consequently found it necessary, in order to protect the interests of the people, to control all commercial undertakings affecting the public safety or welfare. The "Act for the Control of Commercial Undertakings Affecting the Public Safety or Welfare, B. E. 2471" was enacted in 1928.³⁰ Under the provision of this Act no one could operate air transport services³¹ unless authorization had been given by the Government or concession had been granted.³² Upon giving authorization or granting a concession, the Government might impose any conditions it deemed necessary for the public safety or welfare.³³

This Act was slightly amended in 1942.³⁴

Different Interpretations

Since the Act of 1922 was based on the principles established by the Paris Convention of 1919, its scope was limited to air navigation matters, i.e. only to the regulation of air navigation, which was the main purpose

of the Convention. The Thai Government realized that it did not cover air transport matters, and consequently the Act of 1928 was enacted.

While the Act of 1938 replaced the Act of 1922, its scope was also limited to air navigation matters, as could be seen in its Preamble.³⁵ Although Section 36 of the Act of 1938 covered the entry of foreign aircraft,³⁶ the Government interpreted it to mean that it regulated only air navigation, while the Act of 1928 continued to regulate air transport services.

After the Act of 1954 had superseded the Act of 1938, the question arose whether its scope was still limited to air navigation matters or expanded to cover the conduct of air transport services. Two interpretations were offered.

First Interpretation

The scope of the Act of 1954 was expanded to cover air transport matters, since it made provisions for the control of fares and rates charged by air transport operators.³⁷ It also provided for the right of entry of foreign aircraft.³⁸ The provisions of the Act of 1928, as amended, relating to fares and rates charged by air transport operators, and to the operating of air

services by foreign air transport operators, were repealed by those of the Act of 1954 which was the subsequent legislation.

Foreign air transport operators wishing to fly into Thailand, whether for non-traffic or traffic purposes, must comply with the provisions of the Act of 1954 only.

Since the Act of 1954 established CAB³⁹ and appointed it to consider and authorize fares and freight rates,⁴⁰ those fares and rates charged by any air transport operator, Thai or non-Thai, must be approved under the provisions of the Act of 1954.

Second Interpretation

The Act of 1954 regulated air navigation matters only.⁴¹ The Act of 1928 applied to air transport matters as it had in the past.

Final Decision

After having thoroughly considered the matter, the Thai Government endorsed the first interpretation.

Comment

The author does not agree with the first interpretation, but with the second. The purpose of

the Act of 1954 was to amend the law on air navigation⁴² in order to conform to the principles laid down by the Chicago Convention, and to transfer control of civil aviation to civilian jurisdiction⁴³. It still bears the title "Air Navigation Act".

The Act of 1954 establishes the CAB as an advisory committee to the Ministry of Communications with powers to issue certain regulations and to consider and authorize fares and rates with the approval of the Minister of Communications.

Although Section 28 of the Act of 1954 provides for the right of foreign aircraft to fly into Thai territory, its objective is still the same as that of Section 36 of the Act of 1938, which did not cover the entry of foreign aircraft for commercial purposes.

The author does not think that the scope of the Act of 1954 was expanded to include the control of air transport which has already been governed by the Act of 1928, as amended.

Under the first interpretation, as recently accepted, the Act of 1954 covers the conduct of air services by foreign air transport operators only. If the scope of the Act of 1954 includes the control of air transport,

one may ask why the conduct of air services by Thai air transport operators remains under the provision of the Act of 1928, as amended.

Considering that the Act of 1954 makes no provision covering liability, it seems that its scope is narrower than that of its predecessors.

It is hoped that these inconsistencies and complications in the laws relating to civil aviation of Thailand will shortly be eliminated through appropriate revision.

(3) Government Organs and Their Responsibilities

The Ministry of Defence was designated to implement the Acts of 1922 and 1938. The Minister of Defence was empowered to appoint competent officials⁴⁴ and to issue Ministerial Regulations on certain matters as prescribed in the statutes.

The Ministry of Commerce and Communications was designated in 1929 to take charge of the control of air transport services in accordance with the Act of 1928.⁴⁵ The Ministry of Defence continued its duties and responsibilities regarding the control of air navigation activity in accordance with the Act of 1922. It also continued operating air transport services.

In 1931, when the Aerial Transport Co., Ltd. was formed to continue the services started earlier by the Ministry of Defence, it operated under control of the Ministry of Commerce and Communications. The control of air transport services has been vested in civil units ever since.⁴⁶

In 1933 the Ministry of Economic Affairs was established to replace the Ministry of Commerce and Communications. The designation of the Ministries to take charge of the provisions of the Act of 1928 was revised accordingly. The powers and functions of the Ministry of Commerce and Communications relating to control of air transport were transferred to the Ministry of Economic Affairs.⁴⁷

In 1941 the Ministry of Communications was created and it took charge of the air transport in accordance with the Act of 1928.⁴⁸ Since that time, the Ministry of Economic Affairs has had no hand in matters relating to civil aviation control.

The Minister of Communications was thus empowered to appoint officials and to issue Ministerial Regulations for the performance of his duties and functions.⁴⁹ He exercised his duties and functions through the Department of Transport, an arm of the Ministry of Communications.

Early in 1948 the Civil Aviation Administration was created as a unit of the Department of Transport.

In consequence of the Act of 1954, the powers of the Minister of Defence in civil aviation were transferred to the Minister of Communications.⁵⁰ All duties and responsibilities in civil aviation matters under the Act on air navigation and the Act for the control of commercial undertakings have been vested in the Ministry of Communications. The Minister of Communications assumes the power to appoint competent officials, to issue Ministerial Regulations fixing fees not exceeding the schedule annexed to the Act of 1954 as well as exemptions therefrom and also to take other measures to assure compliance with the Act of 1954.⁵¹

The Act of 1954 establishes the CAB,⁵² consisting of the Minister of Communications as Chairman, a Vice-Chairman and not more than seven other members appointed by the Council of Ministers.⁵³ The Vice-Chairman and members of the CAB normally hold office for a period of four years,⁵⁴ but may be relieved before the expiration of the term upon death, resignation, or being retired by the Council of Ministers.⁵⁵ The CAB has powers and duties as specified in the Act of 1954 itself, and as follows:⁵⁶

1. To take consultation and give advice concerning civil aviation to the Minister of Communications;

2. to issue regulations in compliance with the provisions of the Act of 1954 and Annexes to the Chicago Convention;

3. to consider and authorize the rates of fare and freight of transport aircraft, and service charges for air navigation facilities, with the approval of the Minister of Communications.

As a result of the increased responsibilities of various offices in the Civil Aviation Administration, this body was raised in 1963 to the "Department of Aviation" in the Ministry of Communications. All duties and responsibilities of the Department of Transport in civil aviation were transferred to the new Department.

At the present time, the organ of the Ministry of Communications dealing with civil aviation matters is the Department of Aviation headed by the Director General. This Department was created to regulate practices of the air transport services in conformity with regulations, rules and directives issued in accordance with the Act on air navigation and the Act for the control of commercial undertakings and to assure the implementation of the ICAO International Standards and Recommended Practices

and related documents. In addition, it regulates the Government investment in air transport enterprises and airlines operating in Thailand; approves schedules; licences aircraft, pilots and other members of the crew; is in charge of the construction, maintenance and operation of airports, airport facilities and equipment; supervises air search and rescue; and controls all air route traffic and all terminal traffic at civil airports in Thailand.

The Royal Thai Air Force is assigned to operate and administer the joint civil-military airport, Bangkok Airport, designated as the airport of entry or departure in accordance with Article 10 of the Chicago Convention.

The Ministry of Foreign Affairs is the government organ directly responsible for the administration of Thailand's foreign affairs, including international relations in civil aviation. It is responsible for concluding international conventions and agreements. However, the Ministry of Communications is in charge of international relations only in technical matters of civil aviation. Correspondence with foreign governments is mostly conducted through diplomatic channels and is handled by the Ministry of Foreign Affairs by request of the Ministry of Communications.

The Council of Ministers appoints a negotiating team of four members to conduct bilateral negotiations with foreign governments. Under the provisions of bilateral agreements certain amendments can be dealt with by direct arrangement between the aeronautical authorities of the parties involved. These will be discussed in Chapter III.

In summary, the following government organs are responsible for the control of civil aviation:

1. The Ministry of Communications through the Department of Aviation exercises jurisdiction over all matters.
2. The Civil Aviation Board issues regulations on certain matters as prescribed in the Act of 1954, authorizes fares and rates with the approval of the Minister of Communications and generally acts as an advisory committee to the Minister of Communications.
3. The Ministry of Foreign Affairs is responsible for conducting international relations in general.
4. The Royal Thai Air Force operates the joint civil-military airport.

(4) Organs Responsible for Authorizing International
Air Transport Operators

As indicated above, all duties and responsibilities in civil aviation matters under the Air Navigation Act of 1954, as amended, and the Act of 1928, as amended, for the control of commercial undertakings affecting the public safety or welfare have been vested in the Ministry of Communications.

With regard to the operation by a Thai operator of international air services, authorization must be obtained from the Minister of Communications under Section 4 of the Act of 1928, as amended.⁵⁷ In giving such authorization the Minister may impose, under Section 6 of the same Act, any conditions he deems necessary for the public safety or welfare, such as the routes to be followed, insurance, transfer of rights granted, furnishing of statistics and periodical information including financial statements. The Minister may also prescribe the time-limit of such authorization.

The power to give a special authorization to a Thai operator to operate a non-scheduled flight has been delegated to the Department of Aviation.

With regard to foreign air transport operators, Section 28 of the Act of 1954⁵⁸ provides that no foreign aircraft may fly into Thai territory without having the right in accordance with the terms of the Chicago Convention or an international agreement, or permission granted in writing by the Minister of Communications. Flights of foreign aircraft into Thai territory may be divided into two categories: scheduled and non-scheduled.⁵⁹

The authority to grant permission to a foreign operator who performs non-scheduled flights has been delegated to the Director General of the Department of Aviation.

An aircraft having the nationality of an ICAO member state may, under Article 5 of the Chicago Convention, operate a non-scheduled flight in transit non-stop across Thailand, or make stops for non-traffic purposes in Thailand, without having to obtain prior permission, provided that not less than twenty-four hours' prior notice is given to the Department of Aviation. No reply will be given to such notification unless requested.

If the operator of such an aircraft wants to take on and/or discharge passengers, cargo or mail in Thailand, he must obtain special permission in writing from the

Director General of the Department of Aviation. In granting such permission the Director General may prescribe conditions and limitations as to type and nationality of aircraft to be used, the specific purpose of landing, route to be operated, date and time of arrival and departure.

The operator of a non-ICAO state intending to operate a non-scheduled service to or through Thailand must obtain prior permission from the Director General of the Department of Aviation through normal diplomatic channels.

In accordance with Section 28 of the Act of 1954 mentioned above, an authorization is given to a foreign operator for the operation of international scheduled air services over or into Thai territory under the provision of the international agreements to which Thailand is a party or under the provision of national legislation. Thailand requires that the authorization be obtained prior to the inauguration of services. The application for such authorization must be in writing and forwarded to the Department of Aviation through diplomatic channels. An informal conference may be held upon request of the applicant. No third party may participate in this conference. After reviewing

the application, the Department of Aviation submits the whole matter together with its comments in detail to the CAB in order that the CAB may give advice to the Minister of Communications for final decision. The authorization is generally made through diplomatic channels.

The Department of Aviation is responsible for approving schedules and inspecting the day-to-day business of the authorized operator.

CHAPTER II

THAILAND AND THE MAKING
OF INTERNATIONAL AIR TRANSPORT LAW1. Paris Conference, 1919

At the Brussels meeting of the Institute of International Law⁶⁰ in 1902 Paul Fauchille, the French Delegate, presented a draft convention on the regulation of aerial navigation based upon the principle of "freedom of the air".⁶¹ No action toward the adoption of a suggested international convention was taken at this session. The first discussion of the problem was held at the meeting of the Institute in Ghent in 1906. Fauchille upheld the proposition that the air is free. Nys, the Belgian Delegate, was also in favor of this theory. Westlake, the British Delegate, defended the theory that nations have sovereignty over the air, subject to the right of innocent passage⁶² by aircraft. After the adjournment of this meeting, a committee drew up a text stating: "The air is free. States have in it, in times of peace and in times of war, only the rights necessary to their conservation."⁶³

In 1910 an International Air Navigation Conference met in Paris. Its purpose was to draw up an international

convention on the regulation of air navigation, since international flight at that time was practically unregulated. It was expected that national legislation and regulations on air navigation would be in accordance with the general principles of the international convention. There was a long discussion on the sovereign right of states. The French delegation introduced Fauchille's theory that "the air is free". Germany recognized the principle of freedom, but subject to certain restrictions by subjacent states. The British delegation was strongly opposed to any limitation of its sovereign right to control its airspace. International agreement could not be reached, but the Conference agreed on the following principles which were to reappear in the Paris Convention of 1919 and which influenced the Chicago Convention of 1944: the subjacent state may set up prohibited zones above which no international flight is lawful; cabotage⁶⁴ traffic may be reserved for national aircraft; the establishment of international airlines will depend upon the assent of interested states.⁶⁵

No further progress was made until after the end of World War I, when the Peace Conference of Versailles set up an Aeronautical Commission⁶⁶ in 1919 to study

the subject and to draft a convention. The Convention relating to the Regulation of Aerial Navigation was opened for signature on October 13, 1919.⁶⁷ The pre-war controversy over freedom of the air was settled when it was stated in Article 1 of the Convention that every state has "complete and exclusive sovereignty" over the airspace above its territory and territorial waters. The Convention also established the distinction, still maintained, between aircraft engaged in scheduled international air services⁶⁸ and aircraft not so engaged. The latter aircraft belonging to the parties to the Convention were accorded "freedom of innocent passage" through the airspace of other parties, subject to their observance of the conditions laid down in the Convention (Article 2). The former were to have no right of operating, with or without landing, except with the prior authorization of the states flown over (Article 15).⁶⁹ Agreements between the contracting nations were still necessary for international air transport services.⁷⁰ This Convention served in very large measure as a model for the negotiation of all subsequent international air navigation agreements, both bilateral and multilateral.⁷¹

Thailand also participated in the Peace Conference of 1919. It was represented by its Envoy Extraordinary

and Minister Plenipotentiary in Paris. The Thai representative at the Conference did not take any important part in the preparation of the Convention on air navigation. He was not appointed a member of the Aeronautical Commission of the Conference, since Thailand at that time had no experience at all in civil aviation.⁷² When the Convention relating to the Regulation of Aerial Navigation was opened for signature, the Thai representative signed it on October 13, 1919.⁷³ After ratifying the Convention,⁷⁴ Thailand implemented it by enacting a legislation on air navigation in accordance with the principles of the Convention. It also implemented the rules adopted by ICAN by periodically revising its legislation.⁷⁵

2. Chicago Conference, 1944

(1) Proposals

From November 1 to December 7, 1944, the International Civil Aviation Conference met at Chicago, Illinois, USA,⁷⁶ with the texts of four draft proposals already prepared for its consideration by the Governments of the United States, the United Kingdom and Canada, and by Australia and New Zealand jointly.

The United States' plan⁷⁷ called for an international aviation authority with power in technical matters and consultative functions in the economic field. The United States favored free competition in international air transportation.

The United Kingdom⁷⁸ proposed strict control of commercial aviation by an international authority with powers to allocate routes, fix rates and determine frequencies. This proposal reflected Britain's fear of overwhelming unrestricted competition in commercial air transportation.

The Canadian proposal⁷⁹ was similar to the British, but Canada wanted to give the international authority the power to issue permits for international air transport operators, as the CAB does in the United States.

Australia and New Zealand jointly proposed the formation of an international air transport authority which would be entrusted with the operation of all international air services.⁸⁰ This proposal was rejected early in the discussions of Committee I of the Conference.⁸¹

(2) Results

The Conference made remarkable progress in solving many of the problems of international civil aviation.

It was found that technical agreements were not difficult to reach. It was on economic problems that the Conference found agreement difficult or impossible. When the Conference adjourned, the Convention and Agreements were opened for signature.

Convention on International Civil Aviation⁸²

The Convention on International Civil Aviation finally produced at the Conference is a compromise of all proposals. It replaced the Paris Convention of 1919. Its fundamental principles are essentially those of its predecessor. It covers the air-navigation, the air-transport and the technical fields. It sets up ICAO, which consists of an Assembly of all parties to the Convention, as well as a Council which has advisory and technical functions, but is not empowered to regulate the economic phases of air transport.

The Convention made impossible the establishment of international scheduled air services without prior authorization by the states flown over (Article 6). Two supplementary multilateral agreements were consequently drawn up to lessen the restrictions on international commercial aviation and to enable airlines to operate international scheduled air services over the territory of contracting states.

International Air Services Transit Agreement⁸³

This is the so-called "Air Transit Agreement", which provides for the exchange of the transit privileges of flying across foreign territory, and of landing in foreign territory for non-traffic purposes--the first two of five freedoms of the air.⁸⁴

The rights granted by this Agreement are no longer controversial. The exercise of such rights is subject to a few conditions as laid down in the Agreement itself. A contracting state can designate the route to be flown over by an airline of one of the other parties, and can require an airline making non-traffic stops to provide commercial services from those stops.

This Agreement has been signed by a number of states, some leading in aviation such as the Netherlands, the United Kingdom and the United States, and it has been quite widely accepted.⁸⁵

Although nearly one-third of the ICAO states have not yet accepted the Air Transit Agreement, it should be said that it represents the most positive achievement to date toward freedom of the air. However, this multilateral grant of transit rights alone does not permit a scheduled air transport operator to pick up and/or discharge traffic all along the route.

International Air Transport Agreement⁸⁶

The so-called "Transport Agreement" provides for the exchange of all five freedoms, both the transit privileges and the commercial privileges of carrying traffic between contracting states as well as onward to other states. This Agreement does not contain any provision concerning rate, capacity or frequency control, but it does include a few limitations and restrictions, similar to those inserted in the Air Transit Agreement. There is also reserved to each state the sole right to carry traffic within its own territory.⁸⁷

Very few nations supported this Agreement. Only three of the signatories were major operating states, the Netherlands, Sweden and the United States. However, the United States, the sponsor of this Agreement, withdrew its acceptance on July 25, 1946.⁸⁸ Other denunciations followed.⁸⁹ It thus became a dead letter after less than two years of existence.⁹⁰

Standard Form of Agreement for Provisional Air Routes

Realizing that bilateral negotiations were the only means by which commercial rights could be obtained, the Conference agreed on a "Standard Form of Agreement for Provisional Air Routes",⁹¹ the so-called "Chicago

Standard Form". Its most important provisions were intended to prevent discrimination by contracting parties against international air transport operators of other states.⁹²

The Chicago Standard Form recommends no restrictions on capacity or frequency which may be operated, nor does it provide for determination of rates. It likewise places no limitation on the carriage of fifth-freedom traffic.

This standard form served as a model for bilateral air transport agreements. A great variety of restrictions were added, however, particularly with respect to the fifth freedom.

(3) The Chicago Agreements and Thailand

Although Thailand participated in World War II on the side of the Axis, the United States did not declare war against it. The United States Government continued to recognize the status of the Minister of Thailand in Washington, D.C. and invited him to attend the Conference in his personal capacity. In response to the invitation, the Thai Minister attended the Conference without voting rights.⁹³

It does not appear that he played any significant role in the Conference. This might be due to the special status in which he attended because of Thailand's role in the war.⁹⁴ Thailand, however, accepted on March 6, 1947 all multilateral agreements drawn up at the Conference and ratified the Convention on April 4, 1947.

Thus it is apparent that Thailand favored maximum "freedom of the air" and was not reluctant to accept the Transport Agreement. It wanted to play an important role in international civil aviation as a center of civil aviation in Southeast Asia; it never refused to grant any rights requested by foreign governments.

Very shortly after the Chicago Conference, Thailand became aware of the fact that a majority of states did not accept the Transport Agreement. Most states whose airlines were operating to Thailand were not in favor of the Transport Agreement and sought traffic rights by way of bilateral negotiation; thus Thailand had no other solution but to withdraw from the Transport Agreement, which it did on March 18, 1953.

The policies pursued for the past two decades by the Government of Thailand provide the best evidence

of its firm orientation toward international cooperation in world civil aviation. It cooperated with ICAO and supported the establishment of the ICAO Far East and Pacific Office in Bangkok. It fully supported all ICAO recommended practices and procedures. To ensure flight safety over its territory, Thailand spent a great deal of money to provide improved air traffic services, communications, air navigation aids, etc. It also has plans for future implementation of ICAO regional recommendations.⁹⁵ Bangkok Airport is being served by a number of international air transport operators, both scheduled and non-scheduled.

3. Post-Chicago Developments

(1) Bermuda Agreement

Early in 1946, the United States and the United Kingdom met at Bermuda to negotiate the exchange of commercial rights between their countries, and on February 11, 1946 they signed a bilateral understanding generally known as the "Bermuda Agreement".⁹⁶ This Conference proved to be one of the most important events in the history of international aviation.⁹⁷

The agreement reached at this Conference was admittedly a compromise to resolve the disagreements

between the United States and the United Kingdom which had arisen at the Chicago Conference. The United States accepted the principles of the control of rate-fixing and the United Kingdom reversed its attitude in connection with frequency and capacity control. They also believed that the principles of the Bermuda agreement provided a satisfactory approach to a multilateral agreement.⁹⁸

The Bilateral Agreement annexed to the Final Act of the Conference followed the line of the Chicago Standard Form. It actually became a model for agreements between other countries.⁹⁹ The Government of Thailand also recognized the value of the Bermuda Agreement. It therefore followed the Bermuda principles especially as regards the regulation and control of capacity and rates, in almost all of its bilateral air transport agreements.

(2) Geneva Discussions of a Multilateral Agreement¹⁰⁰

Following the failure of the Transport Agreement, PICA0 continued its efforts to find a common basis for agreement.¹⁰¹ A draft multilateral agreement for the regulation of world air traffic was submitted to the PICA0 First Interim Assembly in May, 1946, but it was returned to the Air Transport Committee for further study so that a multilateral agreement might be developed.

Different views arose over the question of freedom to operate routes (the majority view) and the reservation of routes for bilateral negotiation (the minority view) and over treatment of the controversial issue of the fifth freedom.¹⁰² Discussion continued at the ICAO First Assembly in May of 1947. Again, no general agreement was possible. It was therefore resolved to bring up the subject of multilateral agreement at a special conference open to all member states. The Commission on Multilateral Agreement on Commercial Rights in International Civil Air Transport met at Geneva in November of 1947.¹⁰³

The major topics discussed at the Conference were:¹⁰⁴

1. Nature of the rights to be granted
(the so-called Air Freedoms)
2. Authorization of Air Routes
3. Capacity
4. Rates
5. Arbitration.

Following discussion of air route authorization, it was decided to leave entirely to bilateral negotiations the determination of conditions regarding routing, the designation of points open to international traffic and the closely related matter of the location of the terminal of an air route.¹⁰⁵

With regard to capacity, the approach followed the Bermuda principles, but it was agreed that with respect to the fifth freedom, special account might have to be taken of the interests of local and regional services. This, however, did not satisfy certain delegations which felt that the position of local and regional services was still not sufficiently safeguarded. The issue came to be whether the agreement should include fifth-freedom rights on the routes bilaterally agreed to, or whether it should remain optional. Thirteen states voted for its being optional, nine voted against, five abstained from voting and three were absent.¹⁰⁶ After this vote the Commission was convinced that general agreement was not possible.¹⁰⁷

The Commission's discussion of rates included an original proposal for rate-fixing by the interested airlines in consultation, or by the airlines organization, subject to the approval of the governments concerned. The Working Group appointed by the Commission produced a new draft which provided that rates should be set if possible by conferences of airlines, subject to approval of the governments concerned. Provisions were made for procedures to be followed if problems should arise.¹⁰⁸

The question of arbitration was discussed and there was general willingness to submit disputes to the jurisdiction of the International Court of Justice, or, alternatively, upon agreement of both parties, to arbitral tribunals empowered to render binding decisions.¹⁰⁹

Finally, the Commission decided that the submission of an agreement in a form recommended for signature would not be justified. Instead, the Commission submitted to the member states and to the ICAO its Final Report with a draft Multilateral Agreement setting out the results of its deliberations on the various matters.¹¹⁰ The Report, however, made no recommendation of future procedure to reach an agreement.

In 1959 the ICAO Economic Commission considered the prospects of, and the method for, achieving multilateral agreement on commercial rights in international air transport and found the majority of its members opposed to an international conference.¹¹¹ This was, in effect, the last official attempt to organize international air transport on a multilateral basis. It thus seems that in the foreseeable future the world air trade will continue to develop under bilateral arrangements.

CHAPTER III

BILATERAL ARRANGEMENTS
TO WHICH THAILAND IS A PARTY

The Chicago Convention recognizes the right of every state to "complete and exclusive sovereignty" over the airspace above its territory.¹¹² It also provides that no scheduled international services may be operated over or into 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.¹¹³ The recognition of these two basic principles and the failure of the Chicago Conference to find a common solution for economic control of international air transport have forced nations to resort to bilateral negotiations as the only means to obtain appropriate rights in foreign countries.

The privilege to fly across Thai territory without landing, and the privilege to land for non-traffic purposes, are generally granted for scheduled international air services by the Government of Thailand through the Air Transit Agreement.¹¹⁴ The operation of international scheduled air services by a foreign air

transport operator to and through Thailand must be governed by a bilateral air transport agreement between Thailand and the state of that operator. Temporary authorization, however, is given under the provision of national legislation¹¹⁵ pending the conclusion of a bilateral air transport agreement.

1. Organs responsible for Negotiation and Implementation of Bilaterals

As indicated previously, in Thailand, several government organs are responsible for the control of international air transport.¹¹⁶ They are: the Ministry of Communications, the CAB, the Ministry of Foreign Affairs and the Royal Thai Air Force. Some of these are responsible for the negotiation of bilateral air transport agreements and some for their implementation.

(1) Negotiation

The Constitution does not limit the power of the Executive Branch in entering into bilateral air transport agreements with foreign governments.¹¹⁷ The Council of Ministers performs this function through the appropriate Ministries,¹¹⁸ which are the Ministry of Communications and the Ministry of Foreign Affairs. The actual

negotiation of the bilateral agreement is delegated generally to the Ministry of Communications, which is responsible for civil aviation matters. Ministries, however, always negotiate all agreements in conjunction with the Ministry of Foreign Affairs, which is responsible for their form and all diplomatic formalities involved.

A permanent team of four members representing the Ministry of Communications, the Ministry of Foreign Affairs and the CAB, was appointed to conduct negotiation of bilaterals with foreign governments. This team is required to consult with the Ministry of Communications through the CAB, in order that the CAB may review the matter and give advice to the Minister of Communications. The negotiating team is responsible for the negotiation and the adoption of principles and provisions of the bilateral agreements. The team is not authorized to sign the agreement, but it can initial it. In negotiating bilaterals the negotiating team is usually assisted by representatives of the national air transport operators.¹¹⁹

Under the provisions of many existing bilaterals, certain amendments can be dealt with by direct agreement between the aeronautical authorities concerned. In such

cases an ad hoc team may be appointed to conduct negotiation by consulting the CAB.

(2) Implementation

There is no distinction between "treaty" and "agreement" in the constitutional practice of Thailand. The King holds the Royal prerogative to make treaties. He exercises this power through the Council of Ministers. A bilateral air transport agreement concluded by Thailand does not require special enabling legislation or parliamentary approval.¹²⁰ It usually comes into force on the date of signature.¹²¹

Certain bilateral air transport agreements recently concluded by Thailand state that ratification is required by the contracting parties, but, in fact, such clauses are inserted to satisfy the constitutional requirements of other contracting parties, not those of Thailand.¹²²

The procedure of bringing a bilateral air transport agreement into force, either by signing or confirming the approval by an exchange of notes, is exercised by the Ministry of Foreign Affairs. When the agreement has been signed and has come into force, it is made known to all by Royal Command.¹²³

The Ministry of Communications, as the civil aviation authority of Thailand, exercises the implementation of existing bilateral air transport agreements through one of its branches, the Department of Aviation.

Informal exchanges and formal consultation, as provided for in most bilaterals, are also the responsibility of the Ministry of Communications and are conducted as a rule by the Department of Aviation.

2. Bilaterals concluded by Thailand: General Observation

Before World War II very few foreign airlines operated scheduled air services into and through Thailand. Most of them operated under special authorization by the Government of Thailand in accordance with its national laws and regulations.¹²⁴

In 1937 an exchange of diplomatic notes was made between Thailand and the United Kingdom and India for the operation of scheduled air services over Thailand and over India and Burma.¹²⁵ This was the first bilateral agreement concluded by Thailand relating to air transport services. It granted to the British operator and the Thai operator the right to operate

scheduled air services over the routes therein specified. Cabotage traffic was reserved by each party. A provision was also made that the agents of the British operator in Thai territory should be a suitable Thai company approved by the Thai Government. It could be said that this Exchange of Notes was rather favorable to Thailand.¹²⁶ It remained in force until Thailand declared war against the United Kingdom.¹²⁷ At the end of the war an agreement between Thailand and the United Kingdom was signed for termination of the state of war.¹²⁸ Article 16, which was the only Article dealing with civil aviation, referred to the right granted to the British operator by the Exchange of Notes of December 3, 1937,¹²⁹ under which BOAC was authorized on a temporary basis pending the conclusion of a bilateral air transport agreement, to operate scheduled air services from London to Bangkok and beyond.

In 1939 Thailand concluded an air services agreement with Japan.¹³⁰ It seems that this agreement followed the principles of the Exchange of Notes of December 3, 1937, between Thailand and the United Kingdom. It was unique in its form and provisions. It specified in its body the routes to be operated by the designated airlines of both parties. However, it was superseded by the

post-war agreement between the two countries which has been in force since July of 1953.

Pending the conclusion of a bilateral agreement, temporary authorizations were given to foreign operators.¹³¹ This type of bilateral was not published, except for the very special one between Thailand and India.¹³²

When the Thai Government asked for landing rights in India for its operator in early 1948, the Indian Government replied that, pending the negotiation of a formal bilateral air transport agreement, it authorized an airline designated by the Thai Government to operate a scheduled air service between Bangkok and Calcutta via intermediate points under certain terms and conditions, provided that the Thai Government would grant permission on similar and no less favorable terms to an airline designated by the Indian Government to operate air services over the route Calcutta-Rangoon-Bangkok and, if desired, to Singapore and beyond. The Thai Government accepted such conditions. It should be noted here that the Thai operator was authorized to operate only to Calcutta, while the Indian Government wanted its operator to operate beyond Bangkok. The conditions laid down in this temporary authorization dealt with substantial ownership and effective control of the designated airlines;

determination of frequencies; filing of timetables and tariff schedules; rate-fixing and approval of rates; furnishing of statistics; and the applicability of air regulations. This temporary authorization thus seems to be a provisional bilateral in a unique form.

The Chicago Standard Form and the Bermuda principles provide the basis for negotiating Thailand's bilateral air transport agreements. Only two out of twenty bilaterals concluded by Thailand¹³³ (those with the Republic of China and Laos) do not follow the Chicago Standard Form or the Bermuda agreement. These two were made in the form of an exchange of diplomatic notes as a result of bilateral negotiations for the grant of traffic rights under certain limitations and conditions. It was understood that these arrangements would be of a provisional nature, pending the conclusion of formal bilateral agreements. Unfortunately, to date no such agreements have been concluded with either of these two countries.¹³⁴

Many existing bilaterals have been supplemented or amended by the exchange of diplomatic notes between the Thai Government and the foreign governments concerned. Quite a few exchanges of diplomatic notes supplemented the agreements on the date of their signature to confirm

the understanding of both parties.¹³⁵ Such supplements or amendments have also been registered with the ICAO.

The negotiators may also clarify any point by providing a memorandum or through their correspondence.¹³⁶

The bilaterals concluded in 1947 with the Netherlands and the United States strictly followed the Chicago Standard Form. They therefore did not contain any provision relating to rates. The Thai-Dutch agreement was amended by adding a rate provision in its annex.

A standard bilateral agreement concluded by Thailand usually consists of two parts. The first part is the main body regulating the exercise of the rights granted. The second is the annex normally defining the rights granted and the routes to be flown over by the designated airlines of each party. Some bilaterals, e.g. the Thai-Dutch and the Thai-Danish, contain rate provisions in their annexes.

The factors which play a role in the formulation of Thailand's bilateral arrangements are not unlike those characteristic of other countries. Among such factors, the interests of national prestige, of economics, and of politics play a dominant role. Bilateral negotiations are, of course, greatly affected by the interests of national air transport carriers.

During the years subsequent to the war, bilaterals were affected by political considerations,¹³⁷ which generally resulted in conditions unfavorable to Thailand. Efforts made by the Thai Government to amend such unfavorable provisions have not been entirely successful. Very few countries have agreed to the Thai proposals for amendment. Some entered into negotiation for certain amendments, but no agreement could be reached. Some flatly refused to enter into negotiation, since their operators were enjoying the rights granted under such bilaterals. Thailand, however, continues to seek the revision of agreements which are clearly detrimental to its national interests and self-respect.

Thailand's bilateral air transport agreements are concluded mostly in the English language. The agreements with Australia and the United Kingdom are in Thai and English, both texts being equally authentic. The agreements with Belgium, France, Luxembourg and Switzerland are in Thai and French, both texts being equally authentic. The agreement with Germany is in Thai, German and English, all texts being equally authentic, but in the case of divergent interpretations of the Thai and German texts, the English text shall be authoritative. The provisional agreement with Laos is

in French. The exchange of notes in accordance with the provision of any agreement is usually in English. If any agreement is not made in the Thai language, its translation must be provided by the Thai Government.

3. Analysis of Provisions of Existing Bilaterals

(1) Aeronautical Authorities

The bilateral air transport agreements concluded by Thailand refer to "aeronautical authorities" or "competent authorities" of both contracting parties. Some agreements define the term "aeronautical authorities" and some do not. The definitions given are as follows:

1. The agreements signed with Japan, Luxembourg, the Philippines, the United Kingdom and Germany define this term as the "Minister of Communications and any person or body authorized to perform any function presently exercised by the said Minister or similar functions".¹³⁸

2. The agreement signed with France defines it as the "Department of Transport or any person or body authorized to perform the functions at present exercised by it".¹³⁹

3. The agreements signed with Australia and India define it as the "Director General of the Department of Transport¹³⁹ and any person or body authorized to perform the functions exercised by the Director General of the Department of Transport or similar functions".¹³⁸

None of the other twelve agreements gives a definition of the term "aeronautical authorities". It must be interpreted that the "Ministry of Communications", in accordance with national laws and regulations, assumes the functions and responsibilities of the aeronautical authorities as prescribed in such bilateral agreements.¹⁴⁰ This authority may be vested in the Minister of Communications or in any other person or body in the Ministry of Communications.¹⁴¹ Therefore, the Minister of Communications has the authority to exercise these functions as the "aeronautical authorities" of Thailand in accordance with the provisions of the bilateral agreements and with the provisions of the Thai laws and regulations in general. In the implementation of bilateral agreements three different authorities are responsible for the same matters.¹⁴² This procedure in practice is ineffective and inconvenient, especially as the number of bilaterals and air transport operators increases.

In order to avoid unnecessary duplication of authority the meaning of the term "aeronautical authorities" in the case of Thailand should be the same in all bilateral air transport agreements. This term should be defined as the "Director General of the Department of Aviation".¹⁴³ The exercise of functions under bilateral agreements is considered routine work. The Minister of Communications should not be made responsible for any work of this nature. He should be responsible for policy only. Although the Minister of Communications is at present the "aeronautical authorities" of Thailand as determined by certain agreements and in accordance with the Thai laws as mentioned above, the Director General of the Department of Aviation is in practice assigned to exercise such duties and perform such functions generally.

When the term "aeronautical authorities" is not defined,¹⁴⁴ the question could be solved by assigning the Director General of the Department of Aviation to exercise the duties and functions of the "aeronautical authorities", and the matter should accordingly be communicated to the other contracting party.

(2) Establishment and Inauguration of Services

Granting of Rights

In all bilateral agreements concluded by Thailand, even when both parties are bound by the Air Transit Agreement, the rights to fly non-stop across, and to land for non-traffic purposes in, the other party's territory are granted at the same time as the rights to pick up and discharge commercial traffic. They are normally described in simplified form with some variations in wording.

Thailand's agreement with India does not explicitly describe the rights granted to each. It states that the designated airlines of each party shall be entitled to operate air services on the routes specified in its annex and to land for traffic purposes in the territory of the other party.¹⁴⁵

The agreement with France describes the rights granted in different words. It mentions that each party grants to the other the right to have all scheduled air services operated by designated airlines on the routes specified in the schedule annexed to the agreement.¹⁴⁶

Ten agreements¹⁴⁷ concluded in the early post-war years (before 1956) follow the Chicago Standard Form.

They contain an article referring to operating rights described in the annexes, the actual granting of the rights being part of the main body of the agreement. The agreements with the United Kingdom (1950) and with Japan (1953) express the rights granted in the main body of the agreement. They contain two articles, the first referring to the grant of operating rights, and the second giving a description of those rights. Six agreements¹⁴⁸ concluded during 1960-1962 incorporate in slightly different wording the reference to granting of rights and a description of the rights in one article, following the line of the ECAC standard clauses.¹⁴⁹ The provisional agreements with China and Laos also refer to the grant of rights between the two countries concerned.

Inauguration of Services

Following the reference to granting of rights, the bilateral agreements indicate the requirements to be met before the services may be inaugurated. They also provide that each contracting party has the option as to when to inaugurate the services. Only five bilateral agreements¹⁵⁰ provide that 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, and the agreed services may be put into operation as soon as such party has designated an airline or airlines to operate the specified routes. In Thailand's practice, the airline so designated is required to satisfy the Thai aeronautical authorities that it is qualified to fulfil the conditions prescribed under the laws and regulations of Thailand normally applied to the operation of international air services.

With variations in wording and content, the other agreements impose various conditions on the inauguration of services. The inauguration of services under such agreements is subject to the following requirements:¹⁵¹

1. Designation of airlines
2. Operating permits or authorization, subject to provision concerning ownership and control of airlines¹⁵²
3. Competence of airlines.

In practice, no agreed service may be inaugurated without the operating airlines having been designated, and the appropriate authorization or operating permission having been obtained from the government granting the rights.

Designation of Airlines

The rights and duties exchanged under an international air services agreement belong to the states which are

parties thereto and not to their respective nationals, even though the latter may be the beneficiaries thereof.¹⁵³ Save in the case of the provisional agreements with China and Laos, all Thailand's bilateral agreements require each contracting party to designate prior to the inauguration of the agreed services an airline or airlines which will operate such services. By contrast, the said provisional agreements expressly mention the airlines to which the rights have been granted.

In the bilateral agreements concluded by Thailand, the phraseology used in the clauses relating to the designation of airlines is slightly different from, although similar to, the wording of Article (2) (a) of the Chicago Standard Form.

Provision for changes of designated airlines or the designation of additional airlines is not included in any agreement.

Most agreements do not prescribe the specific form in which the designation of airlines is to be made. Only five formulate that the designation must be in writing.¹⁵⁴ In practice, the designation of airlines under the provision of bilateral agreements must be made through diplomatic channels.

No provision has been made which states specifically how airlines are to furnish the competent authorities of Thailand with proof of their competence. In practice, the Thai authorities require the designated airlines to submit through diplomatic channels application in writing for the establishment of scheduled air services. This application shall contain such information as the Thai authorities shall require, such as general, economic and technical information concerning such airlines.

Authorization

To operate an international air service under an agreement, the operator of one contracting party must obtain from the local authorities of the other contracting party an appropriate operating authorization. The granting of such an authorization represents the fulfilment of the international agreement deriving from a bilateral by the boards or persons appointed to deal with civil aviation within domestic jurisdictions.¹⁵⁵

Most bilateral agreements concluded by Thailand,¹⁵⁶ which use with only slight variations the phraseology of the Chicago Standard Form and the ECAC standard clauses,¹⁵⁷ provide that the designated airline must obtain appropriate authorization prior to the inauguration

of the agreed services.¹⁵⁸ In five agreements¹⁵⁹ the obligation of designated airlines to obtain such appropriate authorization is not explicitly stated.

The important question arises as to whether a permit for such authorization is required. This question was once posed in 1950 by Pakistan for ICAO's conclusion in connection with the Air Transit Agreement. The ICAO Council decided to consider the requests with a view to giving an advisory opinion in the matter. It finally announced in 1951 the advisory opinion that the Chicago Convention, and in particular Article 6, did not override the provisions of Section 1, Article I, of the Air Transit Agreement, and that the state becoming party to the Air Transit Agreement granted the rights to other parties with respect to their scheduled international air services. Neither the requirement of permission nor the form of permit was mentioned in this opinion. Pakistan considered that the questions asked "have not been effectively answered".¹⁶⁰

Attention is also drawn to a certain provision recommended in Article 7 of the Chicago Standard Form, that each contracting party reserves the rights to withhold or revoke a certificate or permit to an airline of another state.

The Thai authorities, therefore, are of the opinion that bilateral agreements require the designated airline to obtain a certificate or permit prior to the inauguration of agreed services. In practice, the Thai authorities consider that designation by a contracting party in which the designated airline is registered, and the acceptance of such designation by the Thai Government, constitute the permit.

However, it is the opinion of the author that, since the provision of the agreement alone cannot detail the regulations and conditions which may be imposed on the foreign operator by domestic legislations,¹⁶¹ the Thai authorities may issue a permit or certificate as may be required in accordance with the provision of the agreement, and may impose any limitations or conditions on the operation of the agreed services, in so far as such limitations or conditions are not inconsistent with the provision of such an agreement.

(3) Substantial Ownership and Effective Control

One of the most important reservations in both multilateral and bilateral air transport agreements is that the designated airlines should be substantially owned and effectively controlled by the state designating them or its nationals.¹⁶² In accordance

with the principles laid down in the Chicago Standard Form¹⁶³ the granting of an operating permit is subject to the provisions concerning substantial ownership and effective control of a designated airline. According to this provision a contracting party has the right to withhold or revoke permits if it has doubts that the ownership and control of a designated airline is vested in nationals of a contracting party.

The requirement of substantial ownership and effective control is included in all bilateral agreements of Thailand. Only the agreements concluded with France and the United Kingdom contain a more restrictive condition, to the effect that each contracting party has the right to refuse to accept the designation of an airline and to withhold or revoke the grant to an airline of the privileges specified in the present agreement.¹⁶⁴

The wording of the Chicago Standard Form appears in the agreements with Luxembourg and Switzerland, specifying that substantial ownership and effective control of an airline must be vested in "nationals of either contracting party".¹⁶⁵ Five agreements require that substantial ownership and effective control of a designated airline be vested in "the contracting party

designating the airline or nationals of that party", or the like.¹⁶⁶ The other eleven refer to "nationals of the other contracting party", "nationals of the contracting party designating the airline", or the like.

The absence of an unambiguous definition of the clause "substantial ownership and effective control" naturally raises problems of interpretation. Although Thai aeronautical regulations do not contain provisions relating to this clause, the Thai authorities require that before a designated airline may begin to exercise traffic rights it must prove its ownership and control as provided in the particular agreement. While different states require a different percentage of "substantial" ownership of an airline, in practice Thailand requires only "majority", rather than "substantial", ownership. The ownership and registration of the aircraft used in the agreed services are not important factors in considering ownership of the designated airline.¹⁶⁷ In the case of "effective control", the Thai authorities require that the majority of shares of the designated airline be owned by, and that the majority of the members of the Board of Directors of that airline be, nationals of the contracting party as provided in the particular agreement.

In addition to the provision concerning ownership and control of the designated airline the agreements with Denmark and Sweden contain a clause relating to an air transport organization constituted with another country or countries for the purpose of joint air transport operations.¹⁶⁸ A similar clause is inserted in the diplomatic notes exchanged between Thailand and Belgium relating to the conditions of the operation of agreed services.¹⁶⁹ It further provides that regarding the operation of such an organization, the parties will hold consultation on the question of the application of the present agreement.¹⁷⁰

(4) Routes

The specification of routes to be operated by the designated airlines of the contracting parties to a bilateral agreement has become an instrument in regulating the rights granted. It is well known that a bilateral air transport agreement can vary considerably according to the allocation of routes. The problem of routes is the most complicated part of the negotiation of a bilateral agreement, since no general principle can be agreed upon, every route being different from the other.

It will be recalled that neither the Chicago Standard Form nor the ECAC clauses contain any provisions relating to routes. It is recommended in Article 1 of both the Chicago Standard Form and the ECAC clauses that a description of the routes be included in the annex to the agreement.

Most of Thailand's existing agreements determine in their annexes the routes to be operated by the designated airline of each party. In some of these agreements the routes granted bilaterally are the same.¹⁷¹ Most of them contain the specific routes for each of the contracting parties. Most routes are flexible.¹⁷² A number of alternative points, however, are given on such flexible routes.¹⁷³ Only three agreements provide that the routes to be flown over by the designated airlines of both parties shall be specified in the exchange of diplomatic notes.¹⁷⁴ The agreement with Italy specified routes in its annex, but it is further provided in the annex that the route schedules shall be governed by the stipulations stated in the exchange of diplomatic notes. Although the route pattern is specified in the agreement with the Philippines, it is stated that such routes must be approved by the aeronautical authorities of the other contracting party.

This type of provision may be used as an instrument to protect the interests of national airlines. The Philippines approved the Bangkok-Hong Kong-Manila route proposed by Thai Airways International, the designated airline of Thailand, with limitations of traffic rights (the number of passengers to be carried during a certain period of time) between Hong Kong and Manila and vice versa.

In Thailand's bilateral agreements, it is usually provided (with some variations in wording) that a point or points on the specified routes may be omitted on any or all flights at the option of the designated airlines concerned. Only the agreements with Switzerland and with the United States contain no express provision concerning variation of route or omission of points. The route patterns are, however, so flexible that the routes to be operated may vary at the option of the designated airlines.

The point or place of departure is always mentioned on the route pattern specified in Thailand's bilateral agreements. Five agreements, with slight variations of wording, expressly state that the agreed services provided by the designated airline on the specified routes shall begin at a point in the territory of the

contracting party designating the airline.¹⁷⁵ One of them, the agreement with India, requires that the starting point or the terminal points of the agreed services lie within the territory of the contracting party designating the airline.

In operating the agreed services under some agreements, the Thai airlines have less favorable routes than the airlines of the other contracting party. Some of the routes have become discriminatory as a result of the operation of the airlines of some countries to their colonial territories.

The agreement with the United Kingdom determines specific routes to be operated by the designated airlines of both parties. Both point of departure and point of destination of some of the British routes lie within British territory.¹⁷⁶ The United Kingdom assumes that the traffic carried between two points in its territory falls in the "cabotage" category and must be reserved for its national operators, even though such services pass through the territory of more than one state, thus falling into the category of "international air service"¹⁷⁷. In consequence, British airlines can operate international air services at lower fares. The British airlines can also let domestic passengers

break their journey at Bangkok, a point completely outside British territory, as regularly done by international stop-over passengers.

When the agreement was signed with the United Kingdom, Singapore was a point in British territory. British Route III stated: Hong Kong-Bangkok-Singapore. This route created a number of problems between the two countries and airlines concerned. While the British airlines carried "cabotage" traffic between Hong Kong and Singapore via Bangkok at lower fares--domestic fares--the Thai airlines which provided the air services on the routes Bangkok-Hong Kong, and Bangkok-Singapore, were not permitted to do so. In practice, however, stop-over traffic in Bangkok en route Hong Kong-Singapore could be carried by the Thai airlines provided that two-portion tickets (Hong Kong-Bangkok and Bangkok-Singapore) were issued, the sum of the fares for both parts was charged (higher than the fares charged by the British airlines, of course) and this transportation was not publicized. However, it was not fair competition because of unequal fares. Singapore has now become independent. The problem no longer exists, since British airlines can no longer offer lower fares for transportation between Hong Kong and Singapore via Bangkok.

The United Kingdom granted to Thailand the right to operate beyond the United Kingdom to North America under Thai Route I and II specified in the annex of the agreement, in exchange for the right to operate beyond Thailand to China and Japan. This privilege has been withdrawn by the United Kingdom under the exchange of notes of September 6, and October 8, 1956.¹⁷⁸

Such a route pattern (concerning the carriage of cabotage traffic) as included in the agreement with the United Kingdom also appears in the agreements with France and with the Netherlands.

In order to resolve existing problems and to avoid questions which might otherwise arise in future, this type of route pattern should be removed from existing bilateral agreements and should not be included in any future bilateral. A possible solution was suggested by one well-informed observer¹⁷⁹ who recommended the amendment of Article 7 and the change of definition of Article 96 (b) of the Chicago Convention.

The agreement with the United States is similarly unfavorable to Thailand. While the US airline can fly to Thailand over a Pacific route to Bangkok and beyond, the Thai airline can fly from Thailand to Los Angeles only.

No point beyond the United States is specified on the routes to be operated by the Thai designated airline. While the US airline can fly over a Pacific route to Bangkok, no intermediate points being determined, the Thai airline must fly to Los Angeles over a reasonably direct route, which is more limiting than the US route.¹⁸⁰ The US airline can operate beyond Thailand to Europe and thence over an Atlantic route back to the United States, making the so-called "round-the-world" flight, and can also operate over an Atlantic route to Thailand, this being assumed to be a "return flight". The Thai airline is not permitted to operate to the United States over an Atlantic route, since it is not a "reasonably direct route".

Where the route pattern specifies points to be operated by a designated airline, any changes in route by any party must be made in accordance with the provision of that agreement itself. All agreements provide that such changes must be made by an exchange of diplomatic notes, except the agreement with the Philippines which provides that the routes to be operated must be approved by the aeronautical authorities of the other contracting party. Where the route pattern is flexible, any change of routes in the third countries

may be made at any time. Appropriate notice for such change is, as a matter of practice, to be given to the aeronautical authorities of the other party.

(5) Capacity

Apart from the mutual granting of routes, the greatest problem in the interpretation and application of a bilateral air transport agreement is the regulation of capacity, i.e. the number of seats to be offered and sold by the airlines on the various routes or sections. The term "capacity" means the maximum amount of payload which could be carried in the same direction along the route for which payload is determined, as limited either by available seating capacity or cargo space, or by maximum allowable weight after allowing for the weight of the required stores and fuel.¹⁸¹ The definition of this term as used in the bilateral agreements concluded by Thailand is given only in the agreements with India and with the Philippines.

The Chicago Standard Form does not impose restrictions on capacity or number of frequencies of services which may be operated, nor does it place limitation on the carriage of fifth-freedom traffic, i.e. international traffic between two foreign countries.

The principles relating to capacity agreed on at the Bermuda Conference¹⁸² do not impose any arbitrary restrictions on capacity, number of frequencies or fifth-freedom traffic. The agreement stipulated that the services operated by the airline of either party shall not unduly affect those provided by the airline of the other party on all or part of the same routes.¹⁸³ Three general principles as regards capacity were agreed on to govern the right to carry "fill-up" fifth-freedom traffic. These state that capacity should be related to

- (1) traffic requirements between the country of origin and the countries of destination;
- (2) the requirements of through airline operation;
- (3) the traffic requirements of the area through which the airline passes after taking account of local and regional services.¹⁸⁴

The bilateral agreements concluded by Thailand before 1960 usually contain the Bermuda capacity principles as stated in paragraphs (3), (4), (5) and (6) of the Final Act of the Bermuda Conference. They are, of course, different in wording, but the main principles involved are essentially the same.

The agreements concluded with Ceylon, Denmark, the Netherlands, Norway and Sweden contain no provision

which restricts the exercise of fifth-freedom rights. The agreement with Iceland mentions only the principle of "a fair and equal opportunity" for the airlines of both contracting parties.

Only the agreement with India makes provision on allocation of capacity. A clause of this type secures protection of local and regional traffic and also introduces other kinds of restrictions.¹⁸⁵ In practice, the Thai and Indian Governments have never determined any allocation of capacity, since the designated airlines of both countries do not exclusively operate air services over the specified routes. There are also a number of airlines of other countries exercising traffic rights over the same routes under different bilateral agreements with different clauses. It has been found that it is absolutely unfair to allocate traffic to be carried by the designated airlines of Thailand and India only, while a number of airlines of the third countries still enjoy exercising full traffic rights on the same routes.

With the introduction of the jet airplane in 1959, the capacity offered between points in the Far East has considerably risen. All airlines have expanded the number of frequencies offered, and the number of airlines entering into the Far East market has increased.

The greater number of seats on each flight results in more capacity for the same number of frequencies.

Mr. John C. McCarroll wrote in 1963: "The problem of overcapacity has affected international commercial aviation generally, and almost all carriers have suffered."¹⁸⁶ That is also the situation of international air transport in the Far East.

The following figures show the ineffective operation of the airlines operating scheduled air services within and through the said region during the period July to December, 1961:¹⁸⁷

<u>Sectors</u>	<u>Number of Flights</u>	<u>Total Seats Available</u>	<u>Number of Passengers Carried*</u>
Bangkok-Hong Kong	931	84,144	16,191
Bangkok-Tokyo	759	76,920	2,647
Bangkok-Rangoon	365	23,809	5,002
Bangkok-Calcutta	550	48,850	4,134
Bangkok-Kuala Lumpur	155	9,210	1,579
Bangkok-Singapore	611	44,335	8,518

(* Not including transit passengers on board. However, the average number of empty seats on these sectors was approximately 50% of the total seats available).

In order to protect the interests of the airlines entitled to the privilege of carrying third-and fourth-freedom traffic in the region, the Thai Government imposes certain restrictions on foreign airlines over certain routes served by Thai airlines. Such restrictions are imposed only on foreign airlines belonging to states in which Thai airlines enjoy no traffic rights, and which operate under temporary authorization.¹⁸⁸

A new draft provision relating to capacity was introduced during negotiation for the conclusion of a bilateral air transport agreement with Australia and it was finally included in the agreement signed with Australia in 1960. In addition to the Bermuda principles, it provides that each designated airline shall regard as being of a supplementary character traffic which has neither its origin nor its destination in that designated airline's own country.¹⁸⁹

Thailand has since adopted this capacity clause for use in concluding bilateral air transport agreements with foreign countries. In consequence, it is included in five other agreements, those with Belgium, France, Germany, Italy and Luxembourg. The agreements with Burma, Indonesia and Malaysia, which were recently

initialled, also contain a capacity clause of this type. It is hoped that one will also be included in the bilateral agreements with Canada and with Pakistan, which are now in progress.

In accordance with this provision Thailand imposes restrictions on fifth-freedom traffic rights exercised by the designated airlines of France and Italy.¹⁹⁰

The question of frequency is also closely related to the larger question of capacity. Whenever the frequency is increased, the capacity offered is accordingly greater. Thus, if capacity is subject to control as a result of predetermination between the parties, or of "ex post facto review" laid down in the Bermuda principles, the regulation or reduction of frequency will likewise ordinarily result.

Thailand also makes provision for the control of schedules and capacity provided by the designated airlines. This provision requires the designated airlines to file in advance with the aeronautical authorities of the other contracting party copies of rates and timetables, a statement of any modification and all other information about the planned capacity.¹⁹¹ This clause replaced the original Article 14 of the

agreement with France and came into effect in 1961 by an exchange of diplomatic notes. It is used as a basis for regulating frequency and capacity provided on the specified routes.

Efforts were made to amend the bilateral agreements concluded before 1960 in order to add¹⁹² or to revise the capacity clauses. The agreements with the Scandinavian countries were amended in 1963 by adding similar capacity clauses in their annexes. The agreement with Ceylon was likewise amended in 1965. The United Kingdom and the United States entered into consultation for the amendment of such provision as requested by Thailand, but no agreement was reached. India, Japan, the Netherlands and the Philippines do not agree to the Thai proposal to add or to amend the provision relating to capacity. No reply has been received from Iceland and Switzerland.

(6) Rates

The other problem to be solved in the regulation of scheduled international air services is that of rates--passenger fares and freight rates--which the airline should charge. The principle of standard fares and freight rates as a basis of international air transport competition is a post-war development.¹⁹³

At the Chicago Conference of 1944 there was universal acceptance of the principle of agreed rates. The joint meetings of Committees I, III and IV, in drafting the Chicago Convention, included in Article X five sections dealing with rate provision;¹⁹⁴ but, in fact, in the negotiation of a bilateral agreement, states considered the clauses relating to rates as having the same importance in regulating the exercise of traffic rights as those relating to capacity and routes.¹⁹⁵ This is why the Chicago Standard Form does not contain any provision regarding rates to be charged by designated airlines.

The rate principles were developed by the United States and the United Kingdom at the Bermuda Conference in 1946.¹⁹⁶ Section II of the Annex to the Bermuda Agreement provides that rates to be charged by designated airlines of either party between points in the territory of the United States and points in the territory of the United Kingdom referred to in that annex "shall be subject to the approval of the Contracting Parties within their respective constitutional powers and obligations".

Except for the provisional agreements with China and Laos and the agreement with the United States,

all bilateral agreements concluded by Thailand contain provisions relating to rates. Two of them leave room for negotiation on the rate-fixing provision to be settled by the exchange of diplomatic notes.¹⁹⁷ Six agreements include rate provisions in their annexes.¹⁹⁸ Others contain such provisions in the main body of the agreement.

Only two agreements strictly refer to rates adopted by IATA.¹⁹⁹ Seven mention the IATA machinery or procedures or recommendations as a relevant factor in establishing rates to be charged by the designated airlines on the agreed services.²⁰⁰ The others simply state that the rates to be charged shall be agreed on by the designated airlines of both contracting parties. Only very few mention consultation with airlines of third countries which operate on the same routes as does the agreement with Switzerland.

The designated airlines are required to submit the proposed rates to the aeronautical authorities for approval.²⁰¹ If the designated airlines cannot agree upon rates to be charged, or the aeronautical authorities do not approve the rates submitted, most existing agreements provide that the aeronautical authorities shall endeavor to reach agreement on

those rates. If such agreement cannot be reached, disputes shall be settled under provision of such bilateral agreements. Some provide only that in case of disagreement, disputes shall be settled under provision of the agreements.²⁰² Very few make provision as to which rates will come into effect during disputes.²⁰³ The agreement with the United Kingdom provides rigid procedures governing rate disagreement.²⁰⁴

Provisions are made in some agreements that the rates shall be established at reasonable levels, due regard being paid to all relevant factors, such as cost of operation, reasonable profit and characteristics of services (such as standard of speed, accommodation). These factors make rate-fixing complicated, and virtually impossible in a simple bilateral agreement, since most international rates are a segment of other rates or must bear a relationship to rates on parallel, overlapping or matching routes. What may seem reasonable to one airline may be not acceptable to another. Therefore, the agreements recently concluded by Thailand refer to the IATA rate-fixing machinery as a relevant factor in establishing the rates to be charged on the agreed services, since the IATA machinery has been accepted by the vast majority of airlines.

As regards rate provisions, the author believes that the rates to be charged over the specified routes should be agreed on by the designated airlines of both contracting parties. The rates so agreed on should be subject to approval of the aeronautical authorities of both contracting parties. If no agreement can be reached, or the aeronautical authorities refuse to approve the rates submitted, the present rates should remain effective and disputes should be settled as provided in the bilateral agreement.²⁰⁵ A clause referring to rates agreed on by IATA should not be included in Thailand's bilateral air transport agreements.²⁰⁶ Moreover, it is not easy for the Thai Government to deal with any IATA matter, since there is no link between the Thai Government and the IATA.²⁰⁷ It should be left to the designated airlines themselves to decide what rates should be reasonably established. Of course, if an airline is a member of IATA, it should be free to employ the rates agreed on by IATA.

(7) Settlement of Disputes

In all but two bilateral agreements to which Thailand is a party (the exceptions being provisional agreements with China and Laos) there exists a provision dealing with the settlement of disputes.

Bilateral agreements concluded in the early post-war years generally provide that in the event of dispute recourse may be had to ICAO Council or to some other tribunal or authority for advisory opinion or arbitral decision. Only the agreement with the United States contains provision as in the Bermuda Agreement that, in general, any dispute between the contracting parties relating to the interpretation or application of the agreement which cannot be settled through consultation shall be referred for an advisory report to the Council of ICAO.²⁰⁸

Five agreements²⁰⁹ provide, with slightly different wording, that disputes shall be referred for decision to the Council of ICAO, unless the contracting parties agree to settle the disputes by reference to an arbitral tribunal appointed by agreement between such parties, or to some person or body.

In the agreement with Belgium, negotiation between the contracting parties appears to constitute the only means of settling disputes on its interpretation or application.

Most of the existing agreements specify direct negotiation, consultation or discussion between the contracting parties as a first step toward settling

disputes. As the step following direct negotiation, they provide reference to ICAO, an arbitral tribunal or a tribunal established within ICAO for decision. While most agreements leave the question concerning the composition of an arbitral tribunal to further agreement between the contracting parties, the agreements with Australia and Japan do contain detailed procedure for arbitration. The agreement with the Philippines makes further provision that the matter be referred to the International Court of Justice.

However, it appears that the best way to settle disputes on the interpretation or application of bilateral agreements is by direct negotiation between the aeronautical authorities of the parties concerned. If no settlement can be reached in that manner, the dispute should be settled through diplomatic channels.

All existing bilateral agreements specify the obligation of contracting parties to comply with arbitral decisions given. The agreements with the Philippines and the United Kingdom provide for limitation, withholding or revocation of any rights or privileges granted to a contracting party if it fails to comply with such decisions.

4. Conclusion

As indicated above, although they generally follow the line of the Chicago Standard Form and the Bermuda principles especially as regards the regulation and control of capacity and rates, Thailand's bilateral air transport agreements are not standardized. The agreements concluded with the great powers are mostly unfavorable to Thailand. The efforts made by the Thai Government to renegotiate such agreements and secure for Thailand a more equitable share of the air market have not been entirely successful. Some foreign governments have flatly refused to negotiate. Thailand will, of course, continue to seek the revision of agreements which are clearly detrimental to its national interests and self-respect.

By way of conclusion, it may now be useful to provide a summary categorization of Thailand's bilateral air transport agreements. They may be divided according to grants exchanged into four groups as follows:

1. The rights granted are being enjoyed by the airlines of both contracting parties: the agreements with China, India, Japan, Laos and the United Kingdom.

2. The rights granted are being enjoyed by the Thai airline only: the agreement with the Philippines.

3. The rights granted are being enjoyed by the airlines of the other contracting party only, not by the Thai airline: the agreements with Australia, Denmark, France, Germany, Italy, the Netherlands, Norway, Sweden, Switzerland and the United States.

4. None of the contracting parties has an advantage from the rights granted under the agreements: the agreements with Ceylon, Belgium, Iceland and Luxembourg.

In so far as Thailand has a restrictive policy, the best way to protect the interests of national airlines would be a unilateral control of the operation of international air services effected by giving temporary authorization to foreign airlines in accordance with national jurisdiction. It would not be difficult to predetermine capacity or frequency or to impose limitations or restrictions on certain services operated under mutual understanding. This seems a better policy than to put strict provision for predetermination of traffic in any bilateral agreement.

A bilateral air transport agreement should be concluded only with countries to which the Thai airline is operating air services or plans to operate air services in the very near future. It seems useless to enter into formal bilateral negotiation with countries to which the Thai airline does not plan to operate services. However, if and when Thailand changes its policy on the control of international air transport services and traffic rights are granted liberally, the grant and exercise of such rights should be governed by a bilateral air transport agreement.

NOTES

- 1 Davies stated: "In Thailand the Royal Aeronautical Service began mail flights from Korat to Ubol early in 1922 but these were not flown to a regular schedule". A History of the World's Airlines 88 n. 1 (London, 1964).
- 2 Davies wrote that this company was the civil arm of the Air Force. Id. at 199.
- 3 The information as to what pilot or aircraft first flew over, or landed in, Thailand is not available. During World War II some documents were moved, and some are now missing, since there were quite a number of air strikes over Bangkok.
- 4 Thailand planned for its own airline to serve Burma and Indo-China. A proposal for joint operation was submitted by the Thai Government, but it was turned down by the French Government.
- 5 Davies, op. cit. supra note 1, at 177.
- 6 Thailand participated on the side of the Axis in World War II. The aircraft of Allied states were absolutely not permitted to fly over Thailand.
- 7 ICAO, Digest of Statistics No. 75, Series T - No. 16, Traffic - 1947-1958, 211 (1959).
- 8 TAC operated international routes with DC-4s and L-1049Gs. When the latter were withdrawn from operations, the former continued to be in service.

- 9 During the fiscal year 1958, TAC lost more than two million US dollars, but less than one million in 1959 (after the suspension of its international services). TAC was thus convinced that if it specialized in only domestic service, its overall operation would be profitable. This proved to be true. During the fiscal year 1960, it made a profit of about one-third million dollars, and almost one-half million in 1961.
- 10 See also Davies, op. cit. supra note 1, at 407-08. He pointed out that SAS supplied modern piston-engined equipment which it no longer needed because of its jet program, and that THAI gave SAS some much-needed extra stations in the Far East, in particular Hong Kong, to which it had been unable to operate because of restrictions imposed by the Hong Kong Government.
- 11 In May of 1962 THAI introduced Convair 990 'Coronados' into service, and early in 1964 the French-made Caravelles. THAI now operates only Caravelles. All DC-6Bs, as well as Convair 990s, were returned to SAS. It has become the only all-jet airline in the Far East.
- 12 ICAO, Digest of Statistics No. 113, Series T - No. 23, Traffic - 1960-1964, 280-81 (1965).
- 13 Apart from that, Air Laos of Laos, PAL of the Philippines, RAC of Cambodia and UAA of the United Arab Republic, after serving Thailand for a very few years, suspended their services to Thailand.

- 14 This service was formerly operated by Bharat Airways.
- 15 During 1949-1954 SAFE operated to Thailand on behalf of Norway.
- 16 ICAO, Digest of Statistics No. 104, Series AT - No. 3, Airport Traffic - 1962, 22 (1964).
- 17 ICAO, Digest of Statistics No. 110, Series AT - No. 4, Airport Traffic - 1963, 24 (1965).
- 18 This term is translated from the Thai language. It may be called "Parliament".
- 19 It is the same as "Cabinet".
- 20 This Act was published in the Government Gazette of October 13, B. E. 2465 (1922), and was in force from that date. It will hereinafter be referred to and cited as the "Act of 1922". Prof. Pépin wrote in his survey of the air laws in force before the Chicago Convention that it was enacted on April 11, 1923. "Development of the National Legislation on Aviation since the Chicago Convention," 24 J. Air L. & Com. 3 n. 6 (1957).
- 21 This was mentioned in its Preamble: (translation) Whereas the Assembly of the People's Representatives has passed a resolution that it is deemed expedient to revise the laws concerning air navigation with a view to improvement and compliance with the International Convention to which the Thai Government is a party as also with the rules adopted by the International Commission for Air Navigation.

- 22 It was published in the Government Gazette of April 25, B. E. 2481 (1938), and was in force from October 25, 1938. It will hereinafter be referred to and cited as the "Act of 1938".
- 23 Sect. 36: (translation; parentheses added) No foreign aircraft shall fly over the Kingdom unless it has the right to do so under the International Convention or Regulations on Air Navigation to which the Thai Government is a party or has received a specific and temporary permission in writing from the Minister (meaning the Minister of Defence who had charge and control of the execution of the Act of 1938) or a person acting for the Minister.
- 24 The amendments relating to the rate of fees annexed to the Act of 1938 were made in 1947 and 1949.
- 25 It was published in the Government Gazette of September 14, B. E. 2497 (1954), and was in force from December 13, 1954. Its relevant sections are appended hereto as Appendix A. For full text in English translation, including its four amendments, see 2 Air Laws and Treaties of the World 2413-34 (prepared under the direction of William S. Strauss for the Committee on Commerce, US Senate, 1965). This Act will hereinafter be referred to and cited as the "Act of 1954".
- 26 The Minister of Communications: to issue Ministerial Regulations fixing fees not exceeding the schedule annexed to the Act as well as exemptions therefrom and other matters. (Sect. 6).

The CAB: to issue regulations in compliance with the provisions of the Act and Annexes to the Chicago Convention. (Sect. 15 (2)).

27 Sect. 5.

28 Sect. 28: (translation; parentheses added)
No foreign aircraft shall fly over or take-off or land in the Kingdom unless it has the right in accordance with the Convention (meaning the Chicago Convention) or bilateral agreement or unless permission in writing has been obtained from the Minister (meaning the Minister of Communications who has charge and control of the Act of 1954). See also note 23 supra.

The author does not agree with the English translation of the term as "bilateral agreement". The term used in the original text in the Thai language means "international agreements".

29 In accordance with Sect. 15 (3) the CAB has powers to consider and authorize the rates of fare and freight of transport aircraft, and Sect. 20 fares and freight charges must be collected at the rates approved by the CAB. Sect. 28 also provides for the right of entry of foreign aircraft, see note 28 supra.

30 It was published in the Government Gazette of October 14, B. E. 2471 (1928), and came into force from that date. For full text in English translation, see Appendix B. This Act will hereinafter be referred to and cited as the "Act of 1928".

- 31 The term referred to in the Act is translated
as "aerial navigation", see Sect. 5.
- 32 Sect. 4.
- 33 Sect. 6.
- 34 The amendment is included in Appendix B.
- 35 See note 21 supra.
- 36 See note 23 supra.
- 37 Sect. 15 (3) and Sect. 20, see note 29 supra.
- 38 Sect. 28, see note 28 supra.
- 39 Sect. 7.
- 40 See note 29 supra.
- 41 See pépin, supra note 20, at 11. He also
interpreted this way.
- 42 Its Preamble: (translation) Whereas it is expedient
to amend the law on air navigation.
- 43 Before the Act of 1954 air navigation matters
were under control of the Ministry of Defence,
as the Minister of Defence was designated to have
charge and control of the Acts on air navigation.
See also note 23 supra.
- 44 The term "competent official" was defined by the
Act of 1938 as "the official appointed under this
Act". No definition appeared in the Act of 1922
or the Act of 1954.

- 45 The designation was made by the Proclamation designating the authorities to take charge of the Act of 1928, dated August 16, B. E. 2472 (1929), which was published in the Government Gazette of August 18, B. E. 2472 (1929), and was in force from that date.
- 46 This was in accordance with the policy to separate civil aviation from the military, which the Government had had in mind. The first step was taken in 1924 by establishing the civil unit in the Ministry of Defence to be responsible for the operating of air transport services.
- 47 The Act Designating Ministries to Take Charge of the Act for the Control of Commercial Undertakings Affecting the Public Safety or Welfare B. E. 2471, B. E. 2476 (1933), Sect. 4. See text in full in Appendix C. This Act will hereinafter be referred to and cited as the "Act of 1933".
- 48 Sect. 4 of the Act of 1933 was amended in 1941. The amendment is included in Appendix C.
- 49 The Act of 1933, Sect. 5.
- 50 The Minister of Communications has charge and control of the Act of 1954. See Sect. 6.
- 51 Sect. 6 of the Act of 1954 was slightly amended in 1964.
- 52 Chapter 1 of the Act of 1954 deals with the CAB. See also Pépin, supra note 20, at 10.

Before the Act of 1954 the Council of Ministers appointed a committee which was also called the CAB comprising qualified officers from various Departments concerned with civil aviation. There was no delegation of power to the CAB at that time. It acted as an advisory committee only, and had no power to make any decision. It gave advice concerning civil aviation to the Ministry of Communications, and to other Government units on request.

53 Sect. 7.

54 Sect. 8.

55 Sect. 9.

56 Sect. 15.

57 See text in Appendix B.

58 Note 28 supra.

59 See the definition and its notes in ICAO, Doc 7278-C/841, Definition of a Scheduled International Air Service (1952). A service is regarded by Thailand as "scheduled" only according to the published timetables, since it is difficult to indicate the degree of regularity or frequency of flights in a series.

60 Institut de Droit International.

61 See Sand, Pratt and Lyon, An Historical Survey of the Law of Flight, Institute of Air and Space Law Pub. No. 7, 8 (Montreal, 1961).

- 62 Since there was no clear definition of the term "innocent passage", it was interpreted by each state in its own way. Wassenberg, Post-War International Civil Aviation Policy and the Law of the Air 108 (2nd rev. ed., The Hague, 1962).

This term was interpreted as according the general right of entry and of transit only for civil aircraft operated on non-scheduled services. Latchford, "Comparison of the Chicago Aviation Convention With the Paris and Habana Conventions," 12 Dep't State Bull. 412 (1945).

- 63 See Latchford, "Freedom of the Air--Early Theories; Freedom; Zone; Sovereignty," in Legal Problems of Space Exploration: A Symposium, US Senate Doc. 26, 87th Cong., 1st Sess., 1219-20 (1961).

- 64 The term "cabotage" did not appear in the Paris Convention of 1919, but it does in the Chicago Convention of 1944. As to its meaning in air law concept, see Cheng, The Law of International Air Transport 314 (London, 1962); see also Sheehan, "Air Cabotage and the Chicago Convention," 63 Harv. L. Rev. 1157-67 (1950).

- 65 Sand, Pratt and Lyon, op. cit. supra note 61, at 10.

- 66 Commission de l'Aéronautique.

- 67 See Sand, Pratt and Lyon, op. cit. supra note 61, at 13. For full text, as amended, see Cooper, The Right to Fly 291-305 (New York, 1947).

- 68 Described in Art. 15 as "regular international air navigation lines".
- 69 For a review of the provisions of the Convention, see Bouvé, "The Development of International Rules of Conduct in Air Navigation," 1 Air L. Rev. 1-38 (1930).
- 70 See Rhyne, "Legal Rules for International Aviation," 31 Va. L. Rev. 271 (1945).
- 71 Latchford, "The Right of Innocent Passage in International Civil Air-Navigation Agreements," 11 Dep't State Bull. 19 (1944).
- 72 Air transportation in Thailand began early in 1920, see Chapter I, section 1, supra.
- 73 See ICAN Official Bull., No. 18, 44 (Nov., 1930).
- 74 Instrument of Ratification was dated Feb. 2, 1920. According to the information given by ICAN the ratification was deposited on June 1, 1922. Ibid.
- 75 See also note 21 supra.
- 76 The objectives of this Conference were mentioned in the invitation extended by the US Government to fifty-five nations including Thailand. US Dep't State Pub. 2820, Proceedings of the International Civil Aviation Conference, Chicago, Illinois, November 1 - December 7, 1944, 12 (1948) (hereinafter cited as Proceedings).
- 77 Id. at 55-63.

78 Id. at 566-70.

79 Id. at 67-74.

80 Id. at 77-80, 82-84.

81 The rejection of this proposal indicated the tendency of the Conference away from extensive international control of air services. Id. at 1.

82 For full text, see id. at 147-74.

83 For full text, see id. at 175-78.

84 For definition of "Freedoms of the Air", see ICAO, Doc 8291, Lexicon of terms used in connexion with International Civil Aviation 280-81 (2nd ed., 1964).

85 At the time this work is being prepared, 72 nations including Thailand have accepted the Air Transit Agreement.

86 For full text, see Proceedings at 179-83.

87 This is the right to reserve the so-called "cabotage traffic" (Art. I, Sect. 4), which is the same as Art. 7 of the Chicago Convention.

88 "US Withdraws From Air-Transport Agreement," 15 Dep't State Bull. 236 (1946).

89 At the present time only 11 states are parties to the Transport Agreement: Bolivia, Costa Rica, El Salvador, Ethiopia, Greece (with reservation of fifth freedom), Honduras, Liberia, the Netherlands,

Paraguay, Sweden and Turkey (with reservation of fifth freedom).

90 Little, "Control of International Air Transport,"
3 Int'l Org. 34 (1949).

91 For full text, see Proceedings at 127-29.

92 Bowen, "The Chicago International Civil Aviation
Conference," 13 Geo. Wash. L. Rev. 313 (1945).

93 See Proceedings at 13, 49.

94 When accepting agreements drawn up at the Conference,
several countries made the reservation that they
did not regard Thailand as being a party thereto.
Such reservations were later withdrawn.

95 According to the statement by the Thai Delegation
to the 15th Sess. of the ICAO Assembly. See
20 ICAO Bull., Nos. 8-9, 26-27 (1965).

96 See Joint Statement by the UK and US Delegations,
"Results of the Anglo-American Civil Aviation
Conference," 14 Dep't State Bull. 302-03 (1946).
For text of the Final Act of the Conference,
see 3 Air Laws and Treaties of the World 4319-29
(prepared under the direction of William S. Strauss
for the Committee on Commerce, US Senate, 1965).

97 Wheatcroft, Air Transport Policy 70 (London, 1964).

98 See Joint Statement by US and British Governments,
"International Air-Transport Policy," 15 Dep't State
Bull. 577-78 (1946); see also Tymms, "Freedom of
the Air," 8 J. Ae. Soc'y India 55 (1956).

- 99 Sand, Pratt and Lyon, op. cit. supra note 61, at 34.
- 100 For details, see ICAO, Doc 5230, A2-EC/10, Records of the Commission on Multilateral Agreement on Commercial Rights in International Civil Air Transport, Geneva, November 4-27, 1947 (1948); also McClurkin, "The Geneva Commission on a Multilateral Air Transport Agreement," 15 J. Air L. & Com. 39-46 (1948).
- 101 See Cooper, "The Proposed Multilateral Agreement on Commercial Rights in International Civil Air Transport," 14 J. Air L. & Com. 125 (1947).
- 102 The Committee was divided in its conclusions and produced majority and minority reports. PICA0, Doc 4014, A1-EC/1, Proceedings of the Air Transport Committee: Draft Multilateral Agreement on Commercial Rights in International Civil Air Transport (1947).
- 103 Thailand was not represented at this Conference.
- 104 ICAO, Doc 5230, A2-EC/10, op. cit. supra note 100, at 127.
- 105 Id. at 128.
- 106 See McClurkin, supra note 100, at 45-46.
- 107 See ICAO, Doc 5230, A2-EC/10, op. cit. supra note 100, at 129.
- 108 Ibid.
- 109 Id. at 129-30.

- 110 Id. at 130.
- 111 "Twelfth Session of the Assembly of ICAO: Economic Commission Has Four Resolutions Passed by the Assembly," 14 ICAO Bull., Nos. 7-8, 143 (1959).
- 112 Art. 1.
- 113 Art. 6.
- 114 In this respect permission has been granted to CSA, the Czechoslovak airline, to fly non-stop across Thailand on its scheduled services to Cambodia.
- 115 The Act of 1954, Sect. 28.
- 116 See Chapter I, section 2 (3), supra.
- 117 See Chapter I, section 2 (1), supra.
- 118 In accordance with the provision of the Civil and Commercial Code of Thailand, all Ministries and Departments are juristic persons.
- 119 The representative of the air transport operator normally acts as an advisor to the Thai Delegation or negotiators. He has never been appointed a Delegate or a member of the negotiating team.
- 120 Only a treaty which provides for a change in the Thai territory or requires the issuance of an Act to implement it, must receive the approval of the National Assembly. The bilateral air transport agreement could be considered an executive agreement.

- 121 The agreements signed with Germany and Luxembourg require ratification. The agreements with Japan, Italy and Switzerland provide that they will be approved by each party in accordance with its legal procedure and shall enter into force upon the exchange of diplomatic notes indicating such approval.
- 122 E.g. Art. 15 of the agreement with Germany provides:
"1. The present Agreement shall be ratified by the Federal Republic of Germany. The instrument of ratification shall be deposited as soon as possible with the Government of the Kingdom of Thailand.
2. The present Agreement shall enter into force thirty days after the German instrument of ratification has been deposited.
3. . . ."
- 123 See Appendix E. This procedure is also applied to multilateral agreements.
- 124 Special authorizations were given to foreign operators under an informal understanding between Thailand and the state of the particular operators, which could be considered as an "informal agreement", and not published.
- 125 Exchange of Notes between His Majesty's Government in the United Kingdom and the Government of India and the Royal Siamese Government constituting an Agreement for the Operation of Regular Air Services over Siam and over India and Burma (Bangkok, December 3, 1937). See text in

186 LoN Treaties Series 293 (1938). Imperial Airways began its services into Thailand previously.

- 126 When Thailand entered into this agreement, its operators had not yet been able to fly into India or Burma as granted. Only the British operator enjoyed the right granted.
- 127 It was automatically terminated, when Thailand declared war against the United Kingdom on Jan. 25, 1942.
- 128 Agreement between the United Kingdom of Great Britain and Northern Ireland, India and Siam for the Termination of the State of War, signed at Singapore on Jan 1, 1946. See text in 99 UN Treaties Series 131 (1951).
- 129 Art. 16: The Siamese Government shall accord to the civil air services of the British Commonwealth of Nations, by means of agreements to be negotiated with the Governments of members of the British Commonwealth of Nations, treatment in regard to establishment, maintenance and operation of regular air services not less favorable than that accorded to Imperial Airways by the notes exchanged at Bangkok on December 3rd 1937.
- 130 The Agreement for the Operation of Regular Air Services between Thailand and Japan, signed at Bangkok on Nov. 30, 1939 and in force from Dec. 10, 1939. See text in 200 LoN Treaties Series 197 (1940-41), and the Exchange of Notes relating to the meaning of "Japanese territory" in 200 LoN

Treaties Series 202 (1940-41). For analitical discussion of its provisions, see Ohara, Japan's Post-War Bilateral Air Transport Agreements, Term Paper, Institute of Air and Space Law, 13-16 (Montreal, 1964).

- 131 They were made through normal diplomatic channels, which could be regarded as informal bilateral agreements. See note 124 supra; also Cheng, The Law of International Air Transport 231 (London, 1962).
- 132 This temporary authorization was referred to by the Indian Government as the "Authority". It became effective on Sept. 23, 1948, and remained in force for a period of only six months. After the expiration of this authorization the operators of both countries were reciprocally authorized on a temporary basis until the conclusion of the formal agreement in 1956.
- 133 Appendix D. Three more agreements, with Burma, Indonesia and Malaysia, have been initialled by the negotiators and will be signed shortly. Negotiations are now in progress with Pakistan and Canada.
- 134 One might think there is no urgency for a formal agreement as the existing agreement is sufficient.
- 135 E.g. Exchange of Diplomatic Notes between Thailand and India confirming a reciprocal basis on the aerodrome and route charges, and facilities charges; Exchange of Diplomatic Notes between Thailand and Japan regarding the exercise of traffic rights by Thai operators over Okinawa.

- 136 E.g. Correspondences between Thai and German Delegations regarding customs duty and double taxation; Memorandum made by Thai and Italian Delegations defining certain terms, such as "stop-over passengers".
- 137 Mostly the bilateral agreements with the Allied states, such as the United States, the United Kingdom, the Netherlands and even India, as indicated previously.
- 138 The wording differs slightly in different agreements, but the meaning is the same.
- 139 The functions of the Department of Transport on civil aviation have been transferred to the Department of Aviation since 1963. See discussion in Chapter I, section 2 (3), supra. The Department of Aviation, or the Director General of this Department, as the case may be, has automatically become the "aeronautical authorities" of such agreements.
- 140 The Ministry of Communications exercises its duties and responsibilities under the provisions of the Act of 1954 and the Act of 1928, as amended.
- 141 E.g. in accordance with Sect. 15 of the Act of 1954 CAB assumes the authority to authorize rates and fares with approval of the Minister of Communications.
- 142 E.g. in the case of disapproval of proposed rates, the Minister of Communications disapproves the rates proposed by the Japanese, Philippine, British

and German operators; the Department of Aviation disapproves the rates proposed by the French operators; the Director General of the Department of Aviation disapproves the rates proposed by the Australian and Indian operators; and the CAB disapproves the rates proposed by the Chinese, Danish, Italian, Lao, Dutch, Norwegian, Swedish, Swiss and US operators.

- 143 The Department of Aviation is the only arm of the Ministry of Communications dealing with all civil aviation matters and acts as the "aeronautical authorities" under certain agreements. See note 139 supra.
- 144 The agreements with Belgium, Ceylon, Denmark, Iceland, Italy, the Netherlands, Norway, Sweden, Switzerland and the United States.
- 145 Its annex, Sects. I and II. For full text, see 255 UN Treaties Series 341 (1956).
- 146 Arts. 10 and 1 (b). For full text, see 392 UN Treaties Series 279 (1961).
- 147 The agreements with Ceylon, Denmark, Iceland, India, the Netherlands, Norway, the Philippines, Sweden, Switzerland and the United States.
- 148 The agreements with Australia, Belgium, France, Germany, Italy and Luxembourg.
- 149 Art. 1. See ICAO, Doc 7977, ECAC/3-1, European Civil Aviation Conference, Strasbourg, March 9-20, 1959, Records of the 3rd Session, Vol. I - Report, 35 (1959).

- 150 The agreements with Belgium, Ceylon, Denmark, Norway and Sweden.
- 151 These requirements follow the line of the Chicago Standard Form, Arts. (1) and (2) (a). The phraseology on inauguration of service has been developed by the ECAC (Art. 2) which was found acceptable by most ICAO states including Thailand.
- 152 Art. 3 (4) of the agreement with the United Kingdom and Art. 11 (4) of that with France provide that each party has the right to refuse to accept the designation of an airline when it is not satisfied that substantial ownership and effective control of that airline are vested in the contracting party designating the airline or in nationals of the contracting party designating the airline.
- 153 Cheng, op. cit. supra note 131, at 359.
- 154 The agreements with Australia, France, Germany, Luxembourg and the United Kingdom.
- 155 See Rinaldi Baccelli, Standardization of Bilateral Agreements 68 (Padova, 1963).
- 156 Only five agreements do not make any provision relating to authorization. Note 150 supra.
- 157 See note 151 supra. The agreements with the Netherlands and the United States use the same wording as the Chicago Standard Form.
- 158 Even though most existing agreements avoid mentioning the term "certificate" or "permit" by using, for

instance, the terms "operating permission", "privileges", "the exercise of rights granted", the designated airline of Thailand is still required to obtain a permit from certain governments, e.g. Japanese, Indian and Philippine Governments.

159 Notes 150 and 156 supra.

160 For more discussion on this question, see Heller, The Grant and Exercise of Transit Rights in respect of Scheduled International Air Services, Thesis, Institute of International Air Law, 80-85 (Montreal, 1954).

161 See also Rinaldi Baccelli, op. cit. supra note 155, at 69.

162 Cheng, op. cit. supra note 131, at 375.

163 Arts. (2) (a) and 7.

164 See also note 152 supra.

165 This is apparently the intent of the Chicago Standard Form, which states: "nationals of a party to this agreement".

166 The agreements with Australia, Germany, India, Japan and the United States.

167 See also Gazdik, "Nationality of Aircraft and Nationality of Airlines as Means of Control in International Air Transport," 25 J. Air L. & Com. 4-5 (1958).

- 168 Art. 6 (b). No similar provision is included in the agreement with Norway, since by the time of its conclusion the Norwegian Government permitted SAFE to operate air services to the Far East and SAFE became the Norwegian designated airline under such agreement. In 1954 Norway changed its designated airline to SAS. SAS becomes the designated airline of three Scandinavian countries under three separate agreements. No negotiation for the amendment of the agreement in this respect has been made with Norway.
- 169 This exchange of notes is made in accordance with para. 2 of Art. 1 of the agreement.
- 170 To date no consultation has taken place. Neither party enjoys the rights granted through this agreement.
- 171 E.g. the agreement with the Netherlands specifies that
- Thai Route Thailand via intermediate points to Amsterdam and thence to points beyond in both directions.
- Netherlands Route The Netherlands via intermediate points to Bangkok and thence to points beyond in both directions.
- 172 They state, for instance, "via intermediate points", or "points beyond".
- 173 E.g. the Thai Route I of the agreement with the United Kingdom states some alternative intermediate points as "Basra or Baghdad", "Damascus or Beirut or Lydda or Cairo".

- 174 The agreements with Belgium, Germany and Luxembourg. No exchange of notes has been made with Luxembourg.
- 175 The agreements with Germany, India, Italy, Japan and the United Kingdom.
- 176 E.g. British Route I, starting from London (via intermediate points specified) to Bangkok and beyond to Hong Kong.
- 177 "International air service" means an air service which passes through the air space over the territory of more than one state (Art. 96 (b) of the Chicago Convention).
- 178 See text in 254 UN Treaties Series 409 (1956). This withdrawal reflected the policy of the United Kingdom toward the reservation of local and regional traffic.
- 179 Wassenbergh, Post-War International Civil Aviation Policy and the Law of the Air 74 (2nd rev. ed., The Hague, 1962).
- 180 Undoubtedly, the US CAB will be the only authority which decides whether or not the route proposed by the Thai airline is "reasonably direct"!
- 181 This definition was proposed by Canada at the Chicago Conference. Proceedings at 614.
- 182 For full text of the Final Act of the Conference, see 3 Air Laws and Treaties of the World 4319-29 (prepared under the direction of William S. Strauss for the Committee on Commerce, US Senate, 1965).

- 183 Final Act, para. 4.
- 184 Final Act, para. 6.
- 185 Art. IV. For full text, see 255 UN Treaties Series 341 (1956).
- 186 McCarroll, "The Bermuda Capacity Clauses in the Jet Age," 29 J. Air L. & Com. 117 (1963).
- 187 According to an official survey by the Thai Ministry of Communications.
- 188 Restrictions were imposed on LUFTHANSA and UAA with respect to the number of passengers carried: 10-15 passengers a flight--between Bangkok-Hong Kong and Bangkok-Tokyo. Since the bilateral agreement was signed with Germany and came into force provisionally pending ratification by Germany, LUFTHANSA became the designated airline under the agreement. Restrictions on LUFTHANSA have been accordingly withdrawn.
- 189 Art. 8. For text, see Appendix F.
- 190 Air France: Bangkok-Phnom Penh v.v.,
Bangkok-Saigon v.v.
UTA: Bangkok-Djakarta v.v.
ALITALIA: Bangkok-Hong Kong v.v.,
Bangkok-Tokyo v.v.
- 191 See Appendix G.
- 192 In the case of the agreements with Ceylon, Denmark, Iceland, the Netherlands, Norway and Sweden, which do not contain provisions relating to capacity.

- 193 See Cribbett, "Some International Aspects of Air Transport," 54 J. Ro. Ae. Soc'y 684-85 (1950).
- 194 Proceedings at 385.
- 195 See Rinaldi Baccelli, op. cit. supra note 155, at 61.
- 196 See Chapter II, section 3 (1), supra.
- 197 The agreements with Belgium and Luxembourg.
- 198 The agreements with Ceylon, Denmark, the Netherlands, Norway, the Philippines and Sweden.
- 199 Art. 12 (2) with Japan and Art. 6 (2) with the United Kingdom provide
". . . Where tariffs have been agreed by the IATA these tariffs shall apply unless the designated airlines agree upon alternative tariffs. . . ."
- 200 The agreements with Australia, France, Germany, India, Italy, the Netherlands and Switzerland.
- 201 For authority to approve or disapprove rates, see Chapter I, section 2 (3), supra; see also note 142 supra.
- 202 The agreements with Belgium, Ceylon, Denmark, Iceland, the Netherlands, Norway and Sweden.
- 203 The agreements with Australia, France, Germany, India, Italy, Japan and the United Kingdom.
- 204 Art. 6.

- 205 For discussion on the question of the settlement of disputes, see section 3 (7) of this Chapter, infra.
- 206 See note 199 supra.
- 207 None of the Thai airlines has become a member of IATA. The Thai Government used to ask for copies of IATA resolutions, but the IATA refused to supply them.
- 208 Art. IX of the Bermuda Agreement.
- 209 The agreements with Ceylon, Denmark, the Netherlands, Norway and Sweden.

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APPENDIX ATranslation

AIR NAVIGATION ACT, B. E. 2497

PHUMIPHOL ADULYADEJ, REX.

Given on the 1st September, B. E. 2497;

Being the 9th year of the Present Reign.

H.M. King Phumiphol Adulyadej has been graciously pleased to proclaim that:

Whereas it is expedient to amend the law on air navigation:

Be it, therefore, enacted by the King, by and with the advice and consent of the Assembly of the People's Representatives, as follows:-

Section 1. This Act shall be called the "Air Navigation Act, B. E. 2497".

Section 2. This Act shall come into force after the expiration of ninety days as from the date of its publication in the Government Gazette.

Section 3.

- (1) The Air Navigation Act, B. E. 2480;
- (2) The Air Navigation Act (No. 2), B. E. 2490;
- (3) The Air Navigation Act (No. 3), B. E. 2492; and
- (4) All laws, rules and regulations in so far as they are repugnant to or inconsistent with the provisions of this Act, shall be repealed.

Section 4. In this Act:

"Aircraft" includes all machines which can derive support in the atmosphere from the reactions of the air, except objects specified in the Ministerial Regulations;

"Transport Aircraft" means an aircraft which is used or intended to be used for commercial transport of things or passengers for remuneration;

"Foreign Aircraft" means an aircraft duly registered and having nationality according to the foreign law;

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"Convention" means the Convention on International Civil Aviation done at Chicago on the 7th December, 1944 including its Annexes and Amendments of the Annexes or the Convention;

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"Operator" means the person engaged in aircraft operation;

"Minister" means the Minister having charge and control of this Act.

Section 5. This Act shall not apply to the air navigation in the services of the military, police and other official units as may be determined in the Ministerial Regulations.

Section 6. The Minister of Communications shall have charge and control of this Act, and shall have the power to appoint competent officials and to issue Ministerial Regulations fixing fees not exceeding the rates hereto annexed and determining other activities for the execution of this Act.

Such Ministerial Regulations shall come into force upon publication in the Government Gazette.

/-Note Section 6 was amended by the Air Navigation Act (No. 5), B. E. 2507 (1964) to read as follows:

"Section 6. The Minister of Communications shall be in charge of the execution of this Act and is empowered to appoint competent officers, issue Ministerial Regulations fixing fees not exceeding the schedule annexed to this Act as well as exemptions therefrom and other matters pursuant hereto.

Such Ministerial Regulations shall take effect upon publication in the Government Gazette."

This came into force on June 8, 1964.7

CHAPTER 1

Civil Aviation Board

Section 7. There shall be a Civil Aviation Board consisting of the Minister of Communications as Chairman ex-officio, a Vice-Chairman and not more than seven other members appointed by the Council of Ministers.

Section 8. The Vice-Chairman and members of the Board shall hold office for a period of four years. The Vice-Chairman or members of the Board whose term of office has expired may be reappointed as Vice-Chairman or members of the Board.

Section 9. The Vice-Chairman and members of the Board are relieved of their office before the expiration of the term upon:

- (1) Death;
- (2) Resignation;
- (3) Being retired by the Council of Ministers.

In case where vacancy occurs before the expiration of the term, a Vice-Chairman or member of the Board

shall be appointed in place, as the case may be; and the person so appointed shall hold office only for the unexpired portion of his predecessor's term of office.

Section 10. When the Chairman of the Board is absent at any meeting, the Vice-Chairman shall perform the duty instead.

Section 11. At every meeting of the Civil Aviation Board, the presence of not less than half of all members shall constitute a quorum.

Section 12. All questions shall be decided by a majority of votes.

Each member shall have one vote. In case of a tie, the person presiding at the meeting shall have another vote as the casting vote.

Section 13. The Civil Aviation Board shall have the power to appoint Sub-Committees for performing any activities or examining or enquiring into any facts which are within the scope of powers and duties of the Civil Aviation Board.

For the meeting of the Sub-Committee, Sections 11 and 12 shall apply, mutatis mutandis.

Section 14. The Chairman, Vice-Chairman and members of the Board shall receive remunerations as may be determined by the Council of Ministers.

Section 15. The Civil Aviation Board shall have powers and duties as specified in this Act, and in the following matters:

(1) To take consultation and give advice concerning civil aviation to the Minister;

(2) To issue regulations in compliance with the provisions of this Act and Annexes to the Convention;

Such regulations shall come into force after the approval of the Minister and upon publication in the Government Gazette.

(3) To consider and authorize the rates of fare and freight of transport aircraft, and service charges for air navigation facilities, with the approval of the Minister.

CHAPTER 2

General Provisions on Aircraft

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Section 20. Transport aircraft passenger fares

and freight charges must be collected at the rates approved by the Civil Aviation Board.

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Section 27. No aircraft other than foreign aircraft shall fly out of the Kingdom unless permission in writing has been obtained from the competent official.

Section 28. No foreign aircraft shall fly over or take-off or land in the Kingdom unless it has the right in accordance with the Convention or bilateral agreement or unless permission in writing has been obtained from the Minister.

Section 29. No foreign military aircraft shall fly over or take-off or land in the Kingdom unless permission in writing has been obtained from the Minister.

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CHAPTER 9

Penalties

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Section 70. Whoever, being the owner of an aircraft, violates Section 20, Section 32 last paragraph or

Section 33 shall be punished with fine not exceeding two thousand baht.

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Section 72. Whoever, being the person in charge of an aircraft, violates Section 22 or Section 27 shall be punished with fine not exceeding five thousand baht or imprisonment not exceeding two years, or both.

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Section 76. Whoever, being the person in charge of a foreign aircraft or a foreign military aircraft, violates Section 28 or Section 29, as the case may be, shall be punished with fine not exceeding five thousand baht or imprisonment not exceeding two years, or both.

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Counter-signature:

Field Marshal P. Phibulsonggram

President of the Council of Ministers.

Published in the Government Gazette of September 14, B. E. 2497 (1954) and came into force on December 13, B. E. 2497 (1954).

APPENDIX B

Translation

ACT

FOR THE CONTROL OF COMMERCIAL UNDERTAKINGS
AFFECTING THE PUBLIC SAFETY OR WELFARE

B. E. 2471

BY THE KING'S MOST EXCELLENT MAJESTY

Whereas the commercial and industrial development of the country makes it necessary, in order to protect the interests of the people, to control all commercial undertakings affecting the public safety or welfare,

It is hereby enacted as follows:

Section 1. This Act shall be cited as the "Act for the Control of Commercial Undertakings Affecting the public Safety or Welfare, B. E. 2471".

Section 2. It shall come into force from the day of its publication in the Government Gazette.

Section 3. Section 1014 of the Civil and Commercial Code promulgated on the 1st of January B. E. 2467 is hereby repealed.

Section 4. No person may carry on in Siam a commercial undertaking of public utility, unless a Royal Sanction or concession has been obtained, or when the Royal Sanction or concession so granted has been withdrawn or has expired.

/Note Section 4 was amended by the Act for the control of Commercial Undertakings Affecting the Public Safety or Welfare (No. 2), B. E. 2485 (1942) to read as follows:

"Section 4. No person may carry on a commercial undertaking of public utility unless authorization has been given by the Government or concession has been granted."

This came into force on August 25, 1942.7

Section 5. The following commercial undertakings shall be deemed to be public utility within the meaning of this Act: railways, tramways, canals, aerial navigation, water supply, irrigation, electric power stations and such other undertakings affecting the public safety or welfare as may from time to time be specified by Royal Decree.

Section 6. The Government may, upon granting a Royal Sanction or Concession, impose any conditions as it deems necessary for the public safety or welfare.

Note Section 6 was amended by the Act for the Control of Commercial Undertakings Affecting the Public Safety or Welfare (No. 2), B. E. 2485 (1942) to read as follows:

"Section 6. In giving the authorization or granting the concession the Government may impose any conditions as it deems necessary for the public safety or welfare."

This came into force on August 25, 1942.⁷

Section 7. No person may carry on in Siam a commercial undertaking of insurance, banking, saving institutions, crédit foncier, or any other undertaking of a similar nature, unless the provisions of special laws governing such undertakings are complied with.

Pending the enactment of special laws, no such undertaking shall be carried on in Siam unless an authorization has been obtained from the Government through the competent Minister, subject to the provisions of Section 6.

Commercial undertakings within the meaning of this Section which are existing in the Kingdom at the date of enforcement of this Act must apply for the authorization within one year from the same date.

Section 8. Whoever fails to comply with any of the provisions of this Act shall be liable to a fine

not exceeding five thousand baht and to a penalty not exceeding one thousand baht for every day during which such default continues.

Given on the 13th day of October, B. E. 2471
being the 4th year of the Present Reign.

Published in the Government Gazette of October 14,
B. E. 2471 (1928) and came into force on that date.

APPENDIX CTranslation

ACT

DESIGNATING MINISTRIES TO TAKE CHARGE OF THE ACT
FOR THE CONTROL OF COMMERCIAL UNDERTAKINGS
AFFECTING THE PUBLIC SAFETY OR WELFARE, B. E. 2471,
B. E. 2476

BY THE KING'S MOST EXCELLENT MAJESTY

Whereas the Assembly of the People's Representatives has advised that it is deemed expedient to revise the designation of Ministries to take charge of the provisions of the Act for the Control of Commercial Undertakings Affecting the Public Safety or Welfare, B. E. 2471, in order to conform with the Establishment of Ministries and Departments Act, B. E. 2476 and the Royal Decree Organizing Departments in Various Ministries;

Be it, therefore, enacted by the King, by the advice and consent of the Assembly of the People's Representatives, as follows:-

Section 1. This Act shall be cited as the "Act Designating Ministries to Take Charge of the Act for the Control of Commercial Undertakings Affecting the Public Safety or Welfare, B. E. 2471, B. E. 2476".

Section 2. This Act shall come into force from the date of its publication in the Government Gazette.

Section 3. The Proclamation designating the authorities to take charge of the Act for the Control of Commercial Undertakings Affecting the Public Safety or Welfare, B. E. 2471 dated 16th August, B. E. 2472 is hereby repealed.

Section 4.

(1) The Ministry of Interior shall have charge of the provisions relating to tramways, water supplies and electric power stations.

(2) The Ministry of Finance shall have charge of the provisions relating to banking, saving institutions and crédit foncier.

(3) The Ministry of Economic Affairs shall have charge of the provisions relating to irrigations, railways, canals, aerial navigation and insurance.

[Note] Section 4 was amended by the Act Designating Ministries to Take Charge of the Act for the Control of

Commercial Undertakings Affecting the Public Safety or Welfare, B. E. 2471 (No. 2), B. E. 2484 (1941) to read as follows:

"Section 4.

(1) The Ministry of Interior shall have charge of the provisions relating to tramways, water supplies and electric power stations.

(2) The Ministry of Finance shall have charge of the provisions relating to banking, saving institutions and crédit foncier.

(3) The Ministry of Economic Affairs shall have charge of the provisions relating to insurance.

(4) The Ministry of Communications shall have charge of the provisions relating to railways and aerial navigation.

(5) The Ministry of Agriculture shall have charge of the provisions relating to irrigation and canals."

This came into force on September 23, 1941. This Section was again amended in 1956, but it did not affect the duty and responsibility of the Ministry of Communications on air transport services._7

Section 5. Each Minister specified in the preceding Section is empowered to appoint officials and to issue Ministerial Regulations for the carrying out of the provisions of this Act in so far as they

concern the undertakings under his charge as specified in the preceding Section. Such Ministerial Regulations shall come into force on publication in the Government Gazette.

Given on the 29th day of October, B. E. 2476
being the 9th year of the Present Reign.

Counter-signature:

Colonel Phya Phahol Pholphayuhaseana

President of the Council of Ministers.

Published in the Government Gazette of November 5,
B. E. 2476 (1933) and came into force on that date.

APPENDIX D

Thailand's

Existing Bilateral Air Transport Agreements

<u>Parties</u>	<u>Date of Signature</u>	<u>Date of enter into force</u>	<u>ICAO Reg. No.</u>
Thailand			
-Australia	26-2-60	26-2-60	1474
-Belgium	4-5-62	4-5-62	1620
-Ceylon	24-2-50	24-2-50	791
-China (provisional)	29-9-51	29-9-51	1171
-Denmark	23-11-49	23-11-49	770
-France	26-2-60	26-2-60	1475
-Germany	5-3-62	5-3-62 (provisionally)	
-Iceland	22-1-57	22-1-57	1298
-India	12-6-56	12-6-56	1261
-Italy	28-12-61	28-12-61 (provisionally)	
-Japan	19-6-53	14-7-53	1004
-Laos (provisional)	1-6-55	1-6-55	1180
-Luxembourg	29-12-60	7-2-62	1610
-Netherlands	18-7-47	18-7-47	602
-Norway	26-11-49	26-11-49	758
-Philippines	27-4-53	27-4-53	996
-Sweden	23-11-49	23-11-49	819
-Switzerland	13-10-56	11-7-57	1326
-United Kingdom	10-11-50	10-11-50	839
-United States	26-2-47	26-2-47	433

APPENDIX ETranslation

PROCLAMATION

Re: Enforcement of the Agreement between
the Government of the Kingdom of Thailand and
Switzerland relating to air services

By Royal Command it is hereby made known to all that:

Whereas diplomatic Notes indicating the approval of
the Agreement between the Kingdom of Thailand and
Switzerland Relating to Air Services have been exchanged
on the 11th day of July B. E. 2500, and

Whereas Article 11 (a) of the said Agreement
provides that this Agreement will be approved by each
Contracting Party in accordance with its legal procedures
and the Agreement shall enter into force upon an exchange
of diplomatic Notes indicating such approval.

Therefore, this Agreement comes into force as and
from the 11th day of July B. E. 2500 onwards.

Given on the 22nd day of August B. E. 2500, being
the 12th year of the Present Reign.

Counter-signature:

Field Marshal P. Phibulsonggram
President of the Council of Ministers.

APPENDIX F

Agreement between the Government of the Kingdom of Thailand
and the Government of the Commonwealth of Australia
relating to Air Services

Article 8

(1) It is recognised that the designated airline of each Contracting Party shall have fair and equal opportunity to carry on the agreed services traffic which has its origin in the territory of one Contracting Party and its destination in the territory of the other Contracting Party and that each designated airline shall regard as being of a supplementary character traffic which has neither its origin nor its destination in that designated airline's own territory. Where traffic has its origin in the territory of one Contracting Party and its destination in a third country or vice versa the designated airline of the other Contracting Party in providing capacity for the carriage of such traffic shall take into consideration the primary interest of the other Contracting Party in such traffic so as not unduly to affect that interest.

(2) The agreed services provided by the designated airlines of the Contracting Parties shall bear close relationship to the requirements of the public for transportation on the specified routes and each shall have as its primary objective the provision, at a reasonable load factor, of capacity adequate to meet the current and reasonably anticipated requirements for the carriage of passengers, cargo and mail originating in or destined for the territory of the Contracting Party which has designated the airline.

(3) Provision for the carriage of passengers, cargo and mail originating in the territory of the other Contracting Party and destined for third countries or originating in third countries and destined for the territory of the other Contracting Party shall be made in accordance with the general principle that capacity shall be related to:-

- (a) the requirements of traffic originating in or destined for the territory of the Contracting Party which has designated the airline;
- (b) traffic requirements of the area through which the airline passes, after taking account of other air services established

by airlines of the States situated in the
area; and

(c) the requirements of through airline
operations.

APPENDIX G

Air Transport Agreement
between the Kingdom of Thailand
and the French Republic

Article 14

(as amended)

Each Contracting Party shall cause its designated airlines to provide to the Aeronautical Authorities of the other Contracting Party, as long in advance as practicable, but not less than 30 days, copies of tariffs, timetables, including any modification thereof, and all other relevant information concerning the operation of the agreed services, including information about the planned capacity provided on each of the specified routes and any further information as may be required to satisfy the Aeronautical Authorities of the other Contracting Party that the requirements of this Agreement are being duly observed.