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ABSTRACT

This study deals with the development of Civil Aviation in the Saudi Arabian Kingdom. The writer believes that it is necessary to begin this study with some brief notes about the Kingdom of Saudi Arabia itself and an explanation of the way laws, treaties, and agreements become effective.

Chapter one explains the commencement of Civil Aviation in Saudi Arabia initially with one DC-3 aircraft.

Chapter two contains the Laws, regulations and description of the Government Department concerned with Civil Aviation.

Chapter three explains the Laws and Regulations presently applicable in Saudi Arabia in terms of the right to fly.

Chapter four illustrates the more recent development which started in 1962. Then, Saudi Arabian Airline converted to a Corporation managed in the manner of commercial business with a Board of Directors administering all its affairs. Adherence to various conventions (Chicago 1944, Warsaw 1929 and its amendment in Hague 1955, and Tokyo Convention) is also discussed. The final part of this chapter is devoted to an explanation of the draft of the new Civil Aviation Law.

Chapter five deals with scheduled and non-scheduled Air Transport Services, Bilateral Agreements, Pooling Agreements, and Haj (pilgrimage) Season Agreement.

DEVELOPMENT OF CIVIL AVIATION IN SAUDI ARABIAN
KINGDOM

by

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DEDICATION

To H.R.H.Prince Sultan Bin
Abdul Aziz, Chairman of
Saudi Arabian Airlines,
Minister of Defence and
Aviation.

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I would like to thank Saudi Arabian Airlines Corporation for appointing me to study Air Law in McGill University. The Kingdom stipulated at the founding of the Airline that opportunities must be provided for citizens to further their training in their occupational fields. I would, therefore, like to express my deep gratitude to the Government of Saudi Arabia for thus facilitating my studies.

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I must also state here that the views expressed in this thesis are entirely my own, and do not necessarily represent or reflect the official views, opinion, or policy of Saudi Arabian Government.

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GENERAL

Saudi Arabian Kingdom

This Kingdom of Saudi Arabia came into existence by the Royal Decree No. 2716 dated September 18, 1932,¹ which chose Thursday, twenty-first day of the month Guimada One of the year 1351 of the Hegra and the first day of the Constellation of Libra, (September 22, 1932) for the promulgation of the Unification of the Kingdom of Saudi Arabia. The Royal Decree unified the areas Hijaz, Najd, Asir and Al-Hasa, which till then had been all ruled by different rulers.²

¹See translation of the Decree in the "Constitution of Nations" by Amos J. Peaslee, Vol. 3, 2nd edition. The Hague (1950), pp. 59-71.

²Further information about the creation of the Kingdom of Saudi Arabia and the Arab Peninsula may be found in the following:

- a) H. St. J.B. Philpy, "Arabia". Published by Ernest Benn, Ltd. (London, 1930);
- b) H. St. J.B. Philpy, "Arabian Jubilee". Published by Robert Hall, Ltd. (London, 1952);
- c) K.S. Twitchett, "Saudi Arabia". Princeton University Press (New Jersey, 1953).
- d) D. Vander Meulen, "The Wells of IBN Saud". Published by John Merry (London, 1957);
- c) H. St. J.B. Philpy, "Arabian Oil Ventures". The Middle East Institute, Washington, D.C., 1964.

Saudi Arabia occupies the greater part of the "Arab Peninsula". On the west coast its boundaries are the Red Sea and the Gulf of Agaba, to the east we find Muscat and Oman, Trucial Oman, Qatar and the Arabian Gulf, to the north there are Jordan, Iraq and Kuwait, and to the south its boundaries are Yemen, Aden, and Hadramout.³ The total area of Saudi Arabia is 829,780 sq. miles. It is the twelfth largest country in the world.⁴ The temperature varies from area to area, the language is Arabic, and the population consists of 6,036,000 Moslems.

By virtue of the fact that the Kingdom of Saudi Arabia is the cradle of Islam, the two most important Mosques of the Islamic religion, i.e., the Holy Kaaba and the Prophet's Mosque are located there. The Kingdom of Saudi Arabia has a unique position in the Moslem World, for it is the nucleus of all religious activity. As a result, hundreds of thousands of Moslem pilgrims come to this country each year.⁵

³Statistical Yearbook, 1389 A.H. (1969) issued by the Ministry of Finance and National Economy (Central Department of Statistics) fifth issue, p. 8.

⁴New York Times Encyclopaedic Almanac (1970), pp. 861-862.

⁵Statistical Yearbook, op. cit., supra.note (3), p. 11.

Saudi Arabia was one of the founding members of the United Nations at San Francisco. On June 26, 1945, her delegates signed the U.N. Charter and deposited their ratification on October 24, 1945.⁶ Saudi Arabia is a member of all the United Nations Specialized Agencies, including the International Civil Aviation Organization (ICAO). She is also the founding member of the "Arab League" created in 1945 to coordinate the mutual interests of its members.⁷

His Majesty the King rules in accordance with the Law of Sharia (Islamic Law). All power rests with His Majesty the King who is the Chief of State, head of the government and Commander in Chief of the Armed Forces.⁸ In 1953, the first steps were taken to create a Council of Ministers.⁹ Since that time, the Council, which is appointed

⁶Constitution of Nations, op. cit., supra. note (1), p. 59.

⁷"Area Handbook for Saudi Arabia", by Norman C. Walpole, Alexander J. Bastos, Frederick R. Eisele, Allison Butler Herrick, Howard J. John, Turak Wieland. Documents U.S. Government Printing Office (1966) pp. 37, 39 and 175.

⁸Ibid., p. 133.

⁹Ibid., p. 7.

by the King, has the responsibility of advising His Majesty on the formulation of general policy. The execution of the national policy rested in the hands of the respective Ministries.¹⁰ The next significant step in the development of the legal basis of the government, one which provided the legal basis of today's Ministerial System, was the revised statute of the Council of May 1958 (Decree No. 38 dated 22/11/1377 (May 1958)). The reorganization of the Council of Ministers transformed the purely advisory Council into formal policy-making body with both executive and legislative powers.¹¹ The main functions of the Council appear in Article 18 which provides as follows:

The Council of Ministers shall draw up the policy of the State, internal and external, financial and economic, educational and defence, and in all public affairs, and shall supervise its execution, and shall have legislative authority, executive authority and administrative authority. The Council shall be the arbiter in all financial affairs and all affairs connected to other ministries of the State and other Departments. The Council shall be responsible for deciding what action it may be necessary to take therein. International treaties and agreements shall not be regarded as effective, except after its approval. The decisions of the Council of

¹⁰Ibid., p. 133.

¹¹Ibid., p. 133.

Ministers shall be final, except such of them as require the issue of a Royal Command or Decree, in accordance with the rules of the Statute.

Article 19 of the above Royal Decree requires a Royal Decree and the Council of Ministers' approval to approve Laws, agreements, international treaties and Concessions.¹² If His Majesty the King should not approve of any decree or order placed before him for his signature, the document is returned to the Council with a statement specifying the reason for its return. If the decree or order is not returned by the Secretariat of His Majesty the King, within thirty days of the date of its receipt, the President of the Council may take action as he may think appropriate, keeping the Council informed at all times. Decrees become effective laws upon their publication in the official Gazette Umm Al-Qura, unless a term is specified therein.¹³

¹²Article 19 reads as follows: "No laws or agreement of international treaties or concessions shall be issued, except in accordance with Royal Decree drafted after the approval of the Council of Ministers". See complete translation of the Royal Decree in "The Middle East Journal", Vol. 12 (1958), pp. 318-323.

¹³Area Handbook for Saudi Arabia, op. cit., supra. note (7), p. 142.

Economic Affairs: Before the oil era, the Saudi Arabian economy was largely dependent upon subsistence agriculture, small scale fishing and pearling. In 1933, His Majesty King Abd Al-Aziz granted Standard Oil Company of California an exclusive 60 years concession.¹⁴ Oil production began on a commercial scale in 1938 (annual production was one half million American barrels: revenue three million dollars).¹⁵ However, it was not until after World War Two that oil was produced on a significant scale.¹⁶ Today, Saudi Arabia is one of the world's largest oil producers.¹⁷

¹⁴Ibid., p. 172.

¹⁵"The Annual Report of Saudi Arabian Monetary Agency" S.A.M.A. Jeddah-Saudi Arabia (in Arabic) 1388-1389 A.H. (1969), pp. 91, 92.

The Agency stands for a Central Bank in the Saudi Arabian Kingdom. It keeps an eye on the economic status of the country. The Agency issues an annual report that throws light on the economic situation in the country.

¹⁶See Statistics in the "Europa Yearbook", Vol. II [London, 1967], p. 1121.

¹⁷It estimates that the production is 3.4 millions barrels a day, revenue \$1,008 million. New York Times newspaper, January 1, 1971, p. 3. The Ministry of Petroleum in Saudi Arabia declared that the production during December 1970 was 132,280,517 barrels, i.e. 4,267,107 barrels a day. Al Belad newspaper (in Arabic) date 15/11/1390 A.H. (January 11, 1971).

Revenue from oil provides the government with 80 per cent of its income, which is largely used to build a more modern and productive State. At present, the government seeks to develop the Kingdom in the shortest period of time. The government emphasizes the development of both human and material resources; however, particular attention is given to diversifying sources of wealth to lessen dependence on oil and bring the various economic sectors into closer balance. In laying the foundation for growth, the government has stressed development of transportation and communication facilities, because of the great distances separating populated areas, and the lack of sufficient communications. Economic development has been traditionally hampered by lack of communications between population centers.¹⁸ Education, medicine and medical care are free for all citizens.

Transportation: The Saudi Arabian Kingdom is a vast country. When the Kingdom was established in 1932, there were

¹⁸"The Economics of Saudi Arabia". A series of articles about Saudi Arabia issued by the Information Section in the Saudi Arabian Embassy in Washington, D.C., August, 1970.

no paved roads, nor was there aviation, and the only railway, which linked Damascus (Syria) with Madina (north of Saudi Arabia) had been destroyed during the First World War. Now, in 1971, Saudi Arabian Airline Corporation links major cities throughout the Kingdom and links the Kingdom with all the major world centers. The Railway Corporation links the east coast with the capital Al-Riyadh. Both, the airline and the railway corporations are owned by the government. A major road construction program, commenced in the early 1960's, aims at linking towns and cities with each other and with the hinterland.¹⁹ Saudi Arabian liners now connect Saudi Arabia with the Far-East. Its most active areas include Jeddah, the Red Sea port, Ras Tanura, and the Daman ports on the Arabian Gulf.²⁰

¹⁹Ibid., p. 2.

²⁰The Annual Report, op. cit., supra, note (15), p. 10.

CHAPTER I

PART 1 - AIR TRANSPORT AND THE GOVERNMENT POLICY

Modern civilization rests upon man-made means of transportation and communication. Without such means, modern States could not exist, as human society is based upon communication among its members. As soon as the human group increases in size and extends its settlement beyond the area in which direct visual and aural contact between all or most of its members is normally possible, the unity of the group can be preserved only through the institution of long-distance communication, whether it be by human messenger, by signal bonfire or by radio. Similarly, the maintenance and increase of the economic strength and military potential of the group soon become dependent upon long-distance transportation.

Air transportation is the newest means of intercourse developed by mankind.²¹ The two main factors which

²¹Lissitzyn, Oliver, James. "International Air Transport and National Policy" (New York 1942), pp. 17, 18.

give an advantage to air transport as means of communication or transportation over various types of surface transportation are: its speed and its relative independence of surface conditions.²² Therefore, the government's interest in air transport has been increased since its early infancy, and intervenes in the Air Transport industry for many reasons:

Economic: In this age, the idea of responsibility of State has grown so greatly as to change the whole character of the State in social and legal theory. The State, once expected to provide only certain fundamental services, i.e. defence, police and administration of justice, now undertakes to provide innumerable public services,²³ controls the areas of production in which public interest is clearly involved and also tends to supervise all areas of production by private enterprise. It is quite true that the situation is different from one system to another.

²²Ibid., p. 11.

²³Allen, K. "Law in the Making", 2nd edition, (Oxford, 1930), p. 340.

Adam Smith's theory of non-intervention in business by the State was workable at one time. But towards the later part of the eighteenth century when the steam engine and a series of mechanical inventions replaced the handicraft industry, methods of production changed dynamically. The principle of "laissez-faire" became a tool in the hands of businessmen to monopolize markets through cut-throat competition. This competition, without governmental intervention, rapidly became discriminatory, ruthless and so destructive, that for reasons of economic efficiency and public interest, the State had to assist and regulate.

The jet and supersonic industry of today, with its tremendous amount of investment, cannot be jeopardized by Adam Smith's theory of free competition. The State which has assisted and encouraged the development of this industry has to protect it from the possible chaos of free competition.

In socialistic countries, the government has a direct control over the internal and external affairs of the industry; the ownership of the airlines by the State is justified simply on the basis that the industry is recognized as a public utility and, as such, calls for public

participation in the business. The industry in such countries enjoys a legal monopoly.

In the half socialized countries, the major airlines are wholly or partly owned by the public, thus constituting a chosen instrument of ^{the} Government, and favoured against other privately-owned enterprises by special concession.²⁴

Government subsidy is another factor subjecting the airline industry to government regulation and control. It has been said that the price of security is the loss of freedom. He who accepts subsidy must accept government control.²⁵ Today, every airline in the world is subsidized directly or indirectly. Indirect subsidies are provided by the provision of airports, airways, facilities and navigational aids at less than cost.

²⁴Saljooqi, Hamid S. "Analysis of the Regulations of Air Transport in Different Systems". A thesis submitted to the Faculty of Graduate Studies and Research, McGill University (Montreal, 1967) p. 7, and for more details, see pp. 165-177 and Chapter II.

²⁵Berge, S. "Subsidies and Competition as Factors in Air Transport Policy", 18 J.A.L.C. [1951], p. 2.

In a non-regulated air transport industry, there would be less tendency to serve sectors where not enough revenue may be derived. In a regulated industry, the airline is compelled to offer such services to the public, and the deficiencies incurred will be compensated through either subsidy or cross-subsidization.²⁶

In terms of the conventional measures used by economists - gross national product and total employment - air transport has little quantitative significance in the economics of most countries in the world.²⁷ On the other hand, the industry forms part of what some economists call "Social Overhead Capital", the basic ingredient essential to the working and growth of all other parts of the nation's economy. A general feature of transport and other industries

²⁶Cross-subsidization means serving revenue making routes in order to compensate the deficits from non-profitable routes. In other words, the airlines have given special opportunities to make profits on some routes, in order that they shall be able to subsidize other routes, and other activities, which they would not have undertaken on commercial grounds. Wheatcroft, S. "Air Transport Policy". (London, 1964), pp. 63-65.

²⁷Ibid., pp. 13, 14. See also Pollard, D. "Government Control of Air Transport Industry in the U.S. and U.K." Term paper, Institute of Air and Space Law, McGill University (Montreal, 1965-1966).

which make up the social overhead capital, is that the returns from investing in these activities are not necessarily earned by the industries themselves. The national economic contribution of transport lies very largely in the external economics which it generates; even when it is showing a loss in its own operating account, a transport undertaking may be making money for the economy as a whole.²⁸

The Saudi Arabian Airline has been owned and managed by the government since the first day it started its operation, and initially its budget was a part of that of the Ministry of Defence and Aviation. When the airline converted to a corporation, nothing changed in the ownership of the airline. The only change that has been made is that the corporation is managed by a Board of Directors in the manner of commercial business. The government subsidizes the corporation directly, by contributing about one third of its revenue, and indirectly, by exempting the Corporation from costs of duty, taxes, and utilization of navigation facilities. In return for the government subsidy,

²⁸Wheatcroft, supra note (26), pp. 47-48.

the Corporation carries out the government's wish by maintaining some uneconomic routes inside and outside of the Kingdom of Saudi Arabia.

Defence: The difficulty with use of the word "power" has been especially felt in the case of "air power". Repeatedly, "air power" has been used as being entirely synonymous and co-extensive with "military air power", whereas military air power is only one phase of national air power.²⁹ Air power is both commerce and armed forces. It is the nation's ability to fly.

Much has been written about the air transport's contribution in war time logistics, and readily do we remember the bitter destruction of the German "Sky trucks" in World War II. Germany's invasion of Norway in the Spring of 1940 was one of the early instances of large-scale use of civil aviation in military operations.³⁰

²⁹Cooper, J.C. "Explorations in Aerospace Law" edited by Ivan A. Vlastic. McGill University Press (Montreal 1968), p. 18.

³⁰Sheebon, M.W. "Air Freight for Defence", 13 J.A.L.C. (1944) pp. 1-15. See also Menon, P.K. "History, Law and Government Control of Civil Aviation in India". A thesis submitted to the Faculty of Graduate Studies and Research, McGill University, [Montreal, 1967], pp. 130, 131, 132.

In almost every country, the civil air transport industry is regarded as a reserve for military mobilization.³¹ This participation of the industry is well illustrated by the planning and policies established by the air coordinating committee of the United States.

. . . a policy providing that the production of civil transport aircraft and spare parts should be accorded priorities equal to that of the military.³²

One of the most compelling factors in the establishment of this policy was to support the national defence in their production of additional civil transport aircraft. Furthermore, it would be a reserve to relieve any deficit which might exist in military airlift in the event of full mobilization. Saudi Arabia is no different from any other

³¹Murry, R.B. "Mobilization and Defence Activities of the Department of Commerce", 20 J.A.L.C. (1953), pp. 302-327.

³²Annual Report to the U.S. President by the air coordinating committee (1952). Also President Kennedy's policy on International Air Transport of April 1963 stated "The United States air transport policy takes into account all of the United States' interests: the health and growth of our carriers, the contribution which air transport can make to our national security, and above all the needs of consumer - the traveller and shipper . . ." Burton. A. Landy, "Cooperative Agreement Involving Foreign Airlines", 35 J.A.L.C. (1969), p. 576.

State, for she considers the civil air transport industry as a reserve for military mobilization. Consequently, the Civil Aviation Department is attached to the Ministry of Defence and Aviation, and the Chairman of the Board of Directors of Saudi Arabian Airline Corporation is the Minister of Defence and Aviation.

Safety: One of the main reasons people would hesitate to travel by air is uncertainty as to safety. As a matter of fact, there were more hazards expected in the operation of aircraft than in the surface transportation. Therefore, one of the government's primary concerns in regulating air transport industry has been to provide safety services. All States including Saudi Arabia have exerted strong efforts in this regard. Safety standards and regulations such as flight safety, airworthiness, personal licensing, air traffic, etc., are laid down and enforced. These regulations, maintained through regular inspections authorized by governments have so minimized aircraft accidents that no comparison is now possible between surface and air casualties.

Prestige: Air Transport has been regarded as an instrument of prestige. Today, almost every country, including the

newly emerged nations, have their air transport industry. The international services performed by such countries are considered merely a matter of prestige by certain authors. Wheatcroft states that:

They are acting in the apparent conviction that the operation of international air services is in the same category as the possession of flag and the exchange of ambassador as external signs that nationhood has been achieved.³³

Such a statement that prestige is the ultimate reason for the establishment of an airline is no longer relative. Prestige and security were formerly the primary considerations of the State; however, with the increase of air traffic, the economic and commercial aspects have also acquired a considerable influence.³⁴

Conclusion: Air transport, being a rapid means of communication, has become an instrument of prime importance in the achievement of certain national objectives. This, in fact, has generally led the governments, including Saudi Arabia,

³³Wheatcroft, supra note (26), p. 51.

³⁴Wassenbergh, H.A., "Post-War International Aviation Policy and the Law of the Air", 2nd revised ed. The Hague (1962).

to control the industry. Air transport is rapidly growing: the supersonic era will increase speed, size and techniques drastically and this will obviously speed up mobilization and bring economic and social changes. Therefore, it is worth saying that the industry will continuously remain under the control of the government concerned.

PART 2 - THE COMMENCEMENT OF CIVIL AVIATION
IN SAUDI ARABIA

In 1932, when King Abd al-Aziz established his government of the Kingdom of Saudi Arabia, he had an arduous task set before him. In the whole of the Kingdom, there was not even a kilometer of railroad track nor paved road. Transportation was dependent on the means which had been in use since time began - man and beast, especially camels and horses.

Aviation enterprise in Saudi Arabia commenced as a result of ^ameeting between King Abd al-Aziz and President Franklin D. Roosevelt, which took place on February 14, 1945 aboard the Cruiser U.S.S. Quincy in the Great Bitter Lake in the Suez Canal. A twin-engine Douglas DC-3 aircraft ordered by the President was actually presented to the Saudi Arabian Government on May 27, 1945, as a symbol of mutual understanding between the two Governments.³⁵

Immediately, the Saudi Arabian government commenced its air operations. However, they soon discovered that it

³⁵"Saudi Arabia Today", published by Saudi Arabian Embassy in Washington, D.C. September-October, 1970, Vol. 8, No. 5, p. 4.

takes more than planes to make an airline,³⁶ that it takes pilots, mechanics, tower controllers, meteorologists, radiomen, engineers, and men from dozens of other specialties, and also government regulations to keep aviation activities safe for the public. All these vital elements were either in short supply or wholly lacking. In early 1950, for example, there were two airstrips in the entire kingdom, no Saudi pilots, no Saudi airframes, and no power plane mechanics, and no permanent civil aviation regulations.³⁷

There was a department in the Ministry of Defence called Civil Aviation Department, which consisted of the Department of Civil Aviation and the Saudi Arabian Airlines. These two departments were headed by a military General. Hereafter, I shall refer to these two departments as S.A.A., because most of the activities of that department were controlled by the Saudi Arabian Airlines.

³⁶R.E.G. Davies. "A History of the World Airlines", (London, 1964), pp. 400, 402, where he believed that Saudi Arabian Airlines founded at the end of 1946 and the first services was on May 14, 1947 by aid from the United States Air Force Mission and T.W.A.

³⁷Bardwill Middle East Aviation Newsletter (ICAO Document) No. 461, June 15, 1970.

The first function of the S.A.A. was to carry government officials and the Royal family, as well as the mail between Jeddah (the base), Taif and Riyadh, including several intermediate points.

In 1947, the S.A.A. acquired a fleet of five DC-3's and operations were inaugurated in March 1947, over routes radiating from Jeddah to Cairo and Dhahran (Eastern province in Saudi Arabia), also via several intermediate points. The fleet was doubled a few months later by ^{the} purchase of five more DC-3's. By November 1947, the S.A.A.'s network covered 1,545 unduplicated route miles, over which 6,450 miles per week were flown. A new route was opened to Damascus (Syria) and Beirut (Lebanon) in 1948.³⁸

In 1950, the government sought the help of the Trans World Airlines (T.W.A.) (which supplied the original pilot under contract) to provide technical services.³⁹

³⁸"World Airline Record" Standard Reference of the Industry. Published by Roadcap and Association, 5th ed., (1955), p. 83.

³⁹Op. cit., supra, note (37), p. 2.

During 1951, five 32-passenger Bristol Wayfarers were added to the fleet. Route miles at the start of 1952 totalled 2400; weekly mileage had grown to 12,000, almost double that of 1948.

In 1952, S.A.A. acquired four aircraft Douglas DC-4's and extended its route from Dhahran to Karachi (Pakistan). After about six months of operation, the Dhahran-Karachi route was suspended, due to heavy competition. Domestic services, meanwhile, were expanded. During the last half of 1953, the S.A.A. inaugurated DC-4 services from Jeddah to Asmara and from Dhahran to Beirut. Another route was opened to Istanbul (Turkey), however, it was discontinued in 1954.⁴⁰

On June 8, 1953, (24-9-1372 A.H.), the first law in connection with civil aviation was issued by the Royal Decree No. 17-2-22-3481.⁴¹ The Decree provided that the State had sovereignty over its territory; it prohibited aircraft from flying over or landing on the territory of the Kingdom

⁴⁰Op. cit., supra, note (38), p. 84.

⁴¹"Air Laws and Treaties of the World" Vol. II, p. 2185, Washington, D.C. U.S. Government Printing Office, 1965.

without previous permission, and empowered the Minister of Defence and Aviation to regulate the air navigation of civil aviation through Ministry regulations.⁴²

Before that, the Royal Decree No. 7-7-15-2559 of November 1952 (1st Rabi Awwal 1372 A.H.) spoke of the landing and overflight of foreign military, governmental and diplomatic aircraft, and stated that these aircraft were exempted from payment of fees.⁴³ The Royal Decree No. 7-7-1-3456, spoke of the construction of aerodroms as being the privilege of the government and within the jurisdiction of the Minister of Defence and Aviation, who authorizes the establishment of areas around each airport.⁴⁴

In 1957, the Civil Aviation Department separated from the Saudi Arabian Airlines, and each of them became independent departments.⁴⁵ However, both remained under the observation of the Minister of Defence and Aviation. Further details are given in the following chapters.

⁴²Articles 1,2,3 of the Decree.

⁴³Op. cit., supra, note (41), pp. 2206, 2207.

⁴⁴Ibid., pp. 2207,2208.

CHAPTER II

LAWS, REGULATIONS, AND GOVERNMENT DEPARTMENTS CONCERNED WITH CIVIL AVIATION

As mentioned before, it was not until 1953 that Civil Aviation in Saudi Arabia was regulated. The first Law was the Royal Decree No. 17/2/22/3481 which consists of six articles. Article One dealt with the question of sovereignty of national airspace. Article 2 prohibited foreign aircraft from flying over, or landing in the Kingdom's territory, unless authorization to do so had been given by the competent authorities, or unless such authorization was granted under a special agreement or international treaty to which the government is a party to. Article 3 delegated the power to regulate Civil Aviation in the Kingdom to the Minister of Defence and Aviation.

Ministry of Defence and Aviation

In pursuance of Article 3 of the Royal Decree mentioned above, the Minister of Defence and Aviation made the following Ministry Regulations:

1. Regulation (no number, no date) concerning the procedure for inspection and examination of documents of civil aircraft entering the territory of the Kingdom where its flight ends.
2. Regulation (no date, no number) concerning the penalties for violations of the navigation rules, including flying over or landing in the territory without permission.
3. Regulation dated 18/11/1373 A.H. (1954) regulates air transportation during the pilgrimage seasons in the Kingdom.
4. Regulation (No. 3 dated 23/6/1377 A.H.) January 17, 1958, concerns itself with the permission to fly over, or land in the territory of the kingdom and the necessary procedure to apply for such permission.
5. The most important regulation which stipulates the general rules for air navigation in and over Saudi Arabia is regulation No. 4 dated 23/6/1377 A.H. (1958), which deals with the general safety conditions, certificate of airworthiness, accident of aircraft, documents which should be carried in the aircraft, etc.
6. Regulation No. 5 dated 23/6/1377 A.H. (1958) concerns itself with the registration and marking of aircraft.

The Civil Aviation Department

The Department of Civil Aviation is a department attached to the Ministry of Defence and Aviation, since it was separated from the Saudi Arabian Airlines since 1957.

Since then, the Department of Civil Aviation has been headed by a Director General who is a civil servant. The Director General is assisted in performing his duties by several technical personnel.

The Department, at present, consists of various divisions, each dealing with some particular aspect of civil aviation, e.g., air traffic services, communication operations, flight safety, planning, training, airport affairs, investigation, etc., most of them have direct relation to the D.G. (See Appendix A). Within the Five Year Plan, which was initiated in 1970, the Department consists of five main divisions, each division headed by a Director. The divisions are: Operations,⁴⁵ Administration, Finance, Ground Services, and Airport management. Moreover, the Meteorology Department, which is now an independent department attached to the

⁴⁵This division consists of various sections: A.T.S. Flight Information, Search and Rescue, Communications, Flight Standards, Aircraft Registration, Airworthiness, Flight Operations and Licensing. (Source: The Five Year Plan of Civil Aviation in Saudi Arabia.) See Appendix B.

Ministry of Defence and Aviation is annexed to the Department of Civil Aviation. The same Five Year Plan established two new sections which, I believe, are essential for the safety of aviation. They are the accident investigation section and the search and rescue section (See Appendix B.)

While the Minister is mainly responsible for the formulation of Civil Aviation policy, the execution of that policy, as well as the day-to-day administration, are carried out principally by the Director General, though technically speaking, he is third to the Minister and second to the Minister's Deputy in Civil Aviation affairs, and he is the highest civil servant in the Department of Civil Aviation.

The administrative powers, under the regulations mentioned above, have mostly been delegated to the Director General of Civil Aviation. As a rule, the Director General acts in his administrative capacity, and performs his administrative functions through the agency of his subordinate officials. This rule is based on the practical consideration that no one person could otherwise perform so many multi-various functions and duties. He performs his duties and administrative powers by means of the ordinary routine of official practice.

We may now look at some of the important administrative functions dealt with by the Department of Civil Aviation.

1. Registration of Aircraft: The Director General is the registration authority for civil aircraft registered in Saudi Arabia. He issues the certificate of registration and assigns registration marks.⁴⁶ Further details are given in the next Chapter.

2. Certificates of Airworthiness: The Director General issues certificates of airworthiness for aircraft registered in Saudi Arabia,⁴⁷ and has the right to cancel or suspend the certificate of airworthiness of any aircraft, if there is any doubt in the safety of the aircraft.⁴⁸

3. Licensing of Personnel: The Department of Civil Aviation is the normal channel through which licences are issued to pilots and other members of the operating crew of aircrafts registered in Saudi Arabia. (See the next Chapter for further details.)

⁴⁶ Regulation No. 5, supra, p.26, Articles 7, 12.

⁴⁷ Regulation No. 4, supra, p.26, Article 5.

⁴⁸ Ibid., Article 8.

4. Rules of the Air Traffic Control: Under Article 5 of the Resolution No. 4 (1958), the Department of Civil Aviation has the power to issue rules and instructions relating to the air traffic control systems.⁴⁹

5. Aerodromes: Since the construction of aerodromes is the privilege of the Government of Saudi Arabia,⁵⁰ the Minister is required to carry out the Royal Decree and act in accordance with it, and since the Minister is practicing his authority through the Department of Civil Aviation, therefore the ~~latter~~ is responsible to keep order, approve tariff of charges for landing and housing at public aerodromes, alterations to the landing areas, building or other constructions,⁵¹ and the maintenance and marking of aerodromes.

6. Investigation of accidents: The power to investigate aircraft accidents is delegated to the Department of Civil Aviation by Article 46 of the Ministerial Resolution No. 4 (1958). The Article reads as follows:

⁴⁹Ibid., Article 57.

⁵⁰The Royal Decree No. 7/7/1/3456 supra p. (25).
Article I.

⁵¹Ibid., Article 5.

The aircraft must be left in the same position and place where the accident occurred, and none of its contents should be moved before investigation is carried out by the competent authorities.

Obviously, the competent authority herein is the Department of Civil Aviation.

In accordance with the resolutions adopted by the ICAO Council in Annex 13 regulating the Aircraft Accident Inquiry, the Council urged contracting States to use in their own regulations, as far as practicable, the precise language of these ICAO Standards, that are of regulatory character.⁵² The rules which are stated hereinafter exist at the present time:

Notification of the accident. If the accident involves death or serious injury to any person, or the aircraft receives substantial damage, a notice containing certain information must at once be sent to the nearest airport by the person in command of the aircraft or any person who

⁵² Standards and Recommended Practices "Aircraft Accident Inquiry", Annex 13 to the Chicago Convention, Second edition, which became effective March 1966.

is in command of the aircraft.⁵³ The following particulars must be stated in the notice:⁵⁴

1. Nationality and the registration mark of the aircraft;
2. Place where the accident occurred;
3. Date and time of the accident;
4. Number of the passengers and crew;
5. Details of the nature and description of the accident;
6. The numbers and names of the passengers involved,
injured or killed;
7. Name of the owner;
8. Name of the pilot.

The notification must be given in cases of all aircraft accidents, if the accident takes place between the time any passenger boards the aircraft with intention of flight until such time as all such passengers have disembarked,⁵⁵ in which:

⁵³Regulation No. 4, supra, p. 26, Article 44.

⁵⁴Ibid., Article 45.

⁵⁵The "Aircraft accident" is defined as "an occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, in which:

1. Any person suffers death or serious injury;
2. The aircraft receives substantial damage.⁵⁶

The damaged aircraft must not be removed, except with the permission of the Director General of Civil Aviation, and no person may have access to the aircraft involved in the accident, unless authorized by him.⁵⁷ The idea behind this rule is the protection of evidence for subsequent inquiry.⁵⁸

Accident to Foreign Aircraft. No mention is made in the rules about the obligation to notify the State in which the aircraft is registered. Saudi Arabia is a contracting state, therefore, she applies Article 26 of the Chicago Convention, which requires the State, within which the accident occurs to institute and conduct an inquiry, in accordance with ICAO procedures, to establish all relevant

a) any person suffers death or serious injury as a result of being in or upon the aircraft or by direct contact with the aircraft or anything attached thereto; or

b) the aircraft receives substantial damage.
Annex 13, supra note (52).

⁵⁶See interpretation of terms - serious injury and substantial damage to the aircraft - in attachment A of Annex 13.

⁵⁷Regulation No. 4, supra, p. 26, Article 50.

⁵⁸See Chapter 3, Article 3:1 of Annex 13.

facts pertaining to the accident. Under the same Article, the State of registry is given the opportunity to appoint observers to be present at the accident inquiry. Moreover, Annex 13 to the Convention goes further into this matter by recommending in paragraphs 5.5, 5.6 and 5.8, that the State of registry, the State in which the aircraft was manufactured as well as the contracting State furnishing the relevant information, are entitled to appoint an "accredited representative" to participate in the inquiry.⁵⁹

Other Government Departments Concerned with Civil Aviation

Other departments in the Saudi Arabian Government which are concerned with one or another aspect of civil aviation are as follows:

Ministry of Finance: Expenditure and revenue of the government as a whole are under its responsibility. What we are specifically concerned with here is that it is responsible for the administration of Customs' aerodromes.

⁵⁹ Annex 13, supra note (52), Chapter 5.

Ministry of Health: It is responsible for the administration of Saudi Arabian Aircraft (Public Health) rules, the appointment of health officers, imposing and supervising health measures at airports, and the implementation of the International Sanitary Convention for Aerial Navigation in Saudi Arabia, particularly during the pilgrimage seasons, which require a great deal of effort in order to protect the country from yellow fever, cholera, or other contagious diseases. Health regulations were the first regulations issued dealing with Civil Aviation in Saudi Arabia.⁶⁰

Ministry of Interior: It is responsible for the administration of Immigration rules and for taking necessary security measures at airports.

Ministry of Foreign Affairs: It is responsible for coordinating and, whenever necessary, sponsoring and conducting

⁶⁰See Circular Information Letter No. 6 of 1949, Department of Transport, Union of South Africa (Pretoria 5/8/1949). ICAO Legal Department Document.)

negotiations with foreign governments in regard to bilateral agreements for exchange of commercial rights and other air facilities. The technical requirements and economic implications of such matters are often determined in large part by the Ministry of Defense and Aviation, but they have to be coordinated with the Ministry of Foreign Affairs, so as to ensure compliance with the over-all Foreign Policy objectives of the Government.

CHAPTER III

THE RIGHT OF FLIGHT

Before World War I, the rights of States in the air space above their respective territories were not clearly defined and only the practical exigencies of the problem of war and neutrality led to the recognition of exclusive national sovereignty. This sovereignty was formally acknowledged in the International Convention for Air Navigation of 1919,⁶¹ however, prior to the war, there was considerable discussion as to the exact legal status of the air space above a State's territory.⁶²

⁶¹Lissitzyn, "International Air Transport and National Policy", op. cit., supra note (21), p. 2.

⁶²Before 1919, publicists differed considerably in their views concerning state sovereignty over air space. Four main theories can be identified in the following:

- 1) the "Complete Sovereignty" theory that every State enjoys complete sovereignty over the air space above its territory, and that, as a corollary, no State has any rights in the air space above the territory of another State;
- 2) The "Free Air" theory that, upon the analogy of freedom of the high seas, the air space above the territory of any State is free to aircraft of every State;
- 3) The "Territorial Air" or "Navigable Airspace" theory that, by analogy with the territorial sea, each State has

The complete and exclusive sovereignty of any State in the air space above its territory, as recognized in Article I of the Paris Convention and Article I of the Chicago Convention,⁶³ means, on the one hand, an all-embracing sovereignty and, on the other, a sovereignty not shared with others. Here, therefore, States are accorded an absolute and independent power, with which the restriction on sovereignty embodied in, say, Article 5 of the Chicago Convention, appears to be irreconcilable. We must, therefore, assume that the provision of Article I applies only insofar

sovereignty in the air space up to a certain height and that above that height, the air is free to every State alike; and

4) The "Innocent Passage" theory, again by analogy with the territorial sea, that each State has complete sovereignty in the air space over its territory, subject to the right of innocent passage for the civil aircraft of all States. For details, see J.C. Cooper, "Roman Law and the Maxim 'Cuius est Solum' in International Air Law", "Exploration in Aerospace Law", op. cit., supra note (29). J.C. Cooper, "Background of International Public Air Law", Yearbook of Air and Space Law. Institute of Air and Space Law, McGill University Press, (Montreal 1967). Shawcross, C.N. and Beaumont, K.M., "Air Law", 3rd ed. (London 1966). McNair, "The Law of the Air", 3rd ed. (London 1962). Ivan A. Vlasic, "The Grant of Passage and Exercise of the Commercial Rights in International Air Transport". A thesis submitted to the Institute of Air and Space Law, McGill University, (Montreal, August 1955).

⁶³The Madrid (Ibero American) Convention, 1926, the Havana (Pan American) Convention, 1928, have similar provisions in recognizing the State's sovereignty.

as it is not expressly restricted by other provisions of the Convention or by engagements entered into elsewhere. Hypothetically speaking, this sovereignty of States would exist even without such a provision as Article I, namely as a tacitly accepted rule of customary international law,⁶⁴ given the fact that every State recognizes that power in its air space above its territory is vital to its own interest.⁶⁵

However, it has also been recognized that States have certain rights (or perhaps privileges) in the air space of other States. The Convention of Paris itself provided in Article 15 that "Every aircraft of a contracting State has the right to cross the air space of another State without landing" and by Article 2, "Each contracting State undertakes in time of peace to accord freedom of innocent

⁶⁴"After the first World War, the principle of air space sovereignty became so widely accepted by States both in their municipal laws and in their diplomatic and treaty practice, that it seems safe to conclude that it is now a well organized rule of International Customary Law." Bin Cheng, "From Air Law to Air Space Law", *Current Legal Problems*, University of Oklahoma (1960), p. 229.

⁶⁵Wassenbergh, op. cit., supra note (34), p. 100.

passage above its territory to the aircraft of the other contracting State"

Article 5 of the Chicago Convention now provides for the right of aircraft of contracting States to make non-scheduled flights⁶⁶ over the territory of other contracting States, subject to certain rights of the State overflown. Admittedly, these rights are conferred by the Paris and Chicago Conventions only upon contracting States, but it seems that even in the absence of any treaty provisions, a State may enjoy rights or privileges in the air space of another State.⁶⁷

Without denying the right of innocent passage, a State can therefore feel justified in requiring the necessary safeguards before allowing foreign aircraft over its territory. In a number of cases, prior permission for overflying and technical landing on foreign territory is required, it cannot be said that "innocent passage" is obstructed, even though the meaning of innocent passage is interpreted by each State in its own way.

⁶⁶ See infra note (177) for definition of Scheduled International Service.

⁶⁷ Shawcross and Beaumont, op. cit., supra note (62), pp. 190-191.

It follows from the concept of air space sovereignty that the first objective in any aeronautical agreement is to exchange the right to fly, to which all other concessions become subordinated. In this regard, the Chicago Convention, 1944, first distinguishes between State aircraft and civil aircraft.

The Convention excluded from its operation, State aircraft and pilotless aircraft which are not permitted to overfly the territory of another contracting State without a special authorization by that State.⁶⁸

Of manned civil aircraft, the Chicago Convention, 1944, for the purpose of conferring the right to fly, distinguishes between commercial and non-commercial flights. In respect of non-commercial flights, the Convention grants a fairly liberal right for aircraft bearing the nationality of any of the contracting State to fly into the territory of another contracting State or to fly across it with or without a stop. No right of entry or transit is granted in

⁶⁸State aircraft are those "used in military, customs and police services", Article 3 of the Chicago Convention. The test is, therefore, functional and does not depend on ownership. See also Article 8 of the Chicago Convention concerning pilotless aircraft.

respect of scheduled air services, while that granted in respect of non-scheduled commercial flights is rather nominal. Consequently, commercial flights, whether scheduled or non-scheduled, may be performed over the territories of other contracting States only on the basis of supplementary treaties, both multilateral or bilateral.⁶⁹

When the right of entry and transit has been granted, attention must be turned to ancillary privileges without which the right itself may be deprived of much of its meaning.⁷⁰

⁶⁹Bin Cheng, op. cit., supra, note (64), p. 239.

⁷⁰Under the Chicago Convention, 1944, Contracting States grant one another, in respect of their scheduled air services, national treatment in the matter of prohibited areas. In respect of all flights, the standard of national treatment and equal treatment as among all Contracting States is accepted in: the application of air regulation, the conditions governing the use of all navigation facilities, charges that may be imposed for the use of airports and air navigation facilities, the regulation or prohibition of the carriage of dangerous articles. In addition, the following ancillary/are exchanged: prohibition of fees, duties or other charges being imposed in respect solely of the right of transit over or entry into or exit from its territory, temporary exemption from duty subject to the customs regulations of the State of aircraft on a flight to, from or across its territory, exemption from customs duty, inspection fees or similar charges of fuel, lubricating oils, spare parts, etc., for incorporation in or use on an aircraft engaged in international air navigation, exemption of the aircraft, or its owner, or operator while engaged in international air

The Right to Fly in Saudi Arabia

Article I of the Paris Convention of 1919 and Article I of the Chicago Convention of 1944, both deal with the principle of sovereignty as mentioned in the previous pages. Saudi Arabia was not member of the Paris Convention, and not until 1962, did she become a member of the Chicago Convention; however, she has always applied the Law of a complete sovereignty, since the principle had already been settled in International Law.

Article I of the Royal Decree No. 17/2/22/3481 dated 24/9/1372 A.H. (June 8, 1953) applied the doctrine. The Article states:

The State (Saudi Arabian Kingdom) has a complete and absolute sovereignty over the air space above its territory. The air space is the layer⁷¹ above the lands and territorial water.

navigation, mutual recognition of certificate of airworthiness and certificates of competency and licences.

⁷¹The term "territorial water" means those waters which by Public International Law are within the sovereignty of the State about whose shores they lie, or past whose land they flow. There is at present no generally accepted definition in International Law of the outer limits of territorial waters, but certain areas are clearly within limits. See in general McDougal and Burke, "The Public Order of the Ocean" (1962)

operators engaged in air transport or private aircraft, from transporting pilgrims or passengers during the pilgrimage season unless they obtain permission to do so through the Ministry of Foreign Affairs.⁷⁴ The exclusive privilege to operate all transport operations inside the kingdom has been granted to the Saudi Arabian Airlines.⁷⁵ The regulation required that the aircraft engaged in carrying passengers and goods to the kingdom, carry certain documents among its papers,⁷⁶ that the nationality and registration marks be shown on the aircraft, and also that the aircraft be equipped with all safety instruments and an adequate number of crew members who must be in possession of certificates issued to them by the competent authorities in the country where the aircraft is registered. The regulation defined Jeddah and Dhahran airports as the ones which the aircraft could use to land, and defined the route which should be used to reach^{the} Jeddah airport. It required that all pilgrims and others arriving in Saudi Arabia hold health certificates of vaccination against endemic diseases

⁷⁴Ibid., Article 1.

⁷⁵Ibid., Article 2.

⁷⁶Ibid., Article 4.

such as small pox, cholera, and yellow fever.⁷⁷

The second regulation by the Minister of Defence and Aviation, which is still in force, is No. 4, dated 23/8/1377 A.H. (1958) which deals with the general rules of Civil Aviation in Saudi Arabia.

Scope and Application: At present the regulation (No. 4) applies to all aircraft in or over the Kingdom. The regulation does not specify that it applies only to civil aircraft, but the regulation preamble refers to Article 3 of the Royal Decree No. 17/2/22/3481 (1953) mentioned above, which empowers the Minister to regulate civil aircraft. Therefore, certain classes of aircraft are excluded from its application. These are:

1. Aircraft belonging to or exclusively employed by the military or airforce of Saudi Arabia;
2. All State aircraft. .

The basic distinction between national or foreign aircraft is whether they are registered in Saudi Arabia or elsewhere. Any aircraft registered outside of the Kingdom

⁷⁷Ibid., Articles 6, 9, 10, 11, 12, 14.

is a "foreign aircraft" and a large proportion of the regulations relating to registration, licensing of personnel, airworthiness and log books do not apply to these aircraft. In these matters, the regulation merely requires foreign aircraft, when in Saudi Arabia, to comply with the regulations of their respective State of registration, and the rules of navigation in Saudi Arabia.⁷⁸

Nationality and Registration of Aircraft: One of the most important principles of Public Air Law is that aircraft⁷⁹ have the characteristic termed "nationality". This characteristic has been for centuries applied in maritime law to ships. It means in substance that aircraft have normally a special relationship to a particular State. This State is entitled to make effective the privileges to which such aircraft may, by treaty or international law, be entitled. At

⁷⁸Regulation No. 4 supra p. Articles 35, 36, 56.

⁷⁹A definition of the word "aircraft" found in the Chicago Convention has been made in the Annexes thereto. Those annexes define the word "aircraft" as any machine that can derive support in the atmosphere from the reaction of the air. This definition was amended by the Council of ICAO in November 1967 to read that "aircraft" means "any machine that can derive support in atmosphere from the reactions of the air other than the reaction of the air against the earth's surface."

the same time, such State is reciprocally responsible for the international good conduct of the aircraft having its nationality.⁸⁰

The concept of nationality and registration of aircraft is one which has evolved with the development in air transportation.⁸¹

It is only, according to the Chicago Convention, that aircraft have nationality of a contracting State that are entitled to the right and privileges under the Convention. The Convention attaches these privileges and rights to aircraft having such "nationality", the criteria being, according to Article 17, the place of registration of air-

⁸⁰J.C. Cooper. "Background of International Public Air Law", Yearbook of Air and Space Law, op. cit., supra, note (62), p. 31, and the Legal Status of Flight Vehicles "Exploration in Aerospace Law", op. cit., supra note (62), pp. 215-218.

⁸¹The International Aeronautical Congress held in 1909 in Nancy concluded by noting that registration of aircraft would presumably be the only way to assure liberal regulation of air navigation. (J.C. Cooper, The Legal Status of Flight Vehicles", p. 220). In 1910, the draft Paris Convention accepted the principle of nationality. The majority of States present at the Conference felt that the aircraft should be under the control of a particular State responsible for it to other States, and that aircraft itself should be entitled to the protection of such State (Cooper, ibid., p.224). This principle was first formally incorporated in the body of

craft,⁸² e.g., aircraft are given certain transit and non-scheduled traffic privileges in each contracting States (Article 5), provided that they have the nationality of these States. Article 7 gives a contracting State the right to refuse permission to the aircraft of other contracting States to take on in its territory passengers, mail and cargo carried for remuneration or hire and destined for another point within its territory.

A number of other provisions in the Chicago Convention ~~imposed~~ duty on the nationality of the aircraft, e.g., Article 12 imposes a duty on all contracting States to insure that every aircraft carrying its nationality mark, wherever such aircraft may be, shall comply with the rules and regulations relating to the flight and manoeuvre of aircraft there in force, at any given place, including over the high seas.⁸³

International Air Law by its adoption in the Paris Convention of 1919, it being clearly envisaged in Article 5 thereof.

⁸²The Article reads as follows: "Aircraft have the nationality of the State in which they are registered."

⁸³See op. cit., supra note (70) and the rights, privileges and State's obligations in Goreish Ishaq R., "The Problem of Registration and Nationality of Aircraft of International Operating Agencies and I.C.A.O. Council's Resolution on the Problem." A thesis submitted to the Faculty of

Under Chapter III of the Chicago Convention, the aircraft should be registered, a thing which would facilitate the application of the provisions of that Convention. Article 18 provides that an aircraft "cannot be validly registered in more than one State, but its registration may be changed from one State to another". The registration or transfer of registration of aircraft in any contracting State is made, according to Article 19, in accordance with national laws and regulations. The importance of registration of aircraft is also reflected in the adoption of Annex 7 of the Convention which prescribes detailed rules for registration and nationality of aircraft.⁸⁴

Graduate Studies, McGill University, 1969-1970, pp. 10-16. On the nationality and registration of aircraft operated by International Agencies, see Fitzgerald, F. "Nationality and Registration of Aircraft Operated by International Agencies and Article 77 of the Convention on International Civil Aviation 1944." "The Canadian Yearbook of International Law" (1967) V.5, pp. 193-216.

⁸⁴Article 2 of Annex 7 reads as follows:

- 2:1 The nationality and registration marks appearing on the aircraft shall consist of a group of characters.
- 2:2 The nationality mark shall precede the registration mark, when the first character of the registration mark is a letter, it should be preceded by a hyphen.
- 2:3 The nationality mark shall be selected from the series of nationality symbols included in the radio call signs assigned to the State of Registry by the International Telecommunications Registrations. The

According to Saudi Arabian regulations, a foreign aircraft is not allowed to fly over or land in the territory of the Kingdom unless it has a permission or unless the permission is granted according to special agreement or international treaty. Permission is only granted to aircraft in possession of a valid registration certificate issued by the country to which the aircraft belongs,⁸⁵ and ^{which} have the signs of its nationality and registration in a prominent place.⁸⁶ In ^{the} case of Saudi Arabian aircraft, every aircraft which is registered in ^{the} Saudi Arabian register bears the Saudi nationality.⁸⁷

The registration of aircraft in Saudi Arabia, according to the Regulation No. 5 dated 23/6/1377 A.H. (1958),

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- The nationality marks selected shall be notified to ICAO.
 - 2:4 The registration mark shall be letters, numbers, or combination of letters and numbers, and shall be that assigned by the State of registry.
 - 2:5 When letters are used for the registration mark, combinations shall not be used which might be confused with the five-letter combinations used in the International Code of Signals, Part II, the three-letter combinations beginning with Q used in the Q code, and with distress signals, for example XXX PAN and TTT.

⁸⁵ Regulation No. 3, op. cit., supra, p. 26, Article 5.

⁸⁶ Ibid., Article 6, para. 1.

⁸⁷ Regulation No. 5, op. cit., supra, p. 26, Article 3.

is carried out by the Director General of Civil Aviation in accordance with the procedure and conditions laid down in that regulation. Aircraft cannot be registered in the Saudi Arabian register unless they are owned wholly by^a Saudi citizen or companies whose shareholders are all Saudi citizens, and the aircraft which are already registered in other countries cannot be registered in Saudi Arabia.⁸⁸ According to Article 9 of the said regulation, an aircraft owned by foreigners, who are residing in the Saudi Arabian Kingdom, may be registered in a special Saudi register under permission of the Council of Ministers if such registrations are for the purpose of using the aircraft within the territory of the Kingdom.⁸⁹

The writer believes that the Article (9) was initiated to meet the requirement of the oil companies which are established in the Kingdom of Saudi Arabia.

The registration of an aircraft shall be cancelled if the conditions provided in Article 2 above have not been fulfilled, i.e., the aircraft has been registered in another country, or in case of change or death of the owner, or

⁸⁸Ibid., Article 2.

⁸⁹Ibid., Article 9.

dissolution of the company which owns the aircraft, and in case of destruction or loss of the aircraft or its being unfit for use.⁹⁰ After completion of the registration, the Department of Civil Aviation must issue a certificate of registration.⁹¹ The registered owner must notify the C.A.D. if there is any change in the ownership of the aircraft or if the aircraft is destroyed or lost.

Marking: The characteristic features of this part of the rules are:

1. Nationality Mark;
2. Registration Mark.

The nationality mark is HZ—, and the registration mark is a group of three letters to be assigned by C.A.D. The nationality mark should precede the registration mark and ^{be} separated by a dash.⁹² The nationality and registration marks should be in large even sized letters, and the letters should be written on the upper and lower surface of the aircraft wings.⁹³

⁹⁰Ibid., Article 4.

⁹¹Ibid., Article 19.

⁹²Ibid., Article 7.

⁹³See Article 2 of Annex 7, op. cit., supra, note (84).

Certificate of Airworthiness: Every aircraft flying over Saudi Arabian territory must have a certificate of airworthiness issued by the State of registry. Permission for foreign aircraft to fly within Saudi Arabian territory is only granted to aircraft in possession of a valid certificate of registration issued by the country to which the aircraft belongs, and a certificate of airworthiness issued by or approved by an appropriate authority in that country.⁹⁴ Every aircraft has to carry among its documents, a certificate of airworthiness.⁹⁵ In ^{the} case of Saudi Arabian aircraft, no aircraft registered in the Saudi Arabian register may fly, unless it has a certificate of airworthiness issued by the C.A.D. Such a certificate is valid for a certain period or for a certain number of hours which must be shown on the certificate itself. The C.A.D. has the right to cancel or suspend the certificate of airworthiness of any aircraft, if there is any doubt as to the safety of the aircraft.⁹⁶

⁹⁴ Regulation No. 3, op. cit., supra, p. 26, Article 5.

⁹⁵ Regulation No. 4, op. cit., supra, p. 26, Article 1, para. 3.

⁹⁶ Ibid., Articles 5 and 8.

In accordance with Article 31 of the Chicago Convention, every aircraft engaged in international navigation must be provided with a certificate of airworthiness issued or rendered valid by the State in which it is registered, and this certificate must be carried in the aircraft.⁹⁷

The Director General of Civil Aviation issued, in April 1969, a policy letter informing Saudi Arabian Airlines and its Special Flight Services that certain U.S.A. Federal Aviation Regulations relating to flight operations and airworthiness standards were to be temporarily adopted pending issue of Saudi Arabia's own civil aviation regulations.⁹⁸

Licensing of Operating Crew: Article 6 of the Regulation No. 3 dated June 17, 1958, states that an aircraft operating member covers the commander, pilot, mechanic and others connected with the operation of aircraft. No person can fly as a member of ^{the} operating crew of an aircraft registered in Saudi Arabia, unless he has a licence which entitles him to act in the capacity in which he intends to fly. In ^{the} case of

⁹⁷Chicago Convention 1944, Articles 29(b), 31.

⁹⁸The Five-Year Plan of Civil Aviation Department in Saudi Arabia, pp. 15, 16.

foreign aircraft, there should be an adequate number of crew aboard the aircraft and they must hold certificates of fitness or the licences issued to them by the appropriate authorities in the country where the aircraft is registered.⁹⁹ The acceptance of foreign licences is in accordance with Article 33 of the Chicago Convention which states that "Certificates of airworthiness and certificates of competency and licences issued or rendered valid by the contracting State in which the aircraft is registered, shall be recognised as valid by the other contracting States, . . ."

No licences are issued at present in Saudi Arabia, but there is a system of validating foreign licences: they are as follows:

1. Commercial Pilot licence;
2. Airline Transport Pilot licence;
3. Flight Engineer licence;
4. Aircraft Maintenance Mechanic licence.

⁹⁹ Article 10 of the Regulation dated 18/11/1373 A.H. (1954) op. cit., supra, p.26, and see Article 32 of the Chicago Convention which states that "The pilot of every aircraft and the other members of the operating crew of every aircraft engaged in international navigation shall be provided with certificate of competency and licences issued or rendered valid by the State in which the aircraft is registered."

The holder of a foreign licence has to continue to satisfy the specified requirements after obtaining the licence with its respective issuing authority, (e.g., medical and flying tests). Saudi Arabian Airline has facilities for comprehensive theoretical and practical training for the licences listed above. At the completion of their training, students are examined and, if successful, licenced by the U.S.F.A.A.

There are several disadvantages to this system of validating foreign licences instead of issuing Saudi Arabian licences. For example: A certificate of validation cannot be issued for a period beyond the expiring date of the medical certificate associated with a licence. Thus, the holder of an Airline Transport Pilot's licence must produce to the Department of Civil Aviation a medical certificate every six months, in order to obtain a new certificate of validation. Now, if the pilot were issued a Saudi Arabian licence, he would not need to contact the C.A.D. every six months, because the licence itself would be valid indefinitely, so long as the holder had a current medical certificate (this being in accordance with international practice). The C.A.D. has to accept or reject the validation of the complete foreign licence. Sometimes, the C.A.D. is aware that certain of the

ratings on a licence are no longer justifiable (e.g. the holder has not been involved with the particular type of aeroplane for a long time). Also, graduates from licence-training courses provided by the SDI, sometimes have to wait a considerable time before they can be tested by an F.A.A. examiner.¹⁰⁰

Documents to be carried on aircraft: According to Article 1 of the Regulation No. 4 (1377 A.H.), 1958, every aircraft flying over Saudi Arabian territory must carry the following documents:

1. Its permit granted by the Government of Saudi Arabia;
2. Its certificate of registration;
3. Its certificate of airworthiness;
4. A record of its flight;
5. Licences of its crew members;
6. The aircraft radio-station licence, if it has such equipment;
7. A list of passengers, if it is engaged in commercial transportation or international flight;
8. Its air freight manifest, if it is engaged in commercial transportation or international flight;

¹⁰⁰The Five Year Plan, op. cit., supra, note (98),
pp. 19, 78.

9. Its aircraft safety certificate;
10. A statement of method of cargo distribution, if it is engaged in air transportation activity;
11. A special permit when carrying certain goods.¹⁰¹

Flight permission, registration, airworthiness certificate and wireless set licence must be kept in the pocket of the flight record. Flight permission is required, of course, only when there is no agreement between the Saudi Arabian Government and the country to which the aircraft belongs.

The list of documents above is slightly larger than that prescribed under Article 29 of the Chicago Convention which does not include items 1, 9, 10, 11. Saudi Arabian aircraft are exempt from the condition of carrying the papers indicated in item 5 in case the flight is for the purpose of training.¹⁰² The documents carried on a foreign aircraft and by its crew members must be issued by the competent authority in the country where the aircraft is registered, or by the competent authority in Saudi Arabia.¹⁰³

¹⁰¹Article 1 of the Regulation No. 4, op. cit., supra, p. 26.

¹⁰²Ibid., Article 3.

¹⁰³Ibid., Article 2.

General Safety Conditions

1. Pre-flight action to be taken by the pilot in command of aircraft.

The pilot in command of an aircraft, Saudies or foreign, must satisfy himself, before take-off, that the following conditions have been fulfilled:

- a) That the aircraft is equipped with all necessary and supplementary equipment, and that the aircraft and its equipment are in satisfactory condition for the proposed flight;
- b) That the load carried by the aircraft is of such weight and distribution as is stated in the certificate of airworthiness;
- c) That the view of the pilot is not interfered with by any obstruction nor obscured by the condition of windows or windscreens of the aircraft;
- d) That sufficient fuel, oil, and water are carried in the aircraft for the proposed flight.¹⁰⁴

¹⁰⁴ Ibid., Article 17.

2. Rules of the air and Traffic Control.

Every pilot and navigator must observe the rules of the air, which usually cover the requirement concerning lights and visual signals to be displayed by aircraft in flight: sound, signals, ground marking, lights and signals and in the vicinity of the aerodrome open to public use; distress, emergency and safety signals; ground rules for air traffic; special rules for air traffic in the vicinity of public aerodroms; rules of flight over or in the vicinity of the landing area; and rules for the take-off and landing of aircraft.¹⁰⁵

Annex 2 of the Chicago Convention (Rules of Air) is presently applied in Saudi Arabia pending the establishment of new rules which are now in the development stage.

Duties of pilots upon entering the Kingdom's territory: To ensure safe flights, pilots, upon entering the territory of the Kingdom, must report their positions to either one of the flight information regions: The Jeddah airport or Dhahran airport, and have to report this information once

¹⁰⁵Ibid., Article 55.

every thirty minutes. Pilots of outgoing aircrafts must report about their position half an hour after take-off, and once every thirty minutes. The reports must include information such as nationality and registration mark, altitude, time at reported position, flying conditions, ground speed, estimated time of arrival at the boundary of the control region or airport of destination.¹⁰⁶

3. Dangerous Flying.

No aircraft may be flown at a low altitude or in a way which may endanger the people, animals or properties or which may frighten the people concerned.

Flying over cities and villages: In addition to the provisions stated above, the following restrictions apply to flying over towns and villages:

a) No aircraft may be flown over any city or village, except at sufficient altitude as will enable the aircraft to land outside the city or the village in the event of an emergency. An exception to this rule is made in case of

¹⁰⁶Ibid., Article 52.

aircraft departing from or about to land at aerodroms which are not more than two kilometers from the nearest point of the aerodrome's boundaries.¹⁰⁷

b) No aircraft may be used for acrobatics or dangerous flying, for the sake of show, when flying over city, village or populous areas, except under special permission obtained from C.A.D.¹⁰⁸

4. Other dangerous conduct by persons on board aircraft.

a) Carrying persons on wings: Persons may only be carried in the part of an aircraft specifically designed for this purpose. Prohibition is made against carrying persons on the wings or any other parts not specified for this purpose. An exception to this rule is the temporary access to any part of an aircraft for the purpose of executing repairs to the aircraft or its equipment, or doing anything which may be necessary for the safety of the aircraft, or in a situation where written permission has been obtained from C.A.D. to carry out certain specified work on the aircraft.¹⁰⁹

¹⁰⁷ Ibid., Article 19.

¹⁰⁸ Ibid., Article 23.

¹⁰⁹ Ibid., Article 20.

b) Dropping of persons and articles from aircraft: Except in case of emergency, no objects may be dropped out of the aircraft, except the following:

1. Fine sand and water;
2. Smoke producing materials or other apparatus dropped for the purpose of navigating an aircraft. This condition is subject to the observance of such precaution as to avoid any risks which may result from such falling articles;
3. Any other articles with previous permission from C.A.D.

Except in case of emergency, no person may descend from an aircraft by means of parachute without written permission from C.A.D. and in accordance with the conditions therein.¹¹⁰

c) Smoking: Smoking is absolutely forbidden inside the aircraft in places other than those appropriated for such purpose, unless the place for smoking is indicated by the certificate of airworthiness. The owner has to post notices indicating where and when smoking is allowed.¹¹¹

¹¹⁰ Ibid., Articles 26, 30.

¹¹¹ Ibid., Article 27.

d) Drunkenness: A person who is drunk may not enter or be in an aircraft. The pilot or any member of the crew of an aircraft under influence of drinks or drugs is impairing his capacity to act as such and is guilty of an offence.¹¹²

5. Restrictions on articles carried in aircraft.

a) Cargo restrictions: No aircraft may carry the following items on arrival at or departure from the Kingdom, unless it has permission from the Minister of Defence and Aviation:

- explosives, except those required for the sole purpose of working or handling the aircraft;
- arms or ammunitions;
- pigeons;
- messages which are the privilege of the post office;
- other items which may be specified in a Ministerial Resolution.¹¹³

¹¹²Ibid., Article 29.

¹¹³Ibid., Article 39. Article 35 of the Chicago Convention states in para. (A) that: "No munitions of war or implements of war may be carried in or above the territory of State in aircraft engaged in international navigation, except by permission of such State . . ." and para. (b) states: "Each contracting State reserves the right, for reason of public order and safety, to regulate or prohibit the carriage in or above its territory of articles other than those enumerated in para. (a) . . ."

b) Aircraft radio equipment: The use of radio transmitting apparatus is permitted only in accordance with the regulations prescribed by the State over which the aircraft is flying. According to the Resolution No. 4 (1958), "No wireless set is to be installed in an aircraft, except under special licence issued by the appropriate authority in the country where the aircraft is registered. Such apparatus should be only used for the purpose of air navigation and for the safety of the aircraft and may only be used by members of the crew similarly licenced."¹¹⁴

c) Photographic apparatus: No person is allowed to carry or use still or movie cameras to take pictures from any aircraft flying over Saudi Arabian territory. Cameras in possession of passengers or crew members must be handed over to the pilot who will keep them under his observation, or necessary measures must be taken to secure the non-use of such equipment.¹¹⁵

¹¹⁴Ibid., Article 37 and Article 30 of the Chicago Convention.

¹¹⁵Ibid., Articles 41, 42, and see Article 36 of the Chicago Convention which states that "Each contracting State may prohibit or regulate the use of photographic apparatus in aircraft over its territory."

Rules Relating to Arrival and Departure of Aircraft
in Saudi Arabia

Every aircraft entering Saudi Arabia from abroad must make the first landing at a "customs aerodrome" and every aircraft leaving Saudi Arabia must depart from a customs aerodrome.¹¹⁶ Foreign aircraft are not allowed to land in airports other than those of Jeddah and Dhahran.¹¹⁷

Customs Laws: The regulations, rules and instruction, which are in force concerning the entry and exit of persons to the Kingdom, importation or exportation of goods, via sea or land, are applicable to the entry and exit of persons and importation or exportation of goods by air.¹¹⁸

¹¹⁶Article 2 of the regulation concerning procedure for inspection, op. cit., supra, p. 26. Article 10 of the Chicago Convention states that "Every aircraft which enters the territory of a contracting State shall, if the regulations of that State so require, land at an airport designated by that State for the purpose of customs and other examination. On departure from the territory of contracting State, such aircraft shall depart from a similarly designated customs airport. . ."

¹¹⁷Article 12 of the Regulation dated 18/11/1373, op. cit., supra, p.

¹¹⁸Article 59 of the Regulation No. 4, op. cit., supra, p.

The pilot in command of an aircraft, upon his arrival at a customs aerodrome, must deliver to the customs collector his documents, manifest, list of the passengers and their baggage, and declaration as to the goods and stores on board the aircraft. When an aircraft is departing from Saudi Arabia, the pilot in command or whoever is acting on his behalf, has to deliver to the customs all the above/mentioned documents.

The Regulation concerning the procedure of inspection and examination of documents of an aircraft (no number, no date) states that the inspection and examination of documents of an incoming aircraft will be made after its passengers have disembarked and the cargo is unloaded. Departing aircraft will be inspected and its documents examined before the passengers have embarked and the cargo has been loaded. Before carrying out the inspection, the pilot in command or whoever is acting for him, must be asked whether or not there are materials on the aircraft not listed on the shipping documents or forbidden materials carried by the aircraft, and his answers must be recorded.

It seems to me that the inspection is not carried out on every aircraft arriving at or departing from Saudi

Arabia. These measures are taken only when the customs department suspects an aircraft of transporting illegal materials. This is due to the fact that Article 5 of the same regulation states that "inspection and document examination should be carried out by officials who are delegated to do so, and in the presence of a representative of C.A.D. and a representative of the party to which the aircraft belongs. Also Article 9 of the resolution states that aircraft in transit or craft engaged in internal transport operations are not subject to inspection, unless there is a strong suspicion based on firm proof.

Military, governmental and diplomatic aircraft are exempted from inspection, unless a special order is issued and transmitted through the Minister of Defence and Aviation.

CHAPTER IV

RECENT DEVELOPMENT OF CIVIL AVIATION

Part 1 - Saudi Arabian Airline Corporation

Saudi Arabian Airline became an independent department in 1957 attached to the Ministry of Defence and Aviation.¹¹⁹

The period from 1957-1960 was one of further rapid development for S.A.A. Several new international services were added, including routes to Aden, Sudan, Kuwait, and Iran, but most important was the expansion of domestic services which previously linked only the country's largest traffic centers. The S.A.A. added 3,750 miles of internal routes which reach 19 new towns and villages. Meanwhile, schedules on existing domestic trunk routes have increased steadily and more flights are operated with larger equipment.

¹¹⁹For early history, see supra, pp. 20-24.

Unlike some of its contemporaries, S.A.A. has concentrated on developing its regional and domestic network first before attempting to expand into long-haul network, not wishing to enter the highly competitive international sphere until she was well prepared. Even in 1962, when S.A.A. acquired two Boeing 720B jets and had quite a significant capacity, she did not embark on any large-scale international expansion program. The regional service to Karachi was reopened in 1963. This additional 1,100 mile segment increased the S.A.A.'s network to 13,972 unduplicated route miles.

In 1962, S.A.A.'s aircraft flew 3,007,576 miles and carried 188,665 passengers, for a total of 60,042,000 revenue passenger miles. Revenue ton miles flown totalled 7,778,000, with a weight load factor of 55 per cent. International operations accounted for 49 per cent of total passenger carried, and about 70 per cent of revenue passengers miles flown.¹²⁰

¹²⁰World Airlines Record, op. cit., supra, note (38), 6th edition, 1965, pp. 110, 111.

On February 19, 1963, His Majesty King Faisal, by Decree No. 45 (dated 25/9/1382 A.H.),¹²¹ proclaimed the foundation of Saudi Arabian Airline Corporation (SDI).¹²² Thus, the SDI is no longer within the routine of the government. This meant that, although the airline retained its ties with the Ministry of Defence and Aviation, it is now operated as a commercial entity and is headed by a Board of Directors, who control its budget. The provisions of the Decree will be discussed later.

In 1967, SDI acquired three short-range DC-9 jet aircraft, and in 1968, two Boeing 707-368C, to replace the Bristol aircraft. This was followed by an expansion of its international network. In February 1967, SDI inaugurated its North African route to Tripoli-Tunisia and Rabat via Beirut. These new routes linked the Arab-East and the Arab-West for the first time. Three months later, SDI started its first European route - Geneva, Frankfurt, London via Beirut. On May 1, 1968, a non-stop scheduled flight

¹²¹ The Royal Decree No. 45 was amended by the Royal Decree No. M/24 dated 18/7/1385 A.H. (1966); see infra p. 79.

¹²² S.A.A. abbreviation was changed to SDI because South African Airways already had the same abbreviation.

from Jeddah to London (twice weekly) commenced in association with B.O.A.C. in a pooling agreement.

SDI has a large fleet (25 aircraft: two Boeing 707-368, two Boeing 720B, three Douglas DC-9, eight Convairs 340, eight Douglas DC-3 and two Douglas DC-6)¹²³ enough to carry out its duties towards the nation. It becomes possible for a person to cross this almost continent-size Kingdom within a matter of hours, instead of months, as previously had been the case. Now, the Kingdom is linked to her neighbouring Arab States and all other Moslem countries. SDI network reaches India, Pakistan, Iran, Iraq, Arabic Gulf, Syria, Lebanon, Jordan, U.A.R., Sudan, Ethiopia, Libia, Tunis, Algeria, Morocco, Turkey, and in Europe, Switzerland, Germany, and the United Kingdom.

One unusual aspect of the operations is the high proportion (around 35%) of non-scheduled to scheduled flights arising from the twin circumstances that Saudi Arabia is the goal of ^{an} annual pilgrimage to Mecca and the temporary residence of thousands of foreign persons who

¹²³World Air Transport Statistic I.A.T.A. Document (1969), p. 39.

teach in Saudi Arabia and who vacation at home each summer. In 1967, of the 316,226 foreign Hajis who made the pilgrimage to Mecca, one-third arrived and departed by air, mostly within one month, and 25 per cent of them used SDI. The same year, between June 5 and July 5, some 18,000 teachers were transported home, mostly to Syria, Jordan, Lebanon and Iraq, for their vacations, and returned to their posts once more between August 15 and September 15.¹²⁴

Unfortunately, Saudi Arabia, like any developing country, lacks sufficient skilled manpower. Trained staff are few, and new recruits are hard to find. This creates special difficulties, not usually found in developed countries. This element also affects many other phases in national growth to the extent that any government program must begin from scratch, training its people in the basics.¹²⁵

¹²⁴Bradawill Middle East Aviation Newsletter, op. cit., supra, note (37); The Green Wing, Aviation Magazine monthly issued by SDI, Jeddah, Saudi Arabia (February 1971), p. 14; and the SDI Annual Report of 1969, p. 12.

¹²⁵See area handbook for Saudi Arabia, op. cit., supra, note (7) and the Ninth Annual Report of the Saudi Arabian Monetary Agency on the Kingdom's Economic and Financial situation during 1970, which stated "to complement the program of Ministry of Education for development of human resources and to increase the availability of skilled and

The SDI training program started effectively when it was established in 1945. However, it has become much more effective since 1962, when SDI was converted into a corporation. Now, the training program is the corporation's second most important aim. Its first aim is to secure air transportation for the country; both for economic and social reasons. For this reason, SDI strengthened its co-operative agreement with T.W.A. in 1966. Until that time, T.W.A. had only a technical agreement with SDI; now, they also have a management agreement. In the aspect of training, T.W.A. has done well until now.¹²⁶

semi-skilled manpower for different developing sectors of economy, the Ministry of Labour had opened five vocational training centers in Riyadh, Jeddah, Dammam, Buraidah, and Al-Jawf, between 1963 and 1968. Arrangements are now being made to open a sixth center at Khamis-Mishait. The number of trainees who successfully completed their apprenticeship at these centers rose by 52.3 per cent in 1969, while the number of those under training grew by 53.8 per cent." Quoted from The News from Saudi Arabia, Vol. VII, No. 348 (March 2, 1971). See also World Education Series issued by A.A.C.R.O. (A Service of the International Education Activities Group of the American Association Collegiate Registers and Admission Officers, 1968), pp. 50-56.

¹²⁶At the end of 1969, there were 861 employees in the English language program, 349 of them completed 800 hours of English courses; 38 employees were in the secretarial and procedures courses; 1791 employees were in the commercial courses. In a basic flight, 97 men received a commercial licence, and 87 received Instrument Rating; 1054 enrolled in

The Director General of SDI, in his Annual Report of 1969, said:

At the present time, while we keep a close eye on the near term profitability of the airline, our principal concern is to achieve virtually complete management and operation of the Corporation by Saudi nationals over the next decade. To achieve this desirable aim, we have embarked on a comprehensive training scheme on a scale that is probably without equal in the airline business,¹²⁷ and we have an ambitious five-year plan. Progress toward Saudisation is a major objective of our management and technical assistance contract with Trans World Airlines (T.W.A.).¹²⁸

The following operational statistics¹²⁹ for scheduled and non-scheduled flights illustrate the operation of Saudi

technical courses; 212 SDI employees have been sent abroad to further their education and technical skills (fields which have been explored are aircraft maintenance, Engineering, IBM operations, Air Law, communications, training for DC-9 and Boeing captains, flight engineering, aviation accident investigations, simulator training flight, air frame, power plant skills, as well as Data affairs (SDI Annual Report, op. cit., supra, note (124), p. 15.

¹²⁷Particular reference should be made to the SDI Air Cadet program which began in 1967. SDI chooses about 24 intermediate school students every year and puts them through an intensive course that prepares them to enter any phase of airline's business. (SDI Annual Report 1969, op. cit., supra, note (124), p. 16.

¹²⁸Ibid., p. 4.

¹²⁹I.C.A.O. Digest Statistics No. 151 Series T. No.29-Traffic, 1960-1969. World Air Transport Statistics I.A.T.A. No. 14, 1969.

Arabian Airline (SDI) during years 1967, 1968, 1969. The non-scheduled flights mostly operated during pilgrimage seasons, but the statistics did not show the passenger kilometres or tonne-kilometres performed.

SCHEDULED SERVICES

A - International Operation

<u>Selected Data</u>	<u>1967</u>	<u>1968</u>	<u>1969</u>
Passenger carried	134,311	165,255	161,796
*Passenger Kilometres	149,216	225,999	230,677
*Available Seat Kilometres	381,502	604,322	633,009
Passenger Load Factor	39%	37%	36%
*Tonne Kilometres performed	15,324	26,107	26,429
*Available Tonne Kilometres	38,532	81,295	80,394
Weight Load Factor	40%	32%	33%

B - Domestic Operation

Passenger carried	338,676	315,557	343,324
*Passenger Kilometres	186,100	229,679	241,369
*Available Seat Kilometres	387,656	426,761	441,221
Passenger Load Factor	48%	54%	55%
*Tonne Kilometres performed	18,816	22,937	24,350
*Available Tonne Kilometres	39,153	45,439	48,196
Weight Load Factor	48%	51%	51%

Length of Scheduled Route Network in 1969 is 47,732 (Kms) in International Route, and 19,078 in Domestic Route.

NON-SCHEDULED SERVICES

A - International Operation (Revenue)

<u>Selected Data</u>	<u>1967</u>	<u>1968</u>	<u>1969</u>
*Aircraft Kilometers	470	1,804	1,255
Aircraft Departure	667	1,423	1,005
Aircraft Hours	1,535	2,335	2,328
*Available Tonne Kilometres	3,796	22,405	14,752

B - Domestic Operation (Revenue)

*Aircraft Kilometers	537	672	905
Aircraft Departure	760	1,251	1,682
Aircraft Hours	2,264	1,234	3,252
*Available Tonne Kilometres	4,333	4,413	4,226

* in thousands.

However, the Five-Year Plan of Saudi Arabian Airline Corporation (SDI) forecasted that 8 per cent increase in passenger miles revenue during the plan period.¹³⁰

The Saudi Arabian Corporation was established under the Royal Decree No. 45 dated 25/9/1382 H. (February 19, 1963) as an independent public corporation (Article One).

¹³⁰The Five-Year Plan of Saudi Arabian Airline Corporation (SDI) 1971-1975, pp. 1-4 (in Arabic).

In 1965, a Royal Decree No. M/24 dated 18/7/1385, which is reproduced as Appendix B, reorganized the Corporation with major differences; that the Minister of Defence and Aviation is appointed Chairman of the Board, that the Director General has been granted more power.

Name, Legal Capacity of the Corporation.

Article One of the Decree states that Saudi Arabian Airline is a public and independent organization, having legal capacity and is attached to the Ministry of Defence and Aviation. Its headquarters are in Jeddah, and may be transferred to another city within the Kingdom only by consent of the Council of the Ministers.

Management of the Corporation.

1. The Board of Directors: The general direction and the administration of the affairs of the Corporation rest with the Board of Directors, who exercises all powers and authorize all acts which are performed by the Corporation.

The Board consists of one Chairman and eight members. They are as follows:

1. The Minister of Defence and Aviation or his duly appointed representative, Chairman;
2. The General Manager of the Corporation, member;
3. The Deputy Minister of Finance and National Economy;
4. The Deputy Minister of Communication;
5. The Deputy Minister of Commerce and Industry;
6. The Director General of Civil Aviation;
7. Three members to be appointed by decision of the Council of Ministers upon the nomination of the Minister of Defence and Aviation.

The six members including the Chairman are government officials, and the remaining three members are usually businessmen.¹³¹ The reason for this arrangement is that the Corporation is wholly owned by the government, and thus must be proportionally represented in the majority. There is no mention in the Decree of the term of office of a Director, but to the writer's best knowledge, the term is three years, and this term may only be extended for a longer period through the consent of the Council of Ministers.

¹³¹ For the names of the Board of Directors in 1969 and still at present (1971), see SDI Annual Report, op.cit., supra, note (124), p. 3.

Powers of the Board:- Article 5 of the said Decree

states ~~that~~:

The Board of Directors is the supreme authority which manages and controls the business and affairs of the Corporation.

The Board's main powers are summarized as follows:

- 1) To issue financial, administrative, technical and internal regulations and decisions, other than the internal regulations relative to the appointment of the Corporation's employees and labours, to their promotion, determination of their salaries, wages, gratuities and other benefits which are issued by the Council of Ministers on the advice of the Board.
- 2) To approve the draft budget of the Corporation which is not effective except after its ratification by a Royal Decree.
- 3) To appoint the senior employees, advisers, and experts to the Corporation and determine their salaries, gratuities and powers.
- 4) To purchase, sell, take and grant airplanes on lease.

5) To conclude agreements with others having similar objectives, and to participate in international conferences and organizations which are concerned with civil and commercial aviation.

The Board may appoint from among its members, one or more committees and delegate them with a part of its powers. It may delegate ^{to} the Chairman or to the General Manager of the Corporation part of its powers, and may also authorize one or more of its members to carry out specific duties.

Meetings of the Board of Directors:- The meetings should be at the place of business of the Corporation, or any other city specified by the Board upon call of the Chairman, and there should be not less than ten meetings each year. The meeting is valid if attended by at least five Directors including the Chairman, and any resolution ^{is} passed ~~as~~ if it has the majority vote of the members present. In case of a tie, the Chairman has a casting vote.

There is no mention in the Decree about the Director's personal responsibility for his own actions which cause loss or expense to the Corporation or others.¹³²

¹³² Compared with the Pakistan International Airline Corporation Act 1956, Articles 19, 20 (1-2). See "Law of

2. The Director General of the Corporation: His Appointment and Powers: The Director General is appointed by virtue of decision from the Council of Ministers upon the nomination of the Minister of Defence and Aviation,¹³³ but the Chairman of the Board of Directors is considered to be the superior of the Director General.

The Director General has administrative and executive powers which are defined as follows:

- 1) To prepare the meetings of the Board of Directors and implement the Board's resolutions.
- 2) To supervise the employees and laborers, the preparation of the draft of the general budget and the draft of closing accounts.
- 3) The Director General also represents the Corporation in its relation with other persons, corporations, before Courts, and signs contracts on behalf of the Corporation.

Civil Aviation in Pakistan, Mumtaz, Ahmed. A thesis presented to the Faculty of Graduate Studies and Research, McGill University (Montreal 1957), p. 107 and Appendix 3.

¹³³In Indian Airlines Corporations, the Director General is appointed for each of the Corporation by the Corporations themselves, subject to the approval of the Government. See Menon, P.K., op. cit., supra, note (30), p. 141.

Powers and Objectives of the Corporation:- The SDI has monopoly in Air Transportation inside the Kingdom of Saudi Arabia. Therefore, its objectives are so large as to cover all Air Transport activities. Article 2 of the Decree defines its objectives in general as "to carry out all kinds of activities relating to air, commercial and civil transport within and outside the Kingdom."¹³⁴ The Article continues to account for the powers of the Corporation by which it is to achieve these objectives in a twelve sub-titled article. The main objectives are:

- 1) To exploit all air transport routes;
- 2) To build, manufacture, purchase, sell, take and grant on lease and charter aeroplane machines, air transport, supplies and equipment, spare parts thereof and all that is necessary to operate the same;

¹³⁴The general function of each of the Corporations in India is to provide safe, efficient, adequate, economical and properly co-ordinated air transport services. In carrying out their duties, each of the Corporations should act as far as possible on business principles. The Corporations and their "associates" have a virtual monopoly of air services, both domestic as well as international. Ibid., pp. 142, 143. The same function for the Pakistan International Airline Corporation. See Mumtaz, Ahmed, op. cit., supra, note (132), p. 109.

- 3) To construct, maintain and operate airports, air stations, warehouses, stores, storage depots or aircraft landing stations, aeroplane, machines of any kind, whether for its own account or for the account of others;
- 4) To operate mechanical and electrical workshops and trade-in engines and machines of all kinds and types;
- 5) To purchase and sell real estate property for purpose of achieving the objectives of the Corporation and to take and grant on lease said real estate property;
- 6) To establish and organize institutes and schools pertaining to the practical teaching of aviation and air navigation and training the employees the activities that fall within the objectives of the Corporation, with a view to create a Saudi element qualified to perform all the technical administration and commercial duties related to the objective of the Corporation;
- 7) To achieve its objectives, the Corporation may enter into association or collaboration of any kind with other corporations or organizations which carry out similar activities or which help in the achievement of its purpose inside

or outside the Kingdom and to merge said corporations and organizations in it.¹³⁵

Property:- Saudi Arabian Airline Corporation is a successor of Saudi Arabian Airline, therefore, the property of that airline was transferred to the Corporation. In addition, Article 3 of the Decree provides that the following is the property of the Corporation:

¹³⁵ Article 5 of the Royal Decree, which contains the power of the Board of Directors, does not mention the Board as having power to authorize a final decision of association or merger between SDI and another organization or corporation. However, the Board could propose it as a suggestion and then leave it up to the Council of Ministers' decision as they are the only ones authorized to make this decision. However, the Board of Directors has power under Article 5, paragraph 7, to conclude agreements with other establishments which have similar objectives, but this power really only entails co-operation and collaboration. There is evidence in the Decree supporting my view; in particular, Article 5, paragraph 2, which shows that the Board only can propose internal regulations relative to the appointment of the Corporation's employees and laborers, their promotion, determination of their salaries, wages, etc., however, these regulations must be issued by the Council of Ministers before they become effective; paragraphs 3, 4 point out that the corporation's budget is not effective except after its ratification by the Royal Decree. The closing of the accounts is also subject to review by the State Audit Office. Therefore, merging with other corporation or organization cannot be possible without the consent of the Council of Ministers. See Menon, *op. cit.*, *supra*, note (30), p. 143, which mentioned that the Indian Airlines Corporations could, with the prior approval of the Government, enter into agreements with other operators to provide air transport services on behalf of or in association with them [Corporations].

- 1) The funds in kind or in specie, which are granted from the General Treasury of the State;
- 2) The loans raised by the Corporation. But the Article neither puts a maximum to the loans the Corporation could borrow nor does it stipulate government's approval or permission to obtain loans.¹³⁶
- 3) The Corporation income.
- 4) The donations and contributions accepted by the Board of Directors.

The Budget:- According to Article 10 of the Decree No. M/24, above, (p. 79), the Corporation has a budget independent of the State's budget. This budget should be prepared in the same manner as a commercial budget, and the Board of Directors should prepare an annual balance sheet, indicating

¹³⁶ Compare with the Pakistan International Airline Corporation Act 1956, Article 15, which states "The Corporation may, with the previous sanction of the Central Government and on such terms and conditions as may be approved by the Government, borrow in Pakistan currency or in foreign currency." Muntaz, op. cit., supra, note (132), pp. 111, 208. Also the same in case of Indian Corporations. Menon, op. cit., supra, note (30), p. 145.

a profit and loss account and a detailed report on the activities of the Corporation during its financial year, and its financial position.¹³⁷ The financial year of the Corporation is the same as that of the State (usually starting at the beginning of the seventh month of the Moslem Calendar to the end of the sixth month in the next year.¹³⁸

Auditor's Account:- The Board may appoint one or more auditors. If more than one auditor is appointed, then all of them will be jointly responsible for their work. His or their remuneration is determined by the Board. However, the appointment of the auditor(s) will not prejudice the control exercised by the State Audit Office.

¹³⁷Same condition in Indian Airlines Corporation Act; see Menon, op. cit., supra, note (3), p. 146.

¹³⁸The phrase "independent budget of that State's budget" mentioned in Article 10 of the Decree does not mean that ^{on} the Board of Directors' approval, the budget becomes effective. Article 10 states also that "the Board of Directors shall prepare an annual balance sheet . . . etc." Article 5 (para. 3) states "the Board approves the draft budget of the Corporation. However, the draft budget of the Corporation is not effective unless it is ratified by a Royal Decree. A ratifying Decree must be approved first by the Council of Ministers. (See powers of the Council of Ministers, Articles 18, 19, supra, pp. 4-5. This means that the Corporation's budget is a part of the overall government budget, and the phrase (above) is only to authorize the Corporation to prepare its budget in like manner as the commercial budgets.

Exemption:- The Corporation is exempt from all duties, stamps, and income tax in respect to the economic activities and within the scope of the objectives of the Corporation set up in Article 2 of the Decree which was discussed above.¹³⁹

In conclusion, it might be stated that despite the various controls exercised by the Government, the Corporation enjoys a substantially greater degree of independence in its day-to-day work than is possessed by the regular departments under director control of a Ministry. In matters of finance, personnel, budgeting, accounting, and operation of services, the Corporation has a large measure of freedom.

¹³⁹ Indian Airlines Corporations are not exempted from any tax, duty, rate, or levy or other charges whatsoever general or local. Menon, op. cit., supra, note (30), p. 144. Pakistan Airline Corporation is deemed to be a company within the meaning of the income-tax act, and is liable to income tax and super tax on its income, profits and gains. Mumtaz, op. cit., supra, note (132), p. 110.

Part 2 - Adhering to Conventions

After the signing of an international convention, especially one where legal problems are involved, States which have participated in its preparation, and have signed it, may be called upon to enact, either before or after ratification, laws or regulations, in order to bring the provisions of the Convention into force in their respective countries. Adhering States will be in the same position. Moreover, in some cases, signatory States which have been unable or which are unwilling to ratify the convention or adhere to it, and other States which have not even participated in its preparation, may consider it advisable to have legislative text based on the provisions of the convention.

Such has been the case with the various conventions concerning aviation, e.g., the Paris Convention relating to regulation of Aerial Navigation (October 13, 1919), the Havana Convention on Commercial Aviation (February 20, 1928), certain conventions on private air law, such as the Warsaw Convention for the unification of certain rules relating to carriage by air (October 12, 1929). However, the influence of these conventions on the legislative activity of the

State cannot be compared, either in size or importance, to the great influence of the Chicago Convention on International Civil Aviation, 1944.¹⁴⁰

Saudi Arabia was one of the States which did not participate in the Chicago Conference, nor did she adhere to the Convention up to 1962. But the aviation's regulations in Saudi Arabia during that period were based on the Chicago Convention; such principles as sovereignty, nationality, registration of aircraft, etc., were incorporated in Saudi Arabia's aviation regulations. In 1962, Saudi Arabia became an adhering party to the Convention.¹⁴¹

In the same way, Saudi Arabia was not party to the Warsaw Convention of 1929 or its amendments^{of} 1955, up to 1969, but the conditions of carriage which Saudi Arabian Airlines applied, pointed out that its liability for international carriage is limited by the limit of liability in the provisions of the Warsaw Convention. By the Royal Decree No. M/29

¹⁴⁰Eugene Pepin. "Development of the National Legislation on Aviation since the Chicago Convention," J.A.L.C., Vol. 24, (1957), pp. 1, 2.

¹⁴¹Shawcross and Beaumont, op. cit., supra, note (62), Vol. 2, p. 15.

dated 14/8/1388 (1968), Saudi Arabia became a member of the Warsaw Convention (1929) and its amendment of The Hague Protocol 1955, and was put on membership list by the Polish Government on April 1969.¹⁴²

On April 16, 1967, Saudi Arabia signed the Tokyo Convention 1963,¹⁴³ which relates to offences and certain other acts on board aircraft. Her signature was ratified by the Royal Decree No. M/27 dated 22/8"1386 A.H. (1967).¹⁴⁴

¹⁴²Document submitted to the writer by Saudi Arabian Airline.

¹⁴³Shawcross and Beaumont, op. cit., supra, note (62), Vol. 2, p. 31.

¹⁴⁴Document submitted to the writer by SDI.

Part 3 - The Draft of the New Civil Aviation Law

Despite a late start, the development in Saudi Arabia in the field of Civil Aviation is advancing at a rapid pace. In drafting the Civil Aviation Act, the above/mentioned consideration was taken into view as well as the reasonable expectations of the near future. The draft seeks to provide the basic principles for regulating the entire Civil Aviation activity, including navigation, operation, use, possession, sale and import or export of aircraft: establishment, maintenance, inspection and operation of aerodromes, air navigation facilities and other aeronautical services; investigation of aircraft accidents: registration and airworthiness of aircraft; air traffic and search and rescue services: licensing of personnel, control over land in interest of air safety, measures for safety, liability for causing damage to third parties on surface and control of airspace in the interest of safety, security and national defence.

The draft act also defines the administrative legislature and judicial functions and powers of the Minister of Defence and Aviation and the Department of Civil Aviation, which is to assist the Minister in ^{the} exercise and performance

The draft act had been prepared by Mr. B.S. Gidwani, Director, Civil Aviation Dept. of India, who was representing ICAO. See his letter to Manager, Technical Assistance Dept., dated Aug. 14, 1964, ICAO documents (Legal Dept.).

of his powers and functions. The Draft prescribes procedures for delegation of such powers and functions to the (Superintendent General of Civil Aviation). At present, this position is cancelled; thus ^{the} abovementioned (Superintendent) actually refers to the Director General of Civil Aviation. The Draft act consists of 57 sections, the most important of which will be discussed:

Sovereignty:

Section I reaffirms the principle of complete and exclusive sovereignty of the Kingdom of Saudi Arabia over the airspace of Saudi Arabia, which also finds place in the first Article of the Royal Decree No. 17/2/22/3481 dated 24/9/1372 A.H. (June 8, 1953).¹⁴⁵

Functions and Powers of the Minister of Defence and Aviation:

Section 2 lays down the functions and duties of the Minister of Defence and Aviation. The section charges the Minister of Defence with the duty of organizing, promoting and regulating civil aviation. Certain broad principles have

¹⁴⁵See supra, pp. 43, 44.

been laid down for consideration, amongst other matters by the Minister in the exercise and performance of his function. These principles are:

1. Regulation of flight by aircraft in such a manner as to assure the highest degree of safety;
2. Promotion of regular, efficient and economical transportation without unjust discrimination and unreasonable competition;
3. Encouragement and development of airways, airports and air navigation facilities;
4. Encouragement of the acts of aircraft design and all aspects of civil aeronautics;
5. Control of the use of airspace of Saudi Arabia and regulation of aircraft operations in such airspace in the interest of safety and efficiency of such operations as also in the interest of security and national defence.¹⁴⁶

¹⁴⁶The principles, mainly, are based on the objective given in Article 44 of the Chicago Convention which lays down the aims of the International Civil Aviation Organization. See Article 44, paragraphs a, c, e, h.

The Minister would, in any case, keep these principles in view while regulating the Civil Aviation activities. But, it has been made very clear that the five principles are only some of the principles to which the Minister might give consideration. The expression "amongst other matters" used in the Section may be noted in this regard.

The draft act authorizes the Minister to make regulations giving effect to the provisions of the Chicago Convention, to any annex thereto relating to international standards and recommended practices adopted in accordance with the Convention and to any amendment of the Convention or any such Annex made in accordance with the Convention (Section 3).

The Royal Decree No. 17/2/22/3481 dated 24/9/1372 A.H. (June 8, 1953)¹⁴⁷ has given in Article 3 powers to the Minister of Defence and Aviation, chiefly, to make regulations in respect of air navigation of civil aircraft. Section 4 of the draft act is far more extensive and empowers the Minister to make regulations on, practically, every phase of Civil Aviation activity. Some of the specific subjects covered by this Section, on which the Minister may make regulations are, briefly, as follows:

¹⁴⁷ See supra, p. 44.

- 1) Conditions for carriage by air of pilgrims to and from Saudi Arabia;
- 2) Conditions of flying and aerodromes of entry and exit;
- 3) Operation of commercial air services;
- 4) Prohibition on carriage of certain goods;
- 5) Powers (including powers of arrest, restraint, and disembarkation) of aircraft commander or members of the crew;
- 6) Air traffic rules;
- 7) Airworthiness;
- 8) Establishment, maintenance and operation of aerodromes, air navigation facilities and services;
- 9) Licensing of personnel;
- 10) Conditions for validation, issue, renewal, extension, variation, suspension or cancellation of certificates; licences, or other documents;
- 11) Safety, efficiency and regularity of air navigation;
- 12) Prohibiting flights to or from any territory;
- 13) Acquisition or requisition of land or other property in the interest of Civil Aviation;
- 14) Establishment of flying clubs and training schools;
- 15) Export, import, sale, purchase or transfer of aircraft;
- 16) Airline rates, tariffs and practices;

- 17) Liability of carriers for damages in respect of death or injury to passengers or loss or destruction of goods;
- 18) Prevention of flight, detention of aircraft and compelling aircraft to land by firing thereon or by any other means;
- 19) Imposing of penalties of fines and imprisonment for violation.

Functions of the Civil Aviation Department.

No specific functions under Section 7 have been assigned to the Civil Aviation Department, although its duties have generally been outlined, i.e. assist the Minister in the exercise and performance of his powers and functions. The C.A.D. was managed and controlled by ^{the} Superintendent General. This position, as I mentioned before, has been abolished and replaced by the position of Director General of Civil Aviation. Section 6 envisages the automatic delegation of the powers of the Minister to the (Superintendent) of Civil Aviation, and has been given the concurrent power to make regulations under subsection (3) of Section 6 and can exercise the power, duties, and functions of the Minister under the act, including the powers to issue any licence, permit, certificate or document or giving any order, authorisation, direction, approval or exemption. But the restrictions that can be placed by the

Minister on the powers of the (Superintendent) are: that the power of the (Superintendent) to make regulations is subject to any general or specific directions given or condition imposed by the Minister, that every regulation made under this act by the (Superintendent) should be laid before the Minister and if he decides to make any modification or decides that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be. Thus, the authority which the (Superintendent) can exercise for making regulations under the act or for the performance of other duties, functions, and powers under the act can be defined by the Minister, and can be made as narrow or as wide as the Minister may choose.

Delegation of Functions and Powers.

Section 7 of the act enables the Minister and the (Superintendent) to delegate their powers and functions under the act or the regulations to another person or persons. At the same time, the section clarifies that the person to whom the power is delegated shall not be able to re-delegate this power. The power of making regulations under the act cannot be delegated, and this power to make regulations under the act will remain solely with the Minister and the (Superintendent)

subject to the control and supervision as the Minister may prescribe.

Control of Aviation in time of war or emergency.

The Minister has the power to issue in time of war or emergency, whether actual or imminent, or in case of any external aggression against Saudi Arabia, or threat thereof or attempted threat, in order to control aviation, as he deems expedient in the interest of public security or safety. Amongst the powers the Minister has under Section 8, the power to declare any territory as "prohibited territory" and on such declaration:

- 1) No aircraft which during the course of flight has flown in that territory shall enter into Saudi Arabia;
- 2) No aircraft which during the course of its flight intends to fly in that territory shall depart from Saudi Arabia;
- 3) No aircraft registered in that territory and no aircraft with any person on board who is citizen or resident of that territory and no aircraft owned, wholly or in part, or operated, hired or chartered by any such person shall enter into Saudi Arabia;

Other powers given to the Minister are as follows:

- 1) Cancellation or suspension of any licences, certificates, permits, instruments or documents issued under the law or the regulations of Saudi Arabia;
- 2) Prohibition or regulation of flight of aircraft over Saudi Arabia;

- 3) Prohibition or regulation of the erection, building, maintenance, establishment or use of any aerodrome, aircraft factory, flying school or club, etc.;
- 4) Acquisition for government services of any aerodrome, aircraft factory, flying school or club or place where aircraft are manufactured, repaired or kept, together with any machinery, plant, materials or things, etc.¹⁴⁸

The Minister has the authority, as well, to take measures, or issue orders as appear to him to be necessary, if he is satisfied that Saudi Arabia or any part thereof is visited or threatened with an outbreak of any dangerous communicable disease by means of air navigation.

Licence or Permit for operation, Scheduled or non-Scheduled Air Transport Services.

1. Saudi Arabian Aircraft: Section 13 of the draft merely reaffirms the existing position of Saudi Arabian Airline Corporation.¹⁴⁹ Section 14 raises the possibility of licencing

¹⁴⁸The draft of Section 8 is based, somewhat, on Article 89 of the Chicago Convention, although there are certain differences in the draft. The Chicago Convention permits freedom of action "in case of war", whereas the draft retains the freedom of action for Saudi Arabia "in time of war whether actual or imminent or threat thereof or attempt thereat, also the draft retains the right of Saudi Arabia to consider any territory prohibited area as mentioned above p. 100.

¹⁴⁹See supra, p . 84.

and permitting other Saudi enterprises to operate scheduled or non-scheduled services within, to and from Saudi Arabia. This is a new departure in Saudi Arabian policy to permit other local air transport enterprises to engage in the business of operating scheduled or non-scheduled services.

The licence or permit is subject to certain conditions, in particular that the grant of such licence has been authorized by the Minister, but in consultation with the Council of Ministers, that a substantial ownership and effective control of the enterprise seeking such licence or permit is vested in the citizens or government of Saudi Arabia. Other considerations which should be kept in view before granting such a licence or permit are, that the applicant has to satisfy the authorities that he has experience and financial resources and the ability to provide satisfactory equipment, organization and staffing arrangements, and that he is competent and fit and a proper person to operate aircraft on air transport services, that there is need for an air transport services applied for, that the tariffs for the proposed air transport services are reasonable. The draft provides several powers to the Minister for the control and regulation of the activity of such new enterprise, including the right to lay down standards

for safe and proper operation of the services, and the right to suspend or cancel the licence or permit in the event of failure of the person to whom it is issued to perform in a safe and proper manner or to maintain the equipment required in connection with the operation of the services or for any other reason in view of public interest.

2. Foreign Aircraft.

A - Aircraft of Contracting States.

1) Non-Scheduled flights for non-traffic purposes: Sub-Section 1 of Section 15 authorizes an aircraft of a contracting State to fly in transit non-stop across the Saudi Arabian territory or to land in Saudi Arabian territory for non-traffic purposes without the necessity of obtaining prior permission.¹⁵⁰

¹⁵⁰This Section is new in Saudi Arabian policy. Article 2 of the Royal Decree No. 17/2/33/3481 dated (1953) prohibited aircraft from flying or landing in Saudi Arabian territory unless it has obtained permission, etc. See above p. 44, but Section 15 of the draft applies Article 5, para. 1 of the Chicago Convention which states that "Each Contracting State agrees that all aircraft of other Contracting State being not engaged in scheduled international air services, shall have the right, subject to the observance of the terms of this Convention, to make flights into or in transit non-stop across its territory and to make stop for non-traffic purpose without the necessity of obtaining prior permission. . ." The term "right" which was granted by the Chicago Convention has been avoided in the draft.

But such flights have to be made in accordance with the provisions of the act or any regulations that may be made under the act. Further, the right to require landing of such aircraft in Saudi Arabia has been reserved as exercisable by the Minister, by general or special order, also the draft provides that the Minister may, in the interest of safety, order any such aircraft desiring to proceed over regions which are inaccessible or without adequate air navigation facilities, to follow the prescribed or established air routes or obtain special permission for such flight. It is essential that an advance notice of such a flight along with the necessary particulars, should be furnished. Sub-Section 3 of Section 15 provides for the authority of the Minister to prescribe the procedure to be followed, including the particulars to be supplied and the period by which the notice is to be furnished in respect of such a flight.

2) Non-Scheduled flights for traffic purposes: No traffic rights are given to such aircraft. The draft provides that no passengers, cargo, or mail shall be taken on or discharged in the Saudi Arabian territory by such aircraft, except with the permission of the Minister and accordance with

the terms and conditions of that permission (Section 10

¹⁵¹(1)). While the Chicago Convention is silent in regard to the principles that may be applied in granting traffic rights to such flights, the draft provides principles which the Minister may give consideration to in deciding to grant permission; these principles are:

- 1) Public interest:
- 2) Reasonable protection to other operators of scheduled air transport services between Saudi Arabia and other countries;¹⁵²
- 3) Any resolution or decision of ICAO or IATA that has been approved by the Minister and is relevant to the matter.

¹⁵¹Article 5, para. (2) of the Chicago Convention states that "the privilege of taking on or discharging passengers, cargo, or mail by aircraft of Contracting State engaged in non-scheduled international air services shall be subject to the right of the State where such embarkation or discharge takes place to impose such regulation, conditions or limitation as it may consider desirable.

¹⁵²Normally, the Minister would consider the interest of national operation, but he may also be guided by the consideration of protecting the traffic interest of a foreign operator. One point of view would be that it is not necessary to protect the interest of foreign scheduled operator. On the other hand, when scheduled operators are permitted to operate services to or from Saudi Arabia, such permission is given in account of certain reciprocal benefits which Saudi Arabia may enjoy in foreign countries. It is therefore worthwhile sometimes to protect the national traffic market so as to make it attractive for foreign scheduled operators, in order to exchange with foreign countries the right for reciprocal operation for the national airlines. See infra, p. 134.

B - Non-Scheduled Flights by Aircraft Possessing Nationality of Contracting States.

Under Section 17 of the draft act, the Minister has the right to grant or refuse permission for such flights, and if he gives permission, he has the right to impose such conditions, stipulations and requirements as he considers necessary to secure compliance with the provisions of the act and the regulations made thereunder, as also with the provisions of the Chicago Convention. The Chicago Convention naturally confers no rights or privileges on aircraft of non-contracting States.

Scheduled International Air Services:

No foreign aircraft shall operate scheduled international air services over, to and from Saudi Arabian territory, except in accordance with the international air carrier licence or permission issued by the Minister.¹⁵³ (Section 18 (1) of the draft Act.)

¹⁵³As mentioned above, Chicago Convention accord certain rights and privileges to non-scheduled flights by aircraft of contracting States, but it confers none in respect of scheduled international air services of contracting States and provides in Article (6) that "no scheduled international air services may be operated over or into the territory of contracting States, except with special permission or other authorization of that State, and in accordance with the terms of such permission or authorization". If the Convention does not confer any right to the International Air Transport, there are two international agreements which were established by the Chicago Conference in 1944. These agreements are: The International

Such a licence or permit will be granted to an airline of^a foreign country, if that country and Saudi Arabia are parties to an agreement or arrangement under which scheduled international services of that country may be operated over or into the Saudi Arabian territory. The Royal Decree No. 17/2/22/3481 dated 24/9/1372 A.H. (1953) indicates that a permit may be given under special agreement or international treaty. Section 18 of the draft act, however, is somewhat more restrictive and requires that a specific licence or permit should be issued, even though the agreement with a foreign country may not require such a permit or licence to be issued. The Minister may suspend or cancel the international air carrier's licence or permit if:

- a) The airline or any aircraft operated by the airline fails to comply with a provision of the act or the regulations made thereunder or the terms of the licence or the permission;
- b) The airline fails to conform to, or comply with any term or condition of the relevant agreement or arrangement referred to in the last paragraph.

Air Services Transit Agreement, see infra, note (187), and International Air Transport Agreement, see infra p. 137.

Saudi Arabia is not party either to the International Air Services Transit Agreement nor to the International Air Transport Agreement.

Prohibited Areas.

Article 9 of the Chicago Convention recognized that each contracting State may, for reasons of military necessity or public safety or in exceptional circumstances, declare areas prohibited or restricted. These considerations have been included in Section 20 of the draft act. Additionally, however, the consideration of public interest has been also included. The Minister has been authorized to declare prohibited areas on the ground of any principle herein above. The Saudi Arabian government has declared certain areas as prohibited on ground of religion and it is with this in view that the expression of "public interest" has been included. Some of the principles given in Article 9 of the Chicago Convention which are to guide contracting States in their declaration of prohibited or restricted areas, have not been included in this section of the draft, such as i.e. "no distinction should be made between the aircraft of the State whose territory is involved, engaged in international scheduled airline services and the aircraft of other contracting States likewise engaged". Again, the principle that "such prohibited areas shall be of reasonable extent and location so as not to interfere unnecessarily with air navigation". But it is expected that the Minister will keep this principle in view while declaring any prohibited area.

Higher penalties have been laid down for violation of any regulations or orders issued under section 20. The penalties are imprisonment for a term which may extend to three years, fines, or both, and the aircraft in respect of which the offence has been committed would also be liable to forfeiture. But no mention is made in the section of firing upon the aircraft which enter the restricted area without permission.¹⁵⁴

Registration of Aircraft.

No aircraft can fly in Saudi Arabian territory, unless it is registered in:

- a) Saudi Arabia
- b) Contracting State
- c) Another country with which Saudi Arabia has an agreement or arrangement for permitting such flight.

An exception that an aircraft can fly in Saudi Arabian territory, without being registered, with the Minister's

¹⁵⁴ According to Article 53 of the Ministry Regulation No. 4, op. cit., supra, p. 26, if an aircraft flies over a restricted area in the Kingdom, it will be fired upon immediately without previous warning, and Article 54 also speaks about actions against the aircraft, the crew, and the company which owns the aircraft.

permission (Section 28). But no dual registration of aircraft is permitted. In case of Saudi Arabian aircraft, transfer of its registration should be authorized by the Minister.

The authority for registration of aircraft is vested with the Minister as he may prescribe the procedure for or in relation to the registration and the issue^{nce} of ^{the} certificate of registration of aircraft.¹⁵⁵

Categories for Registration of Aircraft.

As was mentioned above in Chapter 3, the present legal position is that only aircraft owned by Saudi Arabia citizens can be registered in Saudi Arabia. The draft provides for three categories in which aircraft can be registered in Saudi Arabia:

Category (A): Where the aircraft is owned by:

1. A Citizen of Saudi Arabia, or
2. A Company or Corporation established under the laws of Saudi Arabia, and having its principal place of business in Saudi Arabia and the ownership and effective control of which vests in the citizens or the government of Saudi Arabia.

¹⁵⁵ See supra, pp. 51-52.

Category (B): Where the aircraft is owned by a:

- 1.- Person residing in or carrying on business in Saudi Arabia who is not a citizen of Saudi Arabia;
- 2.- Company or Corporation registered elsewhere than in Saudi Arabia and carrying on business in Saudi Arabia;

Category (C): Where the aircraft does not fulfil the requirement for registration in Category (A) or (B) and the Minister is satisfied that it would be in the public interest to register the aircraft.

The Minister may refuse to register an aircraft, if it appears to him to be inexpedient to public interest that such aircraft should be registered. The Minister also may cancel the registration of aircraft under ^{certain} circumstances, i.e. if the ownership is not as shown in the certificate of registration, the registration does not conform with the act or the regulations, or the aircraft is destroyed or permanently withdrawn from use.¹⁵⁶ (Section 32).

Marking.

An aircraft shall not fly in Saudi Arabian territory unless it bears painted thereon or affixed thereto, in the manner required by the law of the country in which it is registered, the nationality and registration marks required by

¹⁵⁶ See supra, pp. 52, 53.

the Law. The nationality and registration mark on aircraft registered in Saudi Arabia shall be in accordance with the regulations made by the Minister (Section 33, para. 1, 2).¹⁵⁷

Licencing of Flight Crew.

Section 35 provides that a person shall not act as a member of the flight crew of an aircraft registered in Saudi Arabia unless he is the holder of an appropriate licence which has been granted or rendered valid or is otherwise authorized in accordance with the regulations made under the act. See the present situation in Chapter III, pp. 55,56,57. In case of foreign aircraft, the flight crew members shall be licenced in accordance with the laws and regulations of the State in which the aircraft is registered.

Certificate of Airworthiness.

Section 36 of the draft applies Article 31 of the Chicago Convention in reference to the Certificate of Airworthiness and the same regulations are applicable at the present time.¹⁵⁸ Therefore, the draft prohibits an aircraft from flying

¹⁵⁷See the present regulations, supra, pp. 51,52.

¹⁵⁸See supra, pp. 56, 57.

in Saudi Arabia, unless the aircraft has either a certificate of airworthiness or a flight permit issued by Saudi Arabian authorities, or a certificate of airworthiness issued under the laws of the country in which the aircraft is registered. The detailed conditions for the issuance and validation of certificates of airworthiness and flight permits shall be in the Ministerial resolutions.

The draft act in Section 37 authorizes the Minister to validate foreign licences, ratings or certificates when they have been issued by the competent authorities in a contracting State, subject to any condition the Minister may impose.

Investigation of Accident.

The Minister is authorized by Section 40 of the draft to make regulations concerning the investigation of any accident:

- a) In or over Saudi Arabia of any aircraft, or
- b) Anywhere, of aircraft registered in Saudi Arabia.

Therefore, Saudi Arabian authorities can investigate any aircraft accident which occurs within the Saudi

Arabian territory and can also investigate an accident concerning a Saudi Aircraft, irrespective of the place at which such an accident occurred.¹⁵⁹ The need for "provision authorizing the investigation of the accident to Saudi Arabian aircraft, irrespective of the place of accident" is obvious, if such an accident takes place in the territory of non-contracting State or over the high seas. Normally, if an accident to a Saudi aircraft takes place in the territory of another State which is signatory to the Chicago Convention, that State will carry out the investigation if the accident is serious enough to fulfil the requirements of Article 26 of the Convention.

The draft gives a general power to the Minister to make regulations, and specifically to make regulations to give effect to the procedures as may be established by the International Civil Aviation Organization (ICAO), i.e., Annex 13 to the Convention. The importance of the powers which have

¹⁵⁹It is in conformity with Article 26 of the Chicago Convention that Saudi Arabian authorities can investigate an aircraft accident that has taken place in Saudi Arabian territory. See supra, pp. 30, 31, 32.

been given to the Minister is to establish or appoint Committees, Courts, or other authorities for investigation of aircraft accidents, which do not exist in the present regulations.

Power of Aircraft Commander.

Section 43 requires obedience to all lawful commands of an aircraft commander given for the purpose of securing safety of aircraft, persons or property or for maintaining good order or discipline on board in the interest of safety, efficiency or regulatory of air navigation.

Also Section 44 prohibits interference with a commander of an aircraft or with any member of the flight crew or tampering with an aircraft or its equipment. It also requires that a person shall not conduct himself in a disorderly manner in an aircraft or commit any act likely to imperil the safety of an aircraft or its passengers or its crew or any other persons or property.

Sections 43, 44 are expected to be supplemented by the regulations issued by the Minister in pursuance of Sub-section 3 of Section 4 of the act (Power to the Minister to make regulation in respect of the powers that may be exercised by the

commander or the members of the crew of an aircraft in relation to persons on board of aircraft, including powers of arrest, restraint and disembarkation.)

The Saudi Arabian Kingdom is a party to the Tokyo Convention 1963, since April 16, 1967.¹⁶⁰ Sections 43, 44 and Sub-Section 3 (5) of Section 4 of the draft should contain the rules of the Convention. The reason why the draft did, was because the draft was prepared before the kingdom became party to the Convention. But under the power given to the Minister in Sub-Section 3 (5) of Section 4, the Minister shall take into consideration the Tokyo Convention's rules.

Applicability of Saudi Arabian Laws and Regulations.

Saudi Arabian laws are applicable to aircraft operating within the Saudi Arabian territory. Section 21 of the draft provides that every aircraft entering into or departing from or while in the Saudi Arabian territory shall comply with the provisions of the act or the regulations made under the act and all other applicable laws and regulations of the Kingdom relating to:

¹⁶⁰See supra, p.92.

- 1.- Admission of aircraft;
- 2.- departure of aircraft;
- 3.- operation, navigation, flight or manoeuvre of aircraft.

At the same time, Section 12 of the draft provides that Saudi aircraft, while operating within the air space of another State, shall comply with the rules and regulations and procedures relating to the flight or manoeuvre of aircraft in force in that State.

The Laws and regulations of Saudi Arabia including the laws and regulations relating to entry, clearance, immigration, passports, customs and quarantine shall be complied with, by, or on behalf of whom^{-soever} is concerned (Section 22).¹⁶¹

Responsibility for Damage.

For the first time in Saudi Arabia's civil aviation laws or regulations, there is a mention of financial compensation to third parties on the service in respect of damage caused by aircraft (Section 51).

¹⁶¹The rules apply Articles 11, 12, 13 of the Chicago Convention 1944. x

The draft makes the owner of an aircraft liable for payment of damages in respect of any material loss or damage caused to any person or property on surface by or through an aircraft. The damage caused to persons or property on surface will give rise to a right for compensation on proof only that damage was caused by aircraft. It is not required that negligence or intention, etc., should be proved and it will be assumed as if the loss or damage was caused by wilful act, neglect or default of the owner of the aircraft. The only real defence open to the owner of the aircraft, under the draft, is that the damage or loss was caused or contributed to by the negligence of the person by whom it was suffered. The loss or damage must take place in the territory of Saudi Arabia. Thus, the aircraft registered in Saudi Arabia causing damage to third parties on the surface in foreign territory will not be liable under the draft act. On the other hand, if such loss or damage takes place in the Saudi Arabian territory, the rules will apply equally to Saudi and non-Saudi aircraft and irrespective of whether the flight is international or national.¹⁶²

¹⁶²Section 51 in general, follows the principle of the Rome Convention on Damage caused by Foreign Aircraft to Third Parties on the Surface, which was adopted in 1952. The Con-

The draft clarifies in Section 51 (3) that no action shall be taken in respect of trespassing or in respect of nuisances, by reason only of the flight of aircraft over

vention contains a system of absolute liability of the (operator) of aircraft for damage caused to third parties on the surface. In return for the acceptance by the operator of this regime of absolute liability along with restricted number of defences. The Convention provides that the operator's liability shall not exceed certain monetary limits calculated in relation to the weight of the aircraft causing the damage. The limits run from 500,000 gold Francs (\$33,168) for aircraft weighing 1,000 Kgs or less to 10,500,000 gold Francs (\$696,518) for aircraft weighing 50,000 Kgs, with a further increase of 100 gold Francs (\$66.3) per Kg for aircraft in excess of 50,000 Kgs. The liability in respect of loss of life or personal injury is not to exceed 500,000 gold Francs (\$33,168) per person killed or injured. The Convention also applies unlimited liability to the operator in certain cases.

The differences between the draft act and the Rome Convention is that the Convention vests the liability on the operator, while the draft act vests the liability on the owner. The stipulation of the Rome Convention is correct, because the operator could be the owner or someone else, as if the aircraft is leased to another airline. Therefore, when the Convention vests the liability on the operator, it bears in mind who is in control of the aircraft at the time that damage occurred. The importance of this distinction is if the damage is caused by a deliberate act or omission of the operator, his servants or agents, with intention to cause damage, the liability, then, is unlimited. That the only defence in the draft available to the owner is in the case where the loss or damage is caused or contributed to by the negligence of the person by whom it is suffered. However, the Rome Convention provides the operator with several either complete or partial defences. Saudi Arabia is not party to the Rome Convention 1952, but with Section 51 of the draft, it is possible to achieve the main objective of the Convention in providing financial protection to the third parties.

any property at the height above the ground which, having regard to wind, weather, and all circumstances, is reasonable, or by reason of the ordinary incident of such flight, as long as the provisions of the act and the regulations or any notices, instructions, orders, and requirement made or given thereunder are complied with. The draft act empowers the Minister to make regulations in relation to limitation of liability.

CHAPTER V

PART 1 - SCHEDULED AIR SERVICES

In 1944, the representative of 52 nations met at Chicago to formulate an international policy of the post-war regulations of International Air Transport. In many respects, the Chicago Conference was highly successful. The Chicago Convention laid the foundation for a commendable degree of international standardisation in operating practices and air-navigation. It also created the International Civil Aviation Organisation (ICAO), now a permanent agency of the United Nations. Nevertheless, in matters concerning the economic regulation of air transport, the Chicago Conference made relatively little progress. There were high hopes when the Conference was convened that it would be possible to agree upon a general system for the exchange of commercial rights which would be multilateral in their application. Conflicts of national interests made this impossible. The basic conflict was between the policies advocated by the United States and the United Kingdom. The airlines of the United States were emerging from the war relatively well equipped and having

acquired an unprecedented amount of experience in trans-ocean operations. The United States, therefore, advocated a policy of maximum "freedom of the air". British commercial air transport was emerging from the war in a weak condition and the idea of free competition with well-prepared American airlines made very little appeal. The policies advocated by the British delegation at Chicago envisaged detailed economic regulation by governments of all aspects of international airline operations; nomination of routes, designation of airlines, control of capacity provided by the airlines of each State, determination of fares and rates, etc. The failure of the Conference to arrive at a multilateral solution to the problems of economic regulation made it necessary for countries which wanted to make arrangements for the operation of air services between their territories to agree to exchange commercial rights by means of bilateral negotiations.¹⁶³

The Chicago Convention itself, in Article 6, leaves to each State complete discretion to permit or not permit a scheduled international air service to be operated into or over its territory.

¹⁶³Wheatcroft, S. "Air Transport Policy", op. cit., supra, note (26), pp. 67-69.

The Convention treats somewhat more liberally aircraft engaged in non-scheduled services. Under Article 5, such aircraft have the right of non-stop transit through foreign air space and the right to make non-traffic stops in foreign territories. But when they carry traffic for remuneration or hire, their privilege to take on or discharge such traffic is subject to "such regulations, conditions or limitation as the State in which the embarkation or discharge takes place considers desirable."

As a means of pursuing the middle course during the Chicago Conference, it was agreed upon to divide the international traffic into so-called "Five Freedoms".¹⁶⁴ Two International Agreements were drawn up at Chicago: The International Air Services Transit Agreement, and The International Air Transport Agreement.¹⁶⁵ The first Agreement found quite a number of signatories. The second Agreement was accepted by relatively few nations and its chief sponsor, the United

¹⁶⁴ For definition of these freedoms, see Article 1, Section 1, of the International Air Transport Agreement, ICAO Doc. 2187 Appendix IV, International Civil Aviation Conference. Final Act and Appendices, Chicago, November 1 - December 7, (1944), pp. 157-159.

¹⁶⁵ See ibid., for the text of these Agreements, pp. 67-75.

States, decided to withdraw from it in 1946.¹⁶⁶ Today, only twelve widely scattered States remain bound by this Agreement, and its role in the legal regime of International Aviation is insignificant.¹⁶⁷

1 - Bilateral Agreements

Most States wished to reserve the right, as laid down in Article 6 of the Chicago Convention, to regulate their relations with other States in air transport matters by means of separate bilateral agreements. At the end of the Chicago Conference, a standard form for bilateral agreements was worked out, the so-called "Chicago Form", which was intended as a guide to States. The provisions of this standard form were very liberal, but were mainly intended to

¹⁶⁶The withdrawal took effect a year later, in July 1947. See Oliver J. Lissitzyn, "Freedom of the Air, Scheduled and non-Scheduled Air Services", The "Freedom of the Air" edited by Edward McWhinney and Martin A. Bradley, (New York, 1968), pp. 90, 103.

¹⁶⁷Bolivia, Costa Rica, El Salvador, Ethiopia, Greece (with reservation), Honduras, Netherland, Liberia, Paraguay, Sweden, Turkey (with reservation). See ICAO Annual Report of the Council to the Assembly for 1966, Doc. 8660, April 1967, pp. 115-117, and see Shawcross and Beaumont.

expedite the revival of International Civil Aviation immediately after the end of the war.¹⁶⁸

In 1946, delegates from the U.K., and U.S.A. met in Bermuda to negotiate bilaterally the exchange of commercial rights between their countries. This Conference proved to be one of the most important events in international aviation history. Compromises were found to resolve the deadlock reached at Chicago, and from Bermuda emerged, not merely a bilateral agreement between the two major air transport nations, but a general philosophy on the way in which the economic regulation of the industry should be achieved.¹⁶⁹

After the Chicago Conference, efforts were made within the framework of (PICAO) and later (ICAO) to draft a generally acceptable multilateral agreement on commercial air transport right. These efforts culminated in a meeting of a special ICAO Commission on this subject at Geneva in November 1947, at which thirty nations were represented and which failed to

¹⁶⁸Wassenbergh, op. cit., supra, note (34), p. 17.

¹⁶⁹Wheatcroft, S., op. cit., supra, note (26), pp. 69-70.

achieve consensus.¹⁷⁰ As at the Chicago Conference, the crucial stumbling block was the problem of the Fifth Freedom Traffic.

The European Civil Aviation Conference (ECAC) in its second session at Madrid, came to the conclusion that "the present divergence of view on method of regulating capacity and allocating routes rendered impracticable any immediate attempts to adopt a multilateral agreement". The Conference adopted at the third session in 1958 a set of standard clauses for bilateral agreements which were recommended to its members.¹⁷¹

Forms of the Agreements.

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

¹⁷⁰ ICAO Doc. 5230 A2-EC/10, 1948, "Record of the Commission on Multilateral Agreement on Commercial Rights in International Air Transport."

¹⁷¹ ICAO Doc. 7977 ECAC/3-1 "European Civil Aviation Conference" third Session [Strasbourg 9-20 March 1959] Record of the Session, Vol. I Report p. 33.

- 1) Agreements without capacity clause in which the airlines of both contracting parties are entitled to provide as much capacity as they desire over the specified routes indicated in a respective agreement;
- 2) Agreements with Bermuda capacity clauses;
- 3) Agreements with predetermination-type capacity clauses;
- 4) Agreements with capacity clauses which are neither Bermuda nor the predetermination-type.¹⁷²

International air transport is not completely based on a special form of agreement which is to be called "bilateral agreement". Many airlines operate international scheduled services to and from different countries without bilateral agreement.¹⁷³ These operations are based on special permits issued by the respective aeronautical authorities of

¹⁷²"Bilateral Agreements", Yearbook of Air and Space Law (1965), pp. 184-187.

¹⁷³Iran has no bilateral agreements with Iraq, Kuwait, Syria, Jordan and Saudi Arabia, but their airlines have commercial flights to Iran and Iranian carrier also operates international air services to some of these countries. See Forooton, M., "An Analytical Study of Iran's Bilateral Air Agreements", a thesis submitted to the Faculty of Graduate Studies and Research, McGill University (Montreal 1970), p. 47.

two countries. Usually, these operations are restricted only to the third and fourth freedoms.

Scheduled International Air Services started into and through Saudi Arabia in 1947.¹⁷⁴ All of them operated under special authorization by the government of Saudi Arabia. This authorization was given to foreign operators under informal understanding between Saudi Arabia and the State of particular operators.

Since aviation commenced in Saudi Arabia, it has been under the control of the Ministry of Defence and Aviation, which has power of control over all national and foreign civil air transport operating within Saudi Arabian territory. And since 1952, Civil Aviation has been controlled by the Royal Decree No. 17/2/33/3481 dated 24/9/1372 (June 8, 1953) and the Ministry's regulations issued pursuant to it (see the regulations in pp. (26) above). According to Article 2 of the Royal Decree and Article 1 of the Ministry's regulation No. 3 (See page (26) above).¹⁷⁵ "No aircraft is

¹⁷⁴The writer's knowledge.

¹⁷⁵See the text of Article 1 of the Royal Decree in supra p. 43, and the ~~text~~ of the Ministry's regulation in "Air Laws and Treaties of the World", op. cit., supra, note (41), pp. 2190-2193.

allowed to fly over or land in Saudi Arabian territory unless it has obtained permission and is in accordance with the terms of the permission or unless such permission is granted under special agreement or international treaty to the government is bound.

Article 21 of the Ministry's regulation above vested the authority to permit Scheduled International Air Services only to the Minister of Defence and Aviation. The Minister may give consent subject to such conditions as it prescribes, or may withdraw his consent or suspend it for a limited period of time, if he believes it to be necessary for the public interest.¹⁷⁶ The above regulation did not define Scheduled International Air Services. In 1952, the ICAO Council developed a definition which reads as follows:

A scheduled international air service is a series of flight that possesses all the following characteristics:

- a) it passes through the air space over the territory of more than one State;
- b) it is performed by aircraft for the transport of passengers, mail, or cargo for remuneration in such a manner that each

¹⁷⁶ Article 14 of the Regulation No. 3, supra p. 26.

flight is open to use by members of the public;

- c) it is operated, so as to serve traffic between the same two or more points, either:
 - 1) in accordance to a published time-table, or
 - 2) with flights so regular or frequent that they constitute a recognizably systematic series.¹⁷⁷

The temporary permission for Scheduled International Service is required, as stated in Article 2 of the Royal Decree above and Article 1 of the Ministry's regulation, only if there is no bilateral agreement between Saudi Arabia and the country of the air carrier concerned. Saudi Arabia has entered into bilateral negotiations with many States and concluded Bilateral Air Transport Agreements with many Asian, African and European countries.

The existing Saudi Arabian bilateral agreements fall into the following classes:

¹⁷⁷ICAO Doc. 7278-C841 Definition of a Scheduled International Air Service (Montreal, May 1952). For more details on the subject, see Bin Cheng, "Law of International Air Transport" (London 1962) pp. 173-182. See also J.G. Gazdik, "Are Inclusive Tour Charters Scheduled or non-Scheduled Services?", "Freedom of the Air," op. cit., supra, note (166) pp. 106-122.

- 1) Agreements without capacity clauses;¹⁷⁸
- 2) Agreements with Bermuda-type capacity clauses;¹⁷⁹
- 3) Agreements with predetermination-type capacity clauses.¹⁸⁰

The Saudi Arabian bilateral agreements, like any other bilateral agreement, usually consist of:

- 1) A title, which indicates the two contracting parties and the subject of the agreement;
- 2) A preamble, which indicates the willingness of both contracting parties to establish air transport services between and beyond their respective territories;
- 3) A body, which contains a number of provisions regulating the exercise of the right granted, the designation of the airlines which are to be allowed to make use of the rights acquired under the agreement; and the granting of an operating permit to such airlines by each party,^{the body} also contains

¹⁷⁸ The agreement with Lebanon [1947]. The agreement has been amended. Agreement with Jordan.

¹⁷⁹ Switzerland, West Germany, Pakistan, Turkey, U.K.

¹⁸⁰ Egypt, Iraq.

provisions regarding the use of airfields, the exemption from tax on gasoline and other taxes, the applicability of national laws and regulations, rates, the submission of carriage statistics, amendment of the agreement or of the Annex, submission of dispute to arbitration, duration of the agreement, which is usually unlimited, subject, however, to one year's notice of termination. An important provision is that concerning "substantial ownership and effective control" of the designated airlines, which must be vested in nationals of the designating Party;

- 4) An Annex, or Schedule, which contains the rights granted and the route agreed upon to be flown over by the designated airlines of each party.

The agreements were concluded mostly in Arabic and English,¹⁸¹ or Arabic and the official language of the State of the other contracting party. In this case, an English text is usually added for reference in the event of dispute on interpretation. It is usually provided that the three texts are equally authentic, or in some cases, that the English text prevail.¹⁸² Agreements between Arab States are concluded in the Arabic language only.¹⁸³

¹⁸¹Example, Pakistan, U.K.

¹⁸²Turkey, West Germany.

¹⁸³Turkey, Jordan, Iraq.

It may be useful to review some of the more important provisions dealt with in these agreements.

Operating Rights.

The basic system of exchanging Air Transport Traffic Rights is through provisions embodied in the bilateral agreements. These agreements are the thread that make the fabric of the State's International Aviation policy. The rights exchanged in these agreements should be designed both to meet the need of the public for air transportation and assure the national airlines the opportunity to achieve benefits no less than those available to the foreign airlines. The benefits to the people of one nation are not solely derived from the exercise of rights by its own carriers. Benefits also flow from the services made available by carriers of other nations.¹⁸⁴

¹⁸⁴Whitney, Gilliland, "Bilateral Agreements", The Freedom of the Air", op. cit., supra, note (166), p. 140.

The principle of reciprocity is expressly incorporated in most Saudi Arabian bilateral agreements and it is intended that the rights granted to both sides are to be of comparable value and the designated airlines of both contracting parties have the right to operate the agreed services on a basis of fair and equal opportunity. In a further article or paragraph, it is provided that the interest of the airline of other contracting party shall be taken into consideration so as not to affect unduly the services which the latter provides on all or part of the route. Article 2 of Saudi bilateral agreement with Turkey reads as follows:

Each contracting party grants to other contracting party the rights specified in the present Agreement for the purpose of establishing Scheduled International Air Services on the routes specified in the Annex to the present Agreement. Such Services and routes are hereafter called "the agreed Services" and "the Specified routes" respectively.

The principle of reciprocity does not mean that the rights granted by both parties should be the same. One State may permit the other State's air carriers to fly to and over its territory, while its own air carrier(s) may merely receive the privilege to fly to another State, but not beyond,¹⁸⁵ or

¹⁸⁵ Oliver J. Lissitzyn, op. cit., supra, note (21), p. 379.

beyond but not the same value of routes. Experience with bilateral agreements reveals that any bilateral agreement between a small country and big power country offers reciprocal rights "on paper only".¹⁸⁶

In the bilateral air transport agreements, the rights granted are:

Transit Rights: The main purpose of International Air Transit Agreement is to enable airlines of the contracting parties to operate Scheduled International Air Services across the territory of other parties, with or without landing for non-traffic purposes.¹⁸⁷ The bilateral air agreements concluded prior to the Chicago Conference contained some provisions indicating that the establishment and operation of International Scheduled Air Services into or across the territory of another State, with or without landing for non-traffic purposes, required the prior consent of the State over

¹⁸⁶ICAO Doc. 4510 AL-EC/72 Discussion of Commission No. 2 of the First Assembly, Vol. I, Development of Multilateral Transport (Montreal, May 1947), p. 14.

¹⁸⁷The Air Transport Agreement which is generally known as the "Two Freedoms" Agreement is in fact second only to the Chicago Convention itself, it is the most widely accepted agreement which emerged out of the Chicago Conference. See op. cit., supra, note (174).

whose territory the flights were to take place.¹⁸⁸ "The Chicago Standard Form" provided that the contracting parties grant the rights specified in the annex hereto necessary for establishing the international air routes and services therein described . . ." The rights specified in the Annex are rights of transit, non-traffic stop and of commercial entry as the case requires. Therefore, after the Chicago Conference, it has become a customary rule to include a general statement on the exchange of transit rights in bilateral agreements, even if both sides are parties to the transit agreements.

Saudi Arabian's bilateral agreements have followed the same procedure. The first two freedoms are granted in the same way as traffic rights are granted. Article 2 of the bilateral agreement with Pakistan, Turkey, provides that:¹⁸⁹

Each contracting party grant to the other contracting party the rights:

1. to fly without landing across the territory of the other contracting party;
2. to make stops in the said territory for non-traffic purposes.

¹⁸⁸ P.P. Heller, "Grant and Exercise of Transit Rights", Master Thesis (1954), pp. 50-51.

¹⁸⁹ Article I of the bilateral agreement with Switzerland, Article 2 of Germany agreement and U.K.'s agreement with Saudi Arabia.

Traffic Rights: The traffic rights are commercial rights consisting of the rights to carry third, fourth and fifth freedom traffic. Article I Section I of the International Air Transport Agreement defines these freedoms as follows:

3. The privilege to put down passengers, mail and cargo, taken on in the territory of the State whose nationality the aircraft possesses.
4. The privilege to take on passengers, mail and cargo destined for the territory of the State whose nationality the aircraft possesses.
5. The privilege to take on passengers, mail and cargo destined for the territory of any other contracting State and the privilege to put down passengers, mail and cargo coming from any such territory.¹⁹⁰

The contracting parties considered the third and fourth freedom traffic as the "primary objective of the service".¹⁹¹ The fifth freedom traffic is considered "secondary" "complementary" traffic. But States cannot confine themselves simply to third and fourth freedom traffic, since this

¹⁹⁰ICAO Doc. 2187 International Civil Aviation Conference, op. cit., supra, note (164), p. 7.

¹⁹¹Ralph Azzi, "Negotiation of Bilateral Air Agreement". Lecture given to the students of Air and Space Law, McGill University, 1967.

makes it impossible for a civil airline to operate economically and profitably, particularly over long distances (trunk services, or services long-carriers), with large aircraft, States are, therefore, dependent on the traffic between third countries, over which they can exercise no control. This dependence on fifth freedom traffic applies to all aviation countries, a State can offer its third and fourth freedom traffic to States for whom such traffic is fifth freedom traffic, in exchange for these States' third and fourth freedom traffic, which to the first State is fifth freedom traffic. Such transaction can, of course, only be effective if both parties also enter into a similar transaction with States situated at the other end of these routes.¹⁹² There are no problems related to the granting of third and fourth freedoms and the exercise of these rights be designated to airline of the contracting parties, because these rights follow the pattern of normal trade between the countries.

The Standard of the bilateral agreements of Saudi Arabia usually makes reference to the Annex of the agreement

¹⁹²Wassenbergh, op. cit., supra, note (34), pp. 23, 24, 25.

in connection with the granting rights.¹⁹³ Article 2 of the agreement with the Federal Republic of Germany stated:

- (1) Each contracting party shall grant to the other contracting party for the purpose of operating International Air Services by designated airline over the route specified in accordance with para. (2) of this Article (the first two freedoms)

The right to land in ~~its~~ territory at the points named on the routes specified in accordance with para. (2) of this Article, in order to take on or discharge passengers, mail and/or cargo on a commercial basis.

- (2) The routes over which the designated airlines of the two contracting parties will be authorized to operate International Air Services shall be specified in a route scheduled to be agreed upon in an exchange of notes.

The agreement grants third, fourth and fifth freedoms to the designated airlines on the basis of reciprocity.

Cabotage: Another type of traffic right is called "cabotage" in which the right to carry traffic from one point in the territory of a State to another point in the same State is granted to the designated airlines of the other party in a bilateral agreement. Under the provision of Article 7 of the

¹⁹³Agreements with Jordan, U.A.R., Turkey, Pakistan, Iraq, Switzerland and U.K.

Chicago Convention, the contracting parties reserve their right to deny cabotage rights to other contracting States and undertake not to seek from or grant to any other State such privileges on an exclusive basis. Many countries including Saudi Arabia have incorporated in their aviation laws a prohibition on the grant of cabotage rights to any other airline except their own national airlines. Article (4) of the Ministry Regulation No. 3 dated 23/6/1377 A.H. (1958) provides that the air transportation is the privilege of Saudi Arabian Airlines.¹⁹⁴ Therefore, all Saudi bilateral agreements contain, in various forms, provisions excluding cabotage rights, for example, the agreement with Turkey provides that:

. . . nothing in paragraph (1) (the granted rights) of this Article shall be deemed to confer on the airlines of one contracting party the privilege of taking up, in the territory of other contracting party, passengers, cargo and mail carried for remuneration or hire and destined for another point in the territory of that other contracting party.

¹⁹⁴ See supra, pp. 44, 45, 84.

Specification of Routes.

Policies governing the specification of the routes to be operated by the designated airlines exercise a more profound influence than any other factor on the value of the transit and traffic rights granted under an agreement. The principle of the reciprocity and self-protection in bilateral agreements may require long negotiations between contracting States on the specification of routes. Every State tries to gain as much freedom as possible for its carrier in order to provide flexibility of operation and full enjoyment of traffic rights. On the other hand, ever increasing competition among international carriers requires some restrictive protection of national airlines, and the specification of routes in bilateral agreements has become a means of regulating this competition. Contracting parties to a bilateral agreement enjoy control over a specified route not only in respect of those points which are within their respective territories, but also every single point along that route whether or not within their own territories. These points must be those specified in the route schedules and may not be varied, except in accordance with the terms of the agreements.¹⁹⁵

¹⁹⁵Bin Cheng, op. cit., supra, note (177), p. 387.

A fair exchange of routes in any bilateral agreements has to be based upon the following steps. First of all, the market potential of the route should be evaluated. Secondly, the proportion of this market which can be attributed to the carriers of the two contracting parties should be determined, and thirdly, the share of each party from the point of passenger and cargo has to be calculated.¹⁹⁶

All existing Saudi Arabian agreements determine in their annexes the routes to be operated by the designated airline of each party. The agreements follow different modes of specifying routes. In some agreements, it is provided that routes be extended beyond the territory of other parties, while in other, specified points are just those located in the territory of the two contracting parties. The exploitation of intermediate points between the two parties is a general rule accepted almost in all Saudi agreements. However, in some agreements, traffic points including intermediate and points beyond are specified in the annex in the agreement.

¹⁹⁶Frank Lay, "Bilateral Air Transport Agreements," Some Problems of Finding a Fair Route Exchange" "Freedom of the Air", op. cit., supra, note (166), p. 180.

For example, in the agreement with Switzerland concluded in 1962, all traffic points on the specified route are individually included. The scheduled annexes to the agreement provided that the routes to be operated by the designated airline of Switzerland are:

Points in Switzerland, VIE, ATH, IST, or Ankara or Cyprus, points in Saudi Arabia and beyond to Karachi, Calcutta, Kolombo, or Rangon, etc... Route to be operated by designated airline of Saudi Arabia are: points in Saudi Arabia, KWI, Abadan, Basra or Baghdad, Amman, Damascus, BEI, Tribuly, Ankara or IST, ATH, VIE, point in Switzerland and beyond Frankfort, Amsterdam, etc...

In this agreement, it is provided that both carriers may on any or all flights omit any points.

In other agreements, considerable freedom is given to both sides by referring to flexible phrases like "beyond points". Agreement with West Germany, the scheduled annexed to the agreement provides that routes to be operated by designated airline of Saudi Arabia are:

Cairo, BIE, VIE, ZRH, or GUA, FRA, and points beyond the route to be operated by airlines designated by Germany are: ZRH, ROM, ATH, IST, CAI, KWI, to Jeddah or DHA and points beyond.

Designation of Airlines.

A successful negotiation of a bilateral air transport agreement does not of itself necessarily permit the air carrier of both parties to exercise their commercial rights immediately after conclusion of the agreement. In general, all bilateral air service agreements require the contracting parties, prior to the inauguration of the agreed services, to designate the airline(s) that are to take the advantage of the rights obtained under the agreement.¹⁹⁷

The aeronautical authorities of each party have to be satisfied that the designated air carriers are qualified to fulfill the conditions prescribed under the laws and regulations of that party, which are normally applied to the operation of international air services, and the air carriers are competent enough to operate such services. In Saudi Arabian's practice, in Article 3 of the agreement with U.K., "each contracting party shall have the right to designate in writing one or more airline . . ." and "on receipt of such designation, the other party shall, subject to the provisions of paras. (3)

¹⁹⁷Bin Cheng, op. cit., supra, note (177), pp. 359-363.

and (4) of this article (qualification of airline and substantial ownership and effective control), without delay grant to the airline(s) designated, the appropriate operating authorisation.

Para. (2) of Article 3 of the agreement with Pakistan stated that "before being authorized to inaugurate the agreed air service . . . the airline may, however, be required to satisfy the aeronautical authorities of other contracting party that it is qualified to fulfill the conditions prescribed under the laws and regulations normally applied by those authorities to the operation of international scheduled air services."¹⁹⁸

Substantial Ownership and Effective Control.

One of the most important reservations in Bilateral Air Transport Agreements, is that substantial ownership and effective control of the designated airline(s) must be vested in nationals of the designated party. The other party is in a position to

¹⁹⁸The same provision in the agreements with Turkey, Switzerland, Germany.

entitled to block the exercise of rights granted if this proves not to be the case.¹⁹⁹

This clause was introduced for reasons of economic protection, to prevent indirect operation by third States not a party to a bilateral agreement. It also prevents airlines and investors from circumventing national laws by acquiring a substantial share in a foreign airline, as well as prohibiting a single State from acquiring a far greater share of international traffic by holding substantial interests in foreign carriers.²⁰⁰

The Saudi air navigation regulations applied in the present time do not contain provisions relating to this concept, but are integrated in the draft of the Civil Aviation Law,²⁰¹ and are essential in all Saudi bilateral air transport agreements. For instance, Article 4 of the agreement

¹⁹⁹Wassenbergh, op. cit., supra, note (34), p. 62.

²⁰⁰The requirement of substantial ownership and effective control is normally acquired with a minimum of 51% of the shares in airline, although even say 30% could be called a "substantial" participation, depending partly on what powers are accorded under the airline's by-laws. Ibid., p. 62.

²⁰¹See supra, p. 107.

with Germany reads as follows:

Each contracting party may withhold the exercise of the rights provided for in Article 2 of the present agreement from any airline designated by the other contracting party, if such airline is not able to prove upon request that substantial ownership and effective control of such airline are vested in nationals or corporations of other contracting party or in that State itself.²⁰²

In the agreement with U.K.:

Each party shall have the right to "refuse" to accept the designation of airline . . . in any case where the said contracting party is not satisfied that substantial ownership and effective control of that airline are vested in the contracting parties designated the airline or in its national.

The agreement with Iraq is the only agreement concluded by Iraq which expressly provides that the substantial ownership be not less than 51 per cent.²⁰³

²⁰²See Article 8 of the Agreement with Switzerland.

²⁰³Al-Jassani, Abdul Rassaq, "Iraq Air Transport Bilateral Agreements, A Comparative Legal Study." A thesis submitted to the Faculty of Graduate Studies and Research, McGill University (Montreal, 1971), p. 202.

Capacity.

The question of capacity and frequency has remained a source of difficulties, since the international community failed during the Chicago Conference, and thereafter, to reach an acceptable multilateral agreement on the exchange of commercial rights. The Chicago Convention of 1944 endorsed, in Article 6, the bilateral approach to such exchange.²⁰⁴

The Bermuda principles arose out of a compromise between the protectionist theory of the United Kingdom and the open competition policy of the United States. No issue was, however, made of predetermining the capacity of the total traffic carried. Instead, the airlines were free to operate services at the frequency and capacity that they considered justified, provided they complied with the general provisions of the agreement, such as "Fair and equal opportunities for the carriers of the two nations to operate on any route", etc. It was also recognized that the operation of trunk services necessitated carriers having rights to

²⁰⁴, Francis Deak, "The Balance Sheet of Bilateralism", "The Freedom of the Air", op. cit., supra, note (166), p. 159.

carry traffic on intermediate sectors. This right was allowed to them only if the total capacity operated was reasonably related to the end-to-end potential of the route. The Bermuda system also provided for an "ex-post-facto" review of capacity if one party felt that its interests were unduly affected by the airline capacity of the other.

The Bilateral Agreements concluded by Saudi Arabia since 1962 usually contain the Bermuda capacity principles, as stated in paragraphs (3), (4), (5), and (6) of the final act of the Bermuda Conference. The following principles have found places in the agreements with Pakistan, West Germany, Turkey, and the United Kingdom: "There shall be fair and equal opportunity for the airlines of both contracting parties"; "the airlines of each contracting party shall take into account the interests of the airlines of the other contracting party so as not to affect unduly the services which the latter provides on the whole or part of the same routes"; "the airlines shall have as their primary objective the provisions, at reasonable load factor, of capacity adequate to carry the current and reasonably anticipated requirements for the carriage of passengers, cargo, mail, originating from or destined for the territory of contracting party which had designated the airline".

Three principles regarding capacity were agreed on to govern the right to carry "Fill up" a fifth freedom traffic in the agreements before mentioned, namely: capacity should be related to:

1. Traffic requirements to and from the territory of the contracting party, which has designated the airline;
2. Traffic requirements of the area through which the airline passes, after taking account of other transport services established by the airlines of the States comprising the area; and
3. The requirements of through airline operation.

2 - Pooling Agreements

"The most important co-operative efforts among airlines in rationalising their air services is pooling."²⁰⁵ But there is no subject which raises as much suspicion as pooling. The critics assume automatically that it operates to the disadvantage of the customer and deprives him of competition that he feels sure would serve him better.²⁰⁶

A majority of the early pools were purely inter-carrier deals, but in recent years, governments have taken an increasing interest in the economic affairs of the "chosen instrument airlines" which they have been protecting and supporting.²⁰⁷ Now, several bilateral agreements on civil aviation contain "pool clauses", thus, obliging the "chosen instruments" of the parties to co-ordinate with services

²⁰⁵Bin Cheng, "Law of International Air Transport", op. cit., supra, note (177), pp. 278, 279.

²⁰⁶British Air Transport in the Seventies: Report of the Committee of Inquiry into Civil Air Transport. London (1969), p. 94.

²⁰⁷Wager, W.H., "International Airline Collaboration in Traffic, Pools, Rates, Fixing and Joint Management Agreements", 18, J.A.L.C. (1951), pp. 193, 195.

and to share the revenues derived from the route concerned between them.²⁰⁸

The pooling agreement has been defined as: "An agreement between air carriers for the operation between them of one service or one group of services, including the allocation of revenue derived from such operation."²⁰⁹

A rider to the above definition may be added in the sense that a pool may be an expenditure and revenue pool or simply a revenue pool.²¹⁰ A pool may be established to include all the services operated by its participants, or some, or part of these services. It may be in respect of all or part of, the expenditure incurred by, and/or revenue derived from the pooled services, e.g. up to a given percentage.²¹¹

²⁰⁸Wheatcroft, S., "The Economics of European Air Transport", London (1956). Example of bilateral agreement in Europe, p. 242.

²⁰⁹Lemoine, "Les pools dans l'aviation commerciale", Espaces, April 1946, p. 15 and Bin Cheng, supra note (177), p. 279 and ICAO Circular 28-AT/4 (1952), p. 87.

²¹⁰European pools are almost invariably revenue pools rather than expenditure and revenue pools. Wheatcroft, op. cit., supra, note (208), p. 252 and see infra p

²¹¹Bin Cheng, op. cit., supra note (177), p. 280.

Pooling is a fairly flexible instrument, especially on short-haul parallel services between two traffic centers. The participant to a pool, in order to avoid concentration of services during the peak hours and peak days, may arrange their timetable in such a way as to provide an equitable distribution of the available traffic and reasonable services to the public at all times.²¹² Pooling may also be an instrument used by weaker airlines to ensure themselves of a share of the traffic on a given route,²¹³ or may be the price for buying freedom on routes which otherwise have been restricted by a government action. The restrictions on capacity imposed by governments are usually intended to protect the interests of the national airline from foreign competition.²¹⁴

It must always be borne in mind that the pool agreement between the airlines are often closely related to the national agreements between the countries. Thus, when Air

²¹² ICAO Circular, supra note (209), referred to Sabena, Swissair and Aliflott Riunite pool.

²¹³ Bin Cheng, op. cit., supra, note (177), p. 280.

²¹⁴ Wheatcroft, S., op. cit., supra, note (208), p. 252.

India joined the B.O.A.C.-Quantas partnership, the Indian authorities, under the government Bilateral Air Services agreement, became far more expansive to everyone's advantage. In the case of New Zealand, the partnership arrangements are actually the basis for permission for B.O.A.C.'s and ANZ's services, the rights for which are not conferred through a formal agreement between the two Governments. In these cases, government policy has actually been expressed through the partnerships. In some cases, pooling is mandatory, for instance, Air Services Agreements between U.K./France for routes between the U.K. and Metropolitan France, and U.K./USSR, laid down that the designated carriers under the agreements will operate in pools. Some times the pooling agreement is a protection to one party, as the commercial agreements between BEA and Eastern Bloc; it is not easy for BEA to seek business in those countries.²¹⁵

To a large extent, pooling reintroduces capacity pre-determination, where the bilateral agreement provides none, through a back-door on a non-governmental but interline level.

²¹⁵ British Air Transport in the Seventies, op. cit., supra, note (206), p. 95.

Since such airline pooling agreements cannot be concluded without the blessing or at least the acquiescence of the government concerned, the difference between these two types of capacity predetermination become relatively insignificant.²¹⁶

The revenue derived from pools may be divided among the participants according to various formulae. It is sometimes agreed that certain operating costs, which fall more heavily on one partner than another, should be paid for out of the pool before it is divided. In other pools, there is an agreement that a certain percentage of revenue be retained by the carrying airline as an "incentive". Other special revenue, such as mail payment, may be excluded from the pool.

Where all the participants are using the same type of aircraft along exactly the same route, the problem is relatively simple. Otherwise, a different corrective may have to be adopted, such as when aircraft of different capacities are used, the system of "aircraft coefficients"²¹⁷ or that of

²¹⁶Bin Cheng, op. cit., supra note (177), pp. 281, 433.

²¹⁷System of Aircraft Coefficient: each type of aircraft brought into service, in the route in question, is given a co-efficient based on its capacity: the mileage performed by each type is multiplied by this co-efficient to obtain the

"ceilings"²¹⁸ to the revenue or capacity pooled.

There is a possibility of difficulties with respect to the division of the revenues. If, for instance, one of the old established airlines with a good safety record enters into a pool agreement with a new and inexperienced company, the public might quite well favour the former with the result that this airline carries most of the passengers along the common route, and the latter flies it with nearly^{an} empty aircraft. In such a case, the former airline will hardly be inclined to share the revenue on a fifty-fifty basis.²¹⁹

sharing ratio. In the case of parallel routes operated by the participants, this sharing ratio may be obtained with less difficulty by multiplying the capacity coefficient by the number of services performed by each type of aircraft. ICAO Circular, supra note (209), pp. 89-90.

²¹⁸ System of ceilings. A "ceiling" is established for the traffic the revenue of which is to be pooled. This ceiling is equal to payload which can be carried on each flight, by the lowest capacity aircraft flown on the route. The revenue is then allocated in proportion to the mileage performed by each airline. The revenue derived from traffic over and above fixed ceiling is retained by the airline which has carried that traffic. Ibid., pp. 90-91.

²¹⁹ Verploeg, E.A.G., "Road Towards an European Common Air Market". A thesis submitted to the Faculty of Graduate Studies and Research, McGill University (Montreal, 1963), p. 122.

Pooling does not eliminate competition, but merely reduces it among the participants. Limited competition is usually preserved by excluding from the pool revenue obtained beyond a predetermined load factor, such revenue, or at least a portion thereof, being retained by the operation carrier.²²⁰

In the report of the Committee of the Inquiry into Civil Air Transport in U.K., the Committee said:

The proponents of airline pooling also assert that the existence of a revenue pool between airlines does not eliminate competition completely, for the details of the pool are reviewed at fairly frequent intervals. BEA has given information over the period since 1960. In five cases, there have been changes stemming from twice-yearly negotiations between the partners and in another five cases, there have been limitations set to pool payments which have been imposed by the major partner

²²⁰ Articles 4, 5 of specimen pooling agreement between ABA, Air France, KLM, read as follows:

Article 4.- Revenue from the carriage of local or transit passengers up to a maximum of 12 passengers per aircraft shall be paid into the pool. Baggage and cargo revenue shall be paid into the pool/toto. Unless the contracting parties agree otherwise, payment into the pool of revenue from G-I passengers shall be at the full rate. G-II passengers and company stores shall come under the pooling agreement.

Article 5.- In case the number of passengers carried, on any route segment, or over the preceding Article, the revenue from the passengers in excess (passengers at full and reduced fares and G-I passengers included in the pooling arrangement) shall be retained by the operating company in respect of the distance flown at local rates less 20 per cent.

/in

when the other carrier has fallen behind. Despite these examples, it would be wrong to think of there being a fully competitive state brought about by frequent and substantial adjustment to the sharing arrangement.²²¹

In Europe, the general basis of pooling agreement is that, on the routes which the airlines operated in parallel, they agree upon the capacity which would be operated by each partner to avoid excess capacity being offered; each airline bears the cost of its own operations: all revenues are paid into a common pool and are then shared out on a predetermined basis. The basis of this share out is usually the percentage capacity operated by each partner. The operating agreement is, therefore, the crux of the pool negotiations.²²²

The United States has determined that any policy or arbitrary restriction of capacity, division of markets by carrier agreements, encouraging high rates or curtailing ser-

²²¹British Air Transport in the Seventies, op. cit., supra, note (206), p. 96.

²²²Wheatcroft, S., op. cit., supra, note (208), p. 252. Most of the pool agreements in which the United Kingdom Airlines are involved, besides sharing of capacity, also cover joint market research, joint tariff studies, joint scheduled planning and some joint publicity and sales promotion. British Air Transport in the Seventies, op. cit., supra, note (206), p. 95.

vices for which a demand exists would be harmful to the United States national interest and contrary to its basic policy of competitive enterprise.²²³ The area of air carrier pooling is specifically treated in the policy statement. President Kennedy's policy 1963 is as follows:

4 - Air Carrier Pooling. It is a common practice for foreign carrier to form combinations or pools which divide revenues or traffic on a particular route or market. Our dealing with foreign carrier pools must be on a case-by-case basis. We must not encourage pools which substantially reduce competition to the detriment of the system we seek. In considering the possible effect of such foreign pools, their size or market power, and their intentions or attitudes toward a basically competitive system are clearly relevant factors.

There are times when it is suggested that U.S. carriers participate in such pools. We believe such arrangements will generally impair the benefits that competition can bring to the system, and it will be difficult to limit the arrangements, once this practice has begun. Therefore, U.S. carriers will be permitted to participate in them only when national interest requires.²²⁴

²²³ Burton, A. Landy., op. cit., supra, note (32), p. 577.

²²⁴ The Federal Aviation Act of 1958 Section 412 requires every air carrier to file copies and memorandums of all agreements for pooling or apportioning earning, losses, traffic, services or equipment, or relating to rates, classification, safety, economy and efficiency of operation, or for controlling, regulating or eliminating competition, regulating steps, or for other "cooperative working arrangement". The Board will then approve or disapprove such agreements, depending upon

The CAB has taken a position on most of the common forms of co-operative agreements between airlines. Some conclusions can be derived from the decision and policy statements. "Pooling arrangements involving U.S. air carrier and foreign carrier have been considered not to be in the national interest of the United States." The same holds true for pooling between foreign air carriers on the basic ground that such agreements permit a combination of carriers to render services which they could not undertake singly. Foreign pools which substantially reduce competition to the detriment of a free competition system sought by the United States have not been encouraged.²²⁵

Even when co-operative agreements have been approved, the CAB has customarily imposed conditions such as:

- 1) Limiting duration of the agreements;
- 2) Filing of agreements and amendments thereto;
- 3) Filing of statistical information;
- 4) Limiting general agency activities;

their effect on public interest and any violation of the act." Ibid., p. 578.

²²⁵ Ibid., p. 587.

duplication in the traffic and operational staff, provide at each of the stations covered by the pool, and from the combination of the efforts of the airlines in matters of sales promotion and advertising.²²⁹

3) The cooperation between the airlines on the schedules to be operated guarantees the travelling public a more adequate spread of services throughout the day than it would be possible under competitive conditions. In competitive conditions, each of the airlines will endeavour to schedule its services at the peak traffic times and that the result is likely to be a parallel operation of flights at certain times.

investment that would be required by each airline acting independently.

Under an agreement which provides for an allocation of routes, if it is decided that a certain route is to be operated by one airline for a specific period, and then by the other, or one of the other airlines for another period, then each airline in turn will be able to use the equipment, thus released for other purposes, which have been taken into consideration in determining the periods during which it does not operate the service. See ICAO Circular 28-AT/4, op. cit., supra, note (209), pp. 161, 162.

²²⁹Wheatcroft, S., where he believes that as far as sales and advertising is concerned, the ability of pooling to reduce costs in Europe is extremely doubtful. Op. cit., supra, note (208), p. 263.

4) Pooling agreements in certain circumstances, enable the airlines to extend their markets. This aspect was listed as an advantage in the study of European pools made by the "Institut Français du Transport Aérien" in 1952, and the following argument was advanced:

A pooling agreement may, in certain cases, enable airlines to gain access or to have access more readily and more effectively, to national or regional markets which would remain more or less closed to them under a purely competitive system. The pool may thus be the key to a door which, for many reasons, may otherwise remain locked.

Experience has shown on several occasions that in the case of countries which are, in some respects, very unequal - for instance in traffic potential - the pool is the only practical form of operation, it has even been imposed by the party which would otherwise be at a disadvantage. The wealthier country may have its traffic, but the poorer country remains master of air space over its territory, and will naturally not permit access to it without compensation.²³⁰

It has been said that "the economic, as distinct from the political, arguments in support of pooling really imply that, without it, economies of scale will be lost, in other words, that there is not really room for full competition between two or more airlines without genuine economic cost

²³⁰ ICAO Circular 28-AT/4 supra, note (209), p. 163.

penalties. From what we have seen, it may well be true that, in some cases, significant scale economies would be lost without pooling. For example, we believe this to be true of the B.O.A.C./Air India/Quantas pool."²³¹

In the event of any dispute concerning the interpretation or application of the arrangement, or concerning any right or obligations based on or relating to the arrangement, it will be a most reasonable solution that such disputes shall be referred to and finally settled by arbitration in accordance with the procedure contained in the IATA resolution.²³²

The pooling agreement derives its institutional basis from the Chicago Convention. Chapter XVI of the Convention does not only expressly permit pooling, but also encourages joint operation and pooled international air services.²³³

In Saudi Arabia, there are many agreements concluded between the Saudi Arabian Airlines Corporation (SDI), and other

²³¹British Air Transport in the Seventies, supra, note (206), p. 97.

²³²"Form of Interline Traffic Agreements," IATA Resolution No. (850).

²³³See Chicago Convention, Articles 77, 78, 79.

airlines concerning co-operation between themselves in various areas of mutual concern, such as agency agreements, handling, sharing capacity during the Haj Season (pilgrim) and pooling.²³⁴

In the pooling aspect, there is a pooling agreement concluded between SDI and B.O.A.C.²³⁵ The agreement was signed in May 1968 with the following provisions:

1) The two parties agreed to pool in a manner following the revenue derived from the transportation of all the passengers where the point of uplift is Jeddah and the point of discharge is London and vice-versa.

2) Revenue derived from the carriage of mail and cargo are excluded from the pool for that time (1968) but are kept under review during the first year.²³⁶

²³⁴Annual Report of Saudi Arabia Airline 1969, supra note (124), p. 12.

²³⁵The agreement between SDI and (LIA) "Lebanon International Airways" was not a pooling agreement, it was a hire agreement to lease on aircraft (Boeing 720). See the opposite in H. Nishigori, "Pooling Agreement". Term paper, Institute of Air and Space Law, McGill University (Montreal, 1965), p. 40.

²³⁶See supra p

3) The parties share the passenger revenue equally on the basis that each party shall initially operate a once-weekly non-stop service over the pooled sectors, B.O.A.C. with VC-10 aircraft, and SDI with Boeing 707 aircraft. The parties have to maintain a sufficient capacity on the pooled sector to carry their anticipated shares of the market, and there are consultations between the parties before any variation in frequency of pooled services takes place.

4) Each party is responsible for its own costs.²³⁷

5) The parties should employ their best endeavours to provide as good a spread of services as possible, over the pooled sectors and common things as required,²³⁸ and each party will publish in its own timetable the other party's schedules in respect of such services, and make reference to its association with the other party in any advertisement of services involving the pooled sectors.²³⁹

²³⁷ See supra p. 158.

²³⁸ Advantage of pooling for the travellers. See supra p. 162.

²³⁹ Advantage of pooling to reduce costs. See supra p. 161.

6) The pool account will be suspended in the event of either party failing to perform pool services whether in a whole or part for a period due:

1) to a labour dispute;

2) to act of God, etc.

7) In a dispute or claim concerning the scope, meaning, construction of effect of the agreement will be referred to and finally settled by three arbitrators, one appointed by each of the parties and one appointed by those two arbitrators. If the two arbitrators are unable to agree on the appointment of a third, then the Director General of IATA will make this appointment. The verdict will be final and conclusively binding upon the parties.²⁴⁰

8) The pool agreement will continue unless terminated by either party, on condition that six months' notice in writing is given to the other party concerned.²⁴¹

²⁴⁰See IATA Resolution No. 850, supra, note (232).

²⁴¹The pooling between the two airlines is still in effect. Annual Report, op. cit., supra, note (124), pp. 5, 12.

9) The pool agreement does not mention in the body of the bilateral agreement concluded between Saudi Arabian Kingdom and United Kingdom, therefore the pool agreement is not mandatory or protection agreement,²⁴² it is merely co-operation between the two airlines, SDI and B.O.A.C. However, Article 16 of the pooling agreement provides that the agreement shall be subject to review if the earning capacity of either party is affected by any revision of the Air Services Agreement between the government of the United Kingdom and the Kingdom of Saudi Arabia.

²⁴² See supra p. 154.

PART 2 - NON-SCHEDULED AIR SERVICES

The Chicago Convention of 1944 makes a distinction between the non-scheduled air transport services not performed for remuneration or hire, and those performed for remuneration or hire in the carriage of traffic. By Article 5, para. 1 of the Convention, so far as the former category is concerned, each contracting State agrees that all aircraft of other contracting State are granted certain rights. In the second category, the aircraft have "merely the privilege of taking on or discharging passengers, cargo or mail." The State which is granting has, however, the right to impose such regulations, conditions or limitations as it may consider desirable.²⁴³ Even though the ICAO Council has stressed that the impositions shall not be exercised in such a way as to render the operation of this important form of air transport impossible or non-effective,²⁴⁴ most of the contracting States insist that prior permission be obtained from them for these non-scheduled flights.

²⁴³Chicago Convention, Article 5, para. 2.

²⁴⁴ICAO Document 7278-C/841, op. cit., supra, note (177) .

As far as Saudi Arabian's attitude is concerned, according to the present regulations, in the case of both categories, permission must be obtained in order to fly over or land in Saudi Arabian territory.²⁴⁵ The Minister of Defence and Aviation is the competent authority to give such permission, either for one flight or for a limited period of times.²⁴⁶

Non-scheduled flights for hire are an important concern for Saudi Arabia. The Kingdom of Saudi Arabia is the cradle of Islam, therefore, the two most important Mosques of the Islamic religion, i.e. the Holy Kaaba and the Prophet's Mosque are located there. Consequently, hundreds of thousands of Moslem pilgrims come to this country every year. One-third of these pilgrims arrive and depart by air and 25 per cent of them use SDI, i.e. in the 1969 pilgrim season, SDI carried 49,825 pilgrims.²⁴⁷

²⁴⁵See Article 2 of the Royal Decree, op. cit., supra, p. (44), and Article 1 of the Regulation No. 3, op. cit., supra pp. 128, 129. x

²⁴⁶For the permission to Scheduled International Services, see supra p. 129.

²⁴⁷The Annual Report of SDI, 1969, op. cit., supra, note (124), p. 12.

Due to the abovementioned facts, SDI had no choice but to seriously consider the annual operations of the Haj Season. The result was that numerous airlines agreed to share the traffic of the Haj Season in return for permission to make non-scheduled flights in order to transport the pilgrims to the Saudi Arabian territory. These agreements are founded on one of the following three bases:

- 1) When sharing traffic, each airline, SDI and the airline of the country concerned, carry half of the pilgrims in either direction. In the first case, SDI carries the pilgrims coming to Saudi Arabia, while the other airline carries them on their departure, or vice versa. In the second case, SDI carries half of the pilgrims to their destination and brings them back, while the other airline carries the other half to their destination and back.
- 2) The airline of the country concerned carries all the pilgrims from their country to Saudi Arabia. In this case, SDI does not participate in carrying the pilgrims, however, the other concerned airline is required to pay a commission to the SDI. This commission is calculated to cover half of the total number of pilgrims as specified in the agreement of equal

distribution of pilgrims between SDI and the other airline concerned.

3) The Haj Season pool agreement is a special agreement which allows SDI to rent airplanes from other airlines in order to service the pilgrims during the Haj Season on the condition that the profit be divided equally between SDI and the other airline concerned (usually is the airline of the country from which the pilgrims are to be transported.)²⁴⁸

The Standard Agreement dealing with the sharing of traffic specifies in Article 1 that SDI and (the airline) agree to carry national or transit pilgrims on equal sharing. Thus, both parties will operate special Haj flights both directions. The agreement demonstrates how the parties must apply the equal sharing of traffic, which is found in Articles 3, 4 and 5 of the Agreement. Both SDI and the other airline agreed that the party which carried the excess number of pilgrims will pay a commission to the other party.

In the agreements, the parties use the IATA fares which are to be charged between the two points (Jeddah is

²⁴⁸The Green Wing, op. cit., supra note (124), No. 3, the third year (February 1971) in Arabic, pp. 12, 13.

always the landing airport which is used in the Haj Season and the other point is the city(ies) to or from which the parties carry the pilgrims). ; . For example, Article 2, paragraph (2) of the agreement with Pakistan International Airline (PIA) mentioned the fare between the points that (PIA) carried the pilgrims from to Jeddah and vice versa.

The agreements also give priority to the other party's aircraft if one party is willing to charter aircraft(s) to carry his share.

The SDI has concluded annually many Haj Season agreements with different airlines. For example, there were in 1388 A.H. (1968-69), 36 agreements and in 1389 A.H. (1969-70), there were 41 agreements concluded.

It is worthwhile to mention that some airlines complained about the commission that SDI is entitled to claim. To the writer's knowledge, this matter has already been discussed with IATA, and in his opinion, this commission is based on International Air Law which gives the State the right to impose regulations, conditions or limitations on non-scheduled flight carrying traffic. The commission which SDI claims may

be considered as a condition that the Saudi Arabian government should and does impose to protect her national airline. Otherwise, foreign airlines would take the opportunity to carry more than one hundred thousand pilgrims annually to the Saudi Arabian airports without her national airline's participation.

CONCLUSION

We notice as a conclusion the rapid development of Civil Aviation in Saudi Arabia within the last 25 years. This development was accompanied by the interest of the government to provide regulations and procedures, both in operations and economic aspects. That was inevitable; for in the early 1950's, Saudi Arabia saw the emergence of a bustling business and governmental community that needed fast communications with all parts of the Kingdom. Thus, aviation tied Saudi Arabia closer to the world and the Kingdom's parts to each other from the far south to the far north along the Arab peninsula. Directly or indirectly with other rapid communication, this fostered the evaluation of social life within the community and unified the nation more promptly.

In this writer's opinion, the draft of the new Civil Aviation Law, discussed in Chapter IV of this study, and the regulations which may be issued pursuant to it, should be made effective as soon as possible. The present Law and regulations have long since proved to be inefficient. In this study, some deficiencies of the present regulations concerning the

Department of Civil Aviation were noted. In addition, the estimates under the Five-Year Plan of the C.A.D. provide for a capital expenditure of 1,889.3 million Saudi Arabian Ryals (\$419.8) million¹ (the construction of two new International airports, upgrading of other airports to provide for jet aircraft, new equipments and employee training), yet our regulations are so outdated.

It has become clear that the SDI cannot survive without the direct support of the Government. The demand for protection against excessive foreign competition has caused Saudi Arabian policy to insist on principle of reciprocity as means of maintaining a balance between national and foreign carriers, by, for example, predetermination capacity in pilgrimage seasons.

Fifth freedom traffic rights have been generously given to carriers, to operate from points in Saudi Arabia to some unlimited points in third countries, in pursuance of certain bilateral agreements. The Saudi national carrier is

¹Five-Year Plan, op. cit., supra note (25), Appendix 8.

unable, at present, to operate, as much as fifth freedom capacity as those carriers. Therefore, some adjustment is required in the exchange of commercial routes. Thus, to protect the Saudi flag carrier, consideration must be given, in the future, to this matter.

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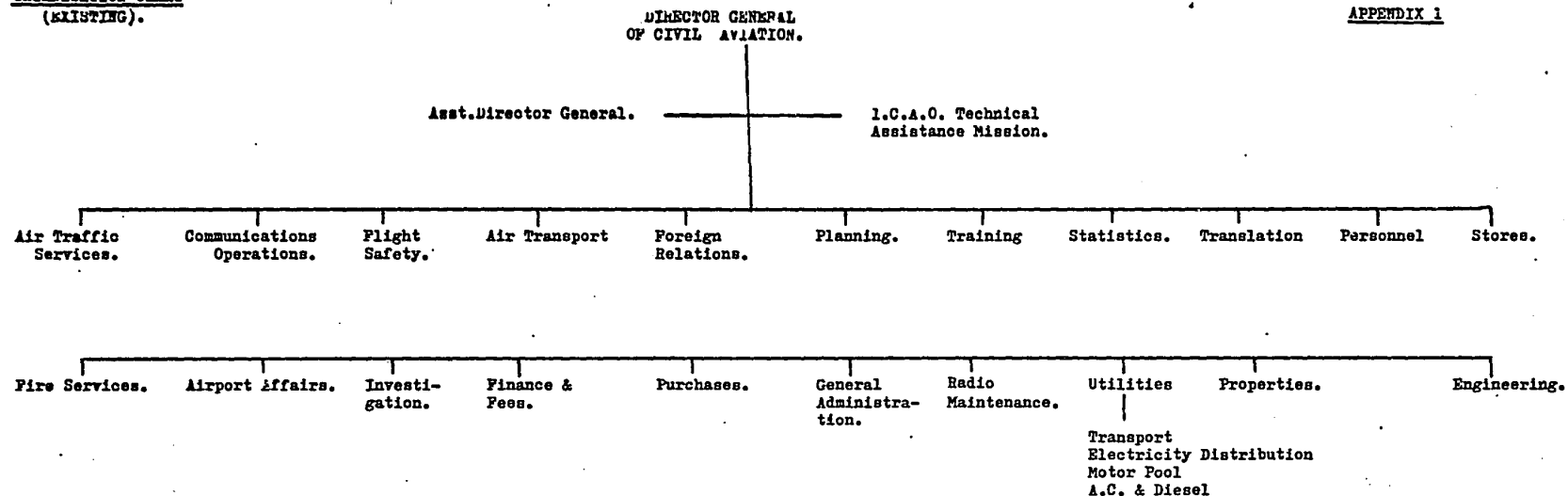
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ORGANISATION CHART
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APPENDIX 1

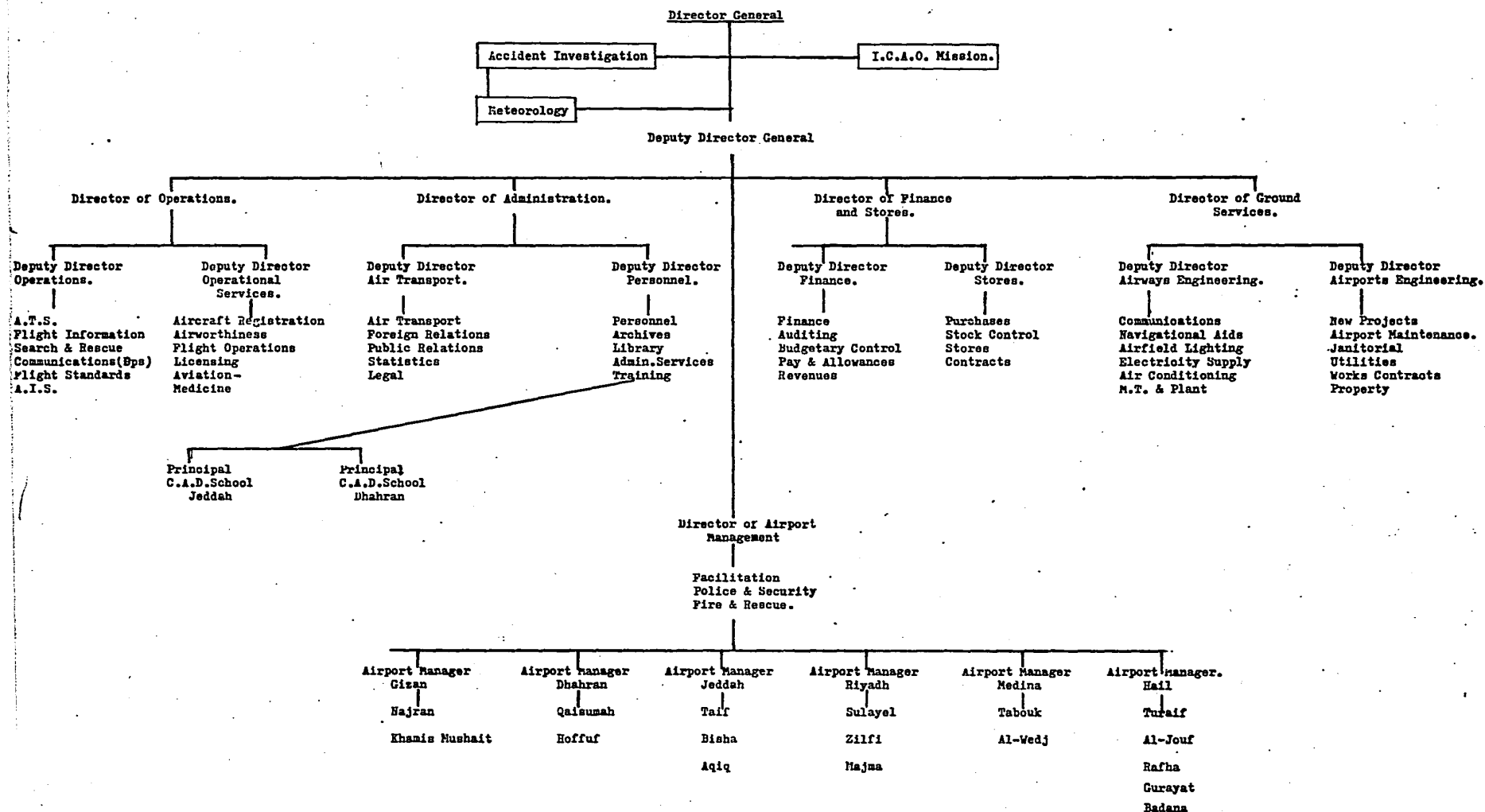


JEDDAH - APRIL 1970.

DIRECTORATE GENERAL OF CIVIL AVIATION

PROPOSED ORGANISATION.

APPENDIX 2



JEDDAH - APRIL 1970.

APPENDIX C

KINGDOM OF SAUDI ARABIA

No. M/24
Date 18/7/1385

With the help of God

WE FAISAL BEN ABDUL AZIZ AL SAUD

KING OF THE KINGDOM OF SAUDI ARABIA

After reviewing Articles 19 and 20 of the Regulations of the Council of Ministers issued by Royal Decree No. 38 dated 22/10/1377 and after reviewing the Decision of the Council of Ministers No. 393 dated 16/7/1385.

Decree the following:

- FIRST: Approval of the By-Laws of the Saudi Arabian Airlines Corporation in the text attached hereto.
- SECOND: The Deputy President of the Council of Ministers and the Minister of Defence and Aviation shall implement this our Decree.

Signature: FAISAL.

BY-LAWS

OF

SAUDI ARABIAN AIRLINES CORPORATION

ARTICLE I: Name, Head Office and Legal Capacity of the Corporation.

The Saudi Arabian Airlines Corporation is a public and independent organization having legal capacity and attached to the Ministry of Defence and Aviation. Its Head Office shall be in Jeddah and the Council of Ministers may determine the transfer of its Head Office to another town within the Kingdom.

ARTICLE II: Objectives of the Corporation.

The objectives of this Corporation is to carry out all kinds of activities relating to air, commercial and civil transport within and outside the Kingdom. For the purpose of achieving this objective the Corporation shall have the following rights:

1. To exploit all air transport routes.
2. To build, manufacture, purchase, sell, take and grant on lease and charter aeroplane machines,

air transport, supplies, and equipment, spare parts thereof and all that is necessary to operate the same.

3. To construct, maintain and operate airports, air stations, warehouses, stores, storing depots or aircraft landing stations, aeroplane machines of any kind whether for its own account or for the account of others.
4. To operate mechanical and electrical workshops and trade in engines and machines of all kinds and types.
5. To deal in all that is related to aerial and cinematographic and radio photography for communicating with airports and exchanging reports on atmospheric conditions, controlling cultivation and disinfecting crops from the air.
6. To purchase and sell real estate property for the purpose of achieving the objectives of the Corporation and to take and grant on lease said real estate property.

7. To erect buildings and constructions and their appurtenances whether permanent or provisional which may be of direct or indirect benefit for the objectives of the Corporation.
8. To establish and organize institutes and schools pertaining to the practical teaching of aviation and air navigation and training the employees on activities that fall within the objectives of the Corporation with a view to create a Saudi element qualified to perform all the technical administrative and commercial duties related to the objectives of the Corporation.
9. To organize, hold and prepare air performances, contests and exhibitions.
10. To carry out all the activities necessary to achieve the objectives for which the Corporation has been established. The Corporation may enter into association or collaboration of any kind with other corporations or organizations which carry out activities similar to its own activities or which help in the achievement of its purposes within and without the

Kingdom and to merge said corporations and organizations in it.

ARTICLE III: Property of the Corporation.

The property of the Corporation shall consist of the following:

1. The funds in kind or in specie presently owned by or allocated to the Saudi Arabian Airlines Corporation.
2. The funds in kind or in specie which the General Treasury of the State may grant.
3. The loans raised by the Corporation.
4. The income realized by the Corporation from its objects.
5. The donations and contributions accepted by the Board of Directors.

The Corporation shall deposit the Corporation's funds at the bank or banks designated by the Board of Directors.

ARTICLE IV: Management of the Corporation.

The Corporation shall be managed by a Board composed of a Chairman and eight members as follows:

1. The Minister of Defence and Aviation or his duly appointed representative, Chairman.
2. The General Manager of the Corporation, member.
3. The Deputy Minister of Finance and National Economy, member.
4. The Deputy Minister of Communications, member.
5. The Deputy Minister of Commerce and Industry, member.
6. The Director General of Civil Aviation, member.
7. Three members to be appointed by decision of the Council of Ministers upon the nomination of the Minister of Defence and Aviation. The said decision shall determine the period of office of the members and the remuneration granted in consideration of such membership.

Where there is more than one Deputy for a Ministry, each Ministry shall elect the Deputy who will represent it on the Board.

ARTICLE V: Powers of the Board of Directors.

The Board of Directors is the supreme authority which manages and controls the business and affairs of the Corporation, sets its general policy without regard to the administrative and financial regulations followed in ministries and other Government departments. In this respect the Board shall have, inter alia, the following powers:

1. To issue financial, administrative, technical and internal regulations and decisions, including the classification and definition of jobs.
2. To propose internal regulations relative to the appointment of the Corporation's employees and laborers, to their promotion, determination of their salaries, wages, gratuities and other benefits whether in kind or specie without regard to laws and regulations applying to government employees. The internal regulations relative to the foregoing shall be issued by the Council of Ministers. However, with regard to pensions, the Corporation shall be bound to apply the Civil Pension Plan for Government Employees. As to labourers, they shall be governed by the Labor and Laborers Regulations.

3. To approve the draft budget of the Corporation which shall not be effective except after its ratification by Royal Decree.
4. To approve the draft closing accounts of the Corporation for the purpose of having them duly ratified by the competent authority.
5. To appoint the senior employees, advisers and experts of the Corporation and determine their salaries gratuities and powers.
6. To purchase, sell, take and grant aeroplanes on lease.
7. To enter into agreements with establishments or corporations having similar objects and to participate in international conferences and organizations which are concerned with civil or commercial aviation.

The Board may set up from among its members one or more committees and delegate to them part of its powers. It may delegate to its Chairman or to the General Manager of the Corporation part of its powers and may also authorize one or more of its members to carry out specific duties.

ARTICLE VI: Meetings of the Board of Directors.

The Board of Directors shall hold its meetings at the place of business of the Corporation or in any other town specified by the Board upon call of its chairman. The meetings held by the Board shall not be less than ten each year. The meeting of the Board shall be valid only if attended by at least five Directors including the Chairman. The resolutions of the Board shall be passed by the majority vote of the members present. In case of a tie, the Chairman shall have a casting vote.

ARTICLE VII: The General Manager of the Corporation.

A General Manager shall be appointed for the Corporation, who shall have administrative and executive powers. His appointment shall be made by virtue of a decision from the Council of Ministers upon the nomination of the Minister of Defence and Aviation. The salary of the General Manager shall be determined in the said decision.

ARTICLE VIII: Powers and Duties of the General Manager.

The General Manager shall have the following powers and duties:

1. To prepare the meetings of the Board of Directors.

2. To implement the resolutions adopted by the Board of Directors.
3. To supervise the employees and laborers of the Corporation.
4. To issue payment orders in respect of the disbursements of the Corporation and to delegate this authority to others.
5. To supervise the preparation of the draft general budget of the Corporation and the draft closing accounts. The internal regulations shall determine the dates for the submission of the draft budget and the draft closing accounts.
6. To carry out such activities as are assigned to him by the By-Laws and internal regulations of the Corporation and the resolutions of the Board of Directors.

Subject to the provisions of the present By-Laws, the Chairman of the Board of Directors shall be considered the supreme authority for the General Manager.

ARTICLE IX: Representation of the Corporation by the General Manager.

The General Manager shall represent the Company in its relations with other persons and corporations and before the

Courts. He shall act on its behalf in accepting grants-in-aid and contributions, in concluding and signing contracts within the limits set in these By-Laws, the internal regulations of the Corporation and the resolutions of the Board of Directors.

ARTICLE X: Budget of the Corporation.

The Corporation shall have a budget independent from that of the State. The said budget shall be prepared in like manner as the commercial budgets. The Board of Directors of the Corporation shall prepare an annual balance sheet, a profit and loss account and a detailed report on the activities of the Corporation during its financial year and on its financial position at the close of the same year. The financial year of the Corporation shall be the same as that of the State.

ARTICLE XI: Auditors.

Without prejudice to the control exercised by the State Audit Office, the Board of Directors shall appoint one or more auditors from among natural persons who are duly qualified to be designated as auditors for joint-stock companies. The Board of Directors shall fix the remuneration of the auditors. Where the auditing is effected by more than one person, all the

auditors shall be jointly responsible for their work toward the Corporation.

ARTICLE XII: Exemption from Stamp Duties and Income Tax.

The Corporation shall be exempted from all duties, stamps and income tax in respect of the economic activity undertaken by it within the scope of the objects set forth in Article II hereof.

ARTICLE XIII: Enforcement of the By-Laws.

These By-Laws shall replace and supersede any provisions contained in other By-Laws and internal regulations and which are inconsistent herewith. These By-Laws shall be published in the Official Gazette and shall come into force on the date of their publication.