

INCLUSIVE TOURS BY AIR

Ranadive

INCLUSIVE TOURS IN INTERNATIONAL AIR TRANSPORT

by

Ramesh V. Ranadive

Inclusive tour is a package deal the price of which includes not only the fare for the journey by air but also the cost of accommodation, meals and other incidental services. The non-scheduled operators entered this market about two decades ago and today a considerable volume of traffic is carried on the inclusive tour services operated by them

Inclusive tours which were for some time almost a monopoly of the non-scheduled operators can also be taken on scheduled air services. In fact, over the last few years inclusive tour traffic carried on scheduled services has, due to the competitive prices offered by them, been increasing steadily and is today greater than that carried by the non-scheduled operators.

In view of the increase in the traffic carried on and distance flown by the inclusive tour services, the European Civil Aviation Conference appointed a special group to study the various aspects of the subject in order to evolve a common policy within Europe. The subject has achieved more importance recently with the decision of the United States Civil Aeronautics Board to authorise inclusive tours across the Atlantic.

In this thesis a study has been made of the development of inclusive tours in Europe and the regulations recommended by ECAC as well as of the problem of classification of the inclusive tour services in the light of the definition of 'scheduled international air service' adopted by the Council of the International Civil Aviation Conference in 1952.

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INTRODUCTION

The post-war era saw a rapid development in civil aviation. Scheduled air transport has been supplemented by non-scheduled operations. Traffic on scheduled, as also on non-scheduled, carriers has increased by leaps and bounds in recent years. However, a large number of travelling public still finds it economically difficult to travel on scheduled carriers due to the fare structure.

To cater to the needs of the tourist of modest means special services began to be operated since 1950 which offered sizeable reductions in the lowest of normal fares. These have come to be known as 'inclusive tours' because the price of the tour includes, apart from the air fare, other expenses such as accommodation, meals, etc.

Tourism based on a package deal, where one cost covers travel, food and accommodation, is not a new phenomenon, since cruise and tour organisers existed long before the advent of popular priced air transport. But what is new is the utilisation of low cost air transport for this purpose, which can be said to be the key to today's boom in the inclusive tour business.⁽¹⁾

The architect of this 'new phenomenon' in the air transport industry is the charter operator who, as a result of his government's policy to protect the scheduled operator, had to find ways and means to support himself in a highly competitive field. A number of European govern-

ments commenced granting, for various reasons, authorisations to their own or to foreign charter operators to operate such services for the general public at prices well below the price at which comparable tours could be offered on the scheduled services. These services were different from the 'bona fide or affinity group' charters where the charter agreement was made with one person on behalf of members of a group having sufficient affinity to set it apart from the general public, e.g. members of clubs, employees of firms, etc. and other charter operations where the total traffic was not large and was considered not to compete excessively with scheduled services, e.g. charters for own use.

With substantial increase in the number of people carried on these 'special inclusive tour services' every year, questions have arisen as to whether they are not competing with the scheduled services and might require some control.

The International Civil Aviation Organisation (ICAO) was attracted by the rapid and significant development of inclusive tours and decided that study should be made of this type of traffic. This subject was one of those noted by the ICAO Assembly at its Tenth Session in Resolution A10-34 as being for attention as resources permitted in the years 1957 to 1959. Although it was not possible to do any substantive work on this item, the

Council intended to give special attention to this project during the next three years. In June 1959 the ICAO Assembly agreed that the study should be made making use of the material produced by the European Civil Aviation Conference (ECAC) study and applying it in the broader field of ICAO's general endeavour.

At the end of 1958, four European Governments (Austria, Germany, the Netherlands and Sweden) commissioned the Institut du Transport Aérien (ITA) to make a study of inclusive tours in Europe to ascertain the facts of the situation. This study was made available to the Third Session of the ECAC in March 1959, where it was decided that a further study should be carried out in order to facilitate the formulation by ECAC member States of agreed policies for the regulation and development of this type of traffic.

To this end, the ECAC established in 1960 the Non-scheduled and Inclusive Tour study group (hereinafter referred to as NSIT study group) which has since its establishment held ten meetings and made a number of recommendations which have been accepted by the Conference. The work of the NSIT study group, although restricted to the geographical area covered by the ECAC member States, is of worldwide interest due to the gradual expansion of the geographical scope of special inclusive tour services.

In the early stages of its activities, NSIT study group devoted all its efforts to a better knowledge of the

evolution of (special) inclusive tours which would show what measures could be contemplated in order to promote in an orderly manner the development of this type of traffic within the ECAC region - such development being regarded as potentially beneficial to the overall development of air transport in Europe as long as it was not creating unfair competition with scheduled services. (10)

The main goal was liberalisation, on a multi-lateral basis, of non-scheduled and inclusive tour charter flights. (11) It was however recognised that, in view of the difficulties encountered it would not be possible, then or in the near future, to go further in the way of multi-lateral measures of liberalisation. (12) Nevertheless, it was decided that NSIT study group should pursue its work and that, although keeping liberalisation as an ultimate goal, the group should be mainly concerned with concrete problems, (13) to which it would try to find practical solutions.

During its existence of past seven years or so, the NSIT study group has examined subjects such as standard form for notification of or requests for authorisation, statistics, tariffs, insurance coverage, etc. in relation to these special inclusive tour services.

While the member States of the European Civil Aviation Conference were struggling with the issues raised by the operation of the special inclusive tour services, the United States Civil Aeronautics Board (CAB) revised its

policy and authorised the U.S. supplemental carriers to
(14)
operate transatlantic inclusive tours and also granted
(15)
authorisation to two foreign carriers for such operations.

This decision of the U.S. CAB has important
implications for the European States and their scheduled
air carriers and therefore two meetings of experts on
inclusive tours to and from other continents were held in
(16)
1967, under the auspices of the ECAC, to discuss the
relevant CAB regulations and seek clarification.

The Sixth Session of ECAC decided that a study by
an expert group should be made to harmonise member States'
regulations on inclusive tour services (intercontinental
and intra-European), with particular reference to inter-
(17)
continental inclusive tours. To this end, the expert group
met twice in 1967.

An inclusive tour may be undertaken on normal
scheduled air services or on aircraft specially hired for
the purpose. It is the latter, referred to as 'special
inclusive tour services', which are the subject of this
thesis. Special inclusive tour services are virtually
non-existent outside Europe, the Middle East and Africa.
Therefore, this thesis is based on the information available
in respect of inclusive tours as they developed within
Europe.

CHAPTER ONE

Inclusive Tours: General

Short History: It is not known when the term 'inclusive tour' was first used in the air transport industry. The marketing of holiday travel as a packaged deal was not entirely a post-war development in air transport; inclusive tour holidays by air had been offered by Imperial Airways (18) before the War. These packaged deals or 'all-expense paid (19) tours' are commonly known as 'inclusive tours'. As will be seen later, the term 'inclusive tour' has acquired a specific meaning in the present day air transport.

Prior to the War, such packaged deals were also being organised in the United States between New York, Washington and Chicago on the one hand, and the sunny (20) coasts of Florida, California, Hawaii and the Caribbean on the other.

After the War, these packaged deals made their first appearance in Europe about 1948 (the United Kingdom being in the forefront) at a time when major European carriers were still reorganising their international services after the long interval of war. Most of them were still under-equipped with aircraft and were having difficulty in meeting the demand. But the peoples of Europe who suffered directly the ravages and restrictions of war, or indirectly, had been confined within their national

frontiers, eagerly sought the first opportunity to escape towards the sun and places which had emerged relatively unscathed. In the United States also, this kind of trips were organised to such distant places as Mexico, South America, Europe, the Middle East and so on. They were organised for groups with an established common interest for whom the tour had a specific purpose other than travel, such as, universities, business and social groups and religious bodies.

Today, the term 'inclusive tour' refers to a package deal where the tour group is drawn from members of the general public and is not restricted to organised groups. At first it was easier for air carrier and the travel agent to reach organised groups than individuals. With the successful working of the idea, it became easier to make it available to the general public. The first such inclusive tour was introduced in the United Kingdom in 1950 when tours to Calvi in Corsica were operated by Horizon Holidays.

Since then, such inclusive tours are carried out both by the non-scheduled operator and the scheduled airlines. Nevertheless, the expansion of the non-scheduled operators in this field of operations has been an impressive feature of their growth in recent years.

Definition of 'Inclusive Tour': Various definitions of the term 'inclusive tour' have been suggested or used, some of which appear in the States' air regulations. (27) These definitions are descriptive in nature and although they differ in form, their contents are similar. No definition of inclusive tour can be precise because apart from the air transport element, there are several other elements which an inclusive tour possesses. For this reason, it is also not possible to have an exhaustive definition.

One task of the NSIT study group was to develop a standard definition of 'inclusive tour' which would be acceptable to all the ECAC member States. (28) The definition evolved by the study group reads as follows: (29)

"An air inclusive tour consists of a round trip or circle trip performed in whole or in part by air for a comprehensive price which includes accommodation for the period the participants are away from the starting point of their journey. It may also provide for additional facilities and may be undertaken either on normal scheduled air services or on aircraft especially hired for the purpose. A tour is normally for a predetermined period and to an announced destination or destinations".

The above definition is a slightly amended version of the definition of 'inclusive tour' which was circulated by the study group for comments of member States of the ECAC. In the earlier definition, the study group had used the words "performed in whole or in substantial part by

(30)
air." Some member States had no objection to the definition. However, some doubts were expressed about the use of the words "in whole or in substantial part" on the ground that some times carriage by other means of transport plays a greater part than carriage by air and that irrespective of the role which air transport plays in such tours, they remain inclusive tours by their other features. (31) The study group therefore substituted the words "performed wholly or partly by air".

Whether this definition is adopted by the member States of ECAC or not, since an inclusive tour has many variable elements the States will have a choice to stipulate the minimum 'additional facilities', the minimum duration and the minimum number of places which must be visited on such tours and the minimum charge.

Geographical Scope: In the early years of their operation inclusive tours operated by the non-scheduled carriers commenced in the northern parts of Western Europe such as the United Kingdom, Scandinavia and Germany and went up to the Mediterranean region. Gradually, their field of activity enlarged and brought within their ambit other parts of Europe such as the East European countries, Russia and the Middle East and North Africa. Even today, these inclusive tours are virtually non-existent outside Europe, the Middle East and Africa. The direction of the traffic flows is such that some countries in these parts

are known as 'originating countries' where the inclusive tours originate or commence and others as 'receiving countries', the countries of destination of these tours.

Very soon inclusive tours will start operating across the Atlantic due to the revised policy of the U.S. (32) CAB. However, with the legal tangle over the CAB authority to permit such operations by the U.S. supplemental carriers and the attitude of some European States, (33) (34) it is doubtful if such operations will commence on a (35) fairly large scale in the near future.

One of the main reasons for the lack of such operations in other parts of the world would appear to be the fear on the part of governments and national airlines that special inclusive tour services would divert substantial traffic from the scheduled airlines. Also, the (36) scheduled airlines are making efforts through the International Air Transport Association (IATA) to compete in this field by providing for special low fares for inclusive (37) tours. Such special low fares are available in different (38) IATA Traffic Conferences.

Volume of Traffic: In 1958 some 200,000 (or 400,000 air passengers, counted twice - once on the way out and again on the return journey) went on an inclusive air (39) charter tour in Western Europe. Charter inclusive tour traffic multiplied by nearly seven times between 1960 and 1965 in terms of passengers carried - from 560,000 to

(40)
3600,000 and 3700,000. For the year ended 31 October, 1966,
4700,000 passengers were carried on inclusive charter
(41)
flights.

The non-scheduled traffic statistics available for African airports - Nairobi, Entebbe, Dar-es-Salaam, Abidjan, Cairo and Tunis indicate that although growth was somewhat irregular, there is clearly an overall increase from year to year not only in the absolute number of international passengers arriving by non-scheduled service, but also in the percentage that these figures represent of arrivals by scheduled services. The average annual rate of increase since 1962 has been 33.3% (from 48,528 passengers in 1962 to 111,129 in 1965), and in relation to scheduled traffic, non-scheduled arrivals increased from about 9% in 1962 to 11% in 1963 and 14% in 1965.
(42)

So far as the intra-Europe traffic is concerned, the Western European countries farthest away from the Mediterranean naturally produce most of the inclusive tour
(43)
traffic. The greatest numbers of inclusive tour participants are provided by the United Kingdom, Scandinavia and West Germany; however, "holidaying populations" from Sweden, Denmark and West Germany are currently registering the
(44)
highest rates of increase.

As regards the Europe-Africa traffic, in 1965 over 70% of the non-scheduled traffic between Austria, Netherlands, Spain and the United Kingdom was between Europe and North

(45)
Africa.

Statistics are available only for North Africa to indicate the volume of non-scheduled inclusive tour traffic as distinct from the other categories of non-scheduled operation. This material refers only to 1965 thus giving no clue as to growth. More than half of this traffic originated in Germany and Switzerland, the rest in France, the Netherlands, Scandinavia and the United Kingdom, (46) and nearly 80% of it had Tunisia as destination.

The build-up of non-scheduled inclusive tour traffic from Europe - particularly from Germany, Switzerland, Scandinavia, France and the United Kingdom ... is well under way for Tunisia, and has begun for Morocco and the United Arab Republic. Other information indicates that the build-up has begun for Kenya as well, particularly from Germany and Switzerland - traffic in 1966 amounting to about 100 (47) passengers a week on a year round basis.

Characteristics: As regards the characteristics of inclusive tour traffic carried within the region both on special services and on scheduled services, the ECAC study (48) group reached the following broad conclusions:

(i) Inclusive tour passengers on the special inclusive tour services tend to be of average or below average income, but to comprise all occupations, including craftsmen, officials, clerks, civil servants, etc; inclusive tour customers on scheduled services

tend to be those with average or above average incomes, such as business and professional people, including high ranking government officials.

(ii) The average length of time for inclusive tours on the inclusive tour services is shorter than that of inclusive tours on scheduled services.

(iii) Passengers on the special inclusive tour services consist mainly of unmarried persons from about 18 to 30 years of age and married couples over 45. Inclusive tour passengers on scheduled services seem to be generally between 30 and 65. In both cases there is a distinct majority of women.

(iv) For the region as a whole the peak season for inclusive tours of all kinds is July and August but the volume of off-season traffic (October to April) is increasing, as also is the popularity of inclusive tours for winter sports, and special events such as Easter holidays.

(v) The main countries of origin of inclusive tours of all kinds in Europe are the United Kingdom, Scandinavian countries, Germany, Belgium and the Netherlands. Spain is the most popular country of destination in Europe, with Italy, France and Switzerland (and Portugal, Greece and Yugoslavia) coming afterwards.

(vi) The special inclusive tour services tend to utilize older type of aircraft, including originally

DC-3's and Vikings, and later DC-4's, DC-6's, etc. Since these aircraft are more available either on charter or for purchase by the smaller carriers. Inclusive tours on scheduled services utilize the ordinary scheduled service aircraft which are mainly (49) of the newer type. This, however, is no longer true.

Role in International Air Transport Market: The conclusion reached by ECAC was that inclusive tour services "are not necessarily detrimental to the scheduled carriers and have on the contrary, in some cases at least, been the forerunner of new scheduled services, thus generating new (50) traffic for the scheduled carriers".

The question whether inclusive tour services do or do not tap new markets is closely associated with their competitive situation, and here too European governments have reached tentative conclusions favourable to the inclusive tour services. The Air Transport Advisory Council of the United Kingdom studied the matter specially in 1958, and reported that it "saw no reason to change their view that they had previously taken that Inclusive Tour Services had attracted a considerable amount of new traffic to air travel, not only to the benefit of the Independent operators but also in the long run to the advantage of the Airways (51) Corporations".

ECAC itself was less definite, but concluded that many persons travelling on inclusive tours at prevailing low (52) prices might not otherwise travel by air.

The fare reduction of about 15% offered by the inclusive tour services attracted many new customers. But this would not appear to be the sole reason for their attractiveness. (53) The inclusive tours in Europe reached a different market. These services were in many cases to places not well served by scheduled services.

Impact on Scheduled Air Services: Scheduled carriers have always opposed the authorisation of special inclusive tour services on the ground that their traffic would be affected adversely. The European experience indicates that there is no basis for such fears. In the United States, the scheduled carriers won the first round against the supplementals on this very ground. However, when the CAB reconsidered its earlier decision, it rejected the argument and concluded that traffic may be affected only to a small extent. (54)

According to the study made by the Institut du Transport Aerien (ITA) in 1959, the number of passengers carried on special inclusive tour services represented less than 5% of the intra-European traffic carried by the European airlines who were members of the European Airlines Research Bureau (EARB). (55) In 1965 this traffic represented a share of about 18% of the total scheduled and non-scheduled traffic in Europe-Mediterranean area. (56)

In 1959, the new IATA regulations permitted substantial reductions in the prices of inclusive tours on scheduled services in Europe. Since then, the European

scheduled carriers have developed their own traffic of this kind and it is estimated that it is greater than the (57) traffic carried on the special inclusive tour services. In December 1966, IATA adopted new group inclusive fares (GIT) for travel over the Atlantic.

However, in addition to the competitive prices offered by the scheduled carriers, there are other reasons which prevail upon a large number of tourists to decide in favour of individual inclusive tour arrangements offered by the scheduled carriers. These are: i) restriction of special inclusive tour services to only a few international airports; ii) obligation of adhering to a rigidly fixed departure time (57a) and iii) duration of stay.

However, so far as transatlantic inclusive tour services are concerned, the views of the majority of ECAC member States appear to be contrary to the opinion of the (58) United States CAB. The European States have expressed their fears that their national scheduled carriers would be affected adversely and may not be able to withstand competition from the U.S. supplementals who would be serving a market different from the European inclusive tour market.

Some of these States would therefore like to assess the effect of the new GIT fares, while others feel that transatlantic tours should be permitted only on an experimental basis. Thus, there is a mixed reaction among the European States towards the new CAB policy.

CHAPTER TWO

Classification of Special Inclusive Tour Services

The rapid and substantial growth in the volume of passenger traffic carried on the special inclusive tour services, the increase in the frequency of their operation and the gradual extension of the period during which they are operated every year raise an important question as to the legal status of these services. The question which poses itself is whether the services are scheduled or non-scheduled in character. It is important because the distinction gives rise to different rights and regulatory procedures. Further, this question has assumed more importance recently because, as stated earlier, the Civil Aeronautics Board has permitted the U.S. supplemental air carriers to operate transatlantic inclusive tours. It has also permitted two foreign carriers to engage in this type of operation. (59) (60)

The distinction between scheduled and non-scheduled flights posed no serious problem in pre-war air transport. Up to the Second World War the air services normally referred to as 'scheduled services' formed a class that was so distinct as to need little definition. Due to several new factors, however, the position changed after the War. (61)

The Chicago Convention, 1944, draws a rigid distinction between scheduled and non-scheduled type of air transport. The probable reason for two distinct Articles in commercial rights was to draw the line between public (62)

transport and other transport, between commercial aircraft operations carried out regularly, with a recognisable pattern of frequency so as to constitute a scheduled international air service, and other commercial aircraft operations.⁽⁶³⁾

However, neither the expression "scheduled air service"⁽⁶⁴⁾ nor the expression "non-scheduled flight"⁽⁶⁵⁾ is defined in the Convention. It also does not specify the types of operations that may be carried out under its Article 5 which is applicable to "non-scheduled flights".

Definition of "scheduled international air service": In 1947, Article 5 of the Convention gave rise to discussion within Commission No. 3 of the First Assembly of the ICAO. The ICAO Secretariat produced a paper in which it was suggested that the method of solving the problem would be to examine the practical applications of the distinction, particularly in the economic field, and to determine whether the results of this examination are capable of expression in the form of a definition.⁽⁶⁶⁾

After having examined the difficulties in drawing a clear line between scheduled and non-scheduled operations, the Secretariat paper tentatively concluded that a verbal definition would not hold good in all cases.⁽⁶⁷⁾ It also suggested the establishment of an international register of 'scheduled air services' in which the ICAO member States will enter from time to time the names of their interna-

tional air transport services which they regard as
(68)
regularly scheduled.

However, as requested by the Second Session of
the Assembly (Resolution A2-18), the Council of ICAO
developed, in 1952, a definition of 'scheduled interna-
tional air service' which reads as follows:

"A scheduled international air service is a
series of flights that possess all the following
characteristics:

- (a) it passes through the air-space over the
territory of more than one State;
- (b) it is performed by aircraft for the
transport of passengers, mail or cargo
for remuneration, in such a manner that
each flight is open to use by members of
the public;
- (c) it is operated, so as to serve traffic
between the same two or more points,
either
 - (i) according to a published time-table,
or
 - (ii) with flights so regular or frequent
that they constitute a recognisably
systematic series. (69)

This definition was adopted for the guidance of
Contracting States in the interpretation or application of
(70)
the provisions of Articles 5 and 6 of the Convention. In
developing the definition the Council took as a starting
point the "description" of a scheduled international air
service put forward by the Second Session of the Assembly
in Resolution A2-18, together with the comments of
(71)
Contracting States on the "description".

During the discussions in the Council some countries' delegations (in particular France) proposed to include in the definition a criterion which seemed to them characteristic of a scheduled service, namely, the fact the latter is operated without taking into account the payload carried, since such an operation is expressly tied to a specific programme and time-table fixed beforehand and made known to the public (emphasis original).⁽⁷²⁾

This proposal was attacked, particularly by the United Kingdom representative who in support of his case referred to the existence of some services which, although operated according to published time-tables, were however subject to the condition of a minimum load (that is a payload).⁽⁷³⁾ The proposal to include this criterion in the definition (a scheduled service is a service which is operated "irrespective of payload on any individual flight")⁽⁷⁴⁾ was finally rejected, but by a small majority.

This definition by the Council, the main elements of which are cumulative in effect, has not really solved the complex problem of distinguishing between the 'scheduled and non-scheduled' operations. Some of the elements are vague in nature, and therefore, the Council has provided notes on its application. Probably because of the doubts of its usefulness, the definition has found only a limited measure of acceptance from the member States.⁽⁷⁵⁾ So, as far as practical everyday application is concerned, the definition

to which ICAO devoted so much effort, remained a dead
(76)
letter.

Another attempt was made to clarify the distinction between the 'scheduled and non-scheduled' operations, this time by the ECAC. The approach which appeared practical then, was to enumerate those non-scheduled flights which would be admitted freely by the member States without imposing 'regulations, conditions, or limitations' under second paragraph of Article 5 of the Chicago Convention, 1944. This materialised in a Multilateral Agreement on Commercial Rights of Non-Scheduled Air Services in Europe which was opened for signature to the members of the Conference in 1956. Article 2 of this Agreement (hereinafter referred to as Paris Agreement, 1956) enumerates certain flights which are regarded as properly carried out under Article 5 of the
(77)
Chicago Convention.

Since 1959, the ECAC is making another attempt to further liberalise the non-scheduled operations within Europe. It appointed the Non-Scheduled and Inclusive Tour study group to study the problems of these operations. The study group worked with the idea of expanding the scope of Article 2 of the Paris Agreement, 1956, and recommended a
(78)
list of services which could be included under that Article.

The ECAC at its Fourth Session, felt that no attempt should be made immediately to amend Article 2 of the Paris Agreement, 1956, but that member States should be

recommended to accord a certain measure of liberalisation to additional types of non-scheduled flights beyond those described in that Agreement. It, however, adopted a list of the main types of non-scheduled international flights carrying out commercial air transport operations. In this list are included "flights exclusively for air inclusive (80) tours".

These efforts by ICAO and ECAC indicate that since the Chicago Convention was signed in 1944, considerable developments has taken place under its Article 5. Various forms of "non-scheduled" aircraft operations have been introduced.

What is the position in the national air laws of the States which are parties to the Chicago Convention, 1944 and the Paris Agreement, 1956? Surprisingly, except the air laws of a handful of States, air laws of most of the States do not define the terms 'scheduled' and 'non-scheduled' with reference to air transport operations. In spite of the ICAO definition of "scheduled international air service", this definition has not found place in the national air law of any Contracting State.

The reason for this lack of interest in defining these expressions appears to be twofold. Firstly, the impossibility of formulating satisfactory definitions which would be sufficiently precise and concrete to cover all situations and the absence of these definitions leaves a

great deal of discretion with the States to determine the nature of air transport operations. Secondly, in international civil aviation the expression 'scheduled air service' has probably acquired the meaning of those services which are operated under bilateral agreements or arrangements.

In order to understand the nature of the special inclusive tour services, it is necessary to refer to the definitions of two more related terms, namely, charter and inclusive tour.

Definition of "Charter": Neither the Chicago Convention, 1944 nor the Paris Agreement, 1956 use the term (82) "charter" or define it. Various national air laws or regulations made thereunder, contain the definition of the term 'charter' or 'charter flight' or 'charter operations' (83) or 'charter service'. The term 'charter' commonly refers to the hiring of the entire capacity of the aircraft on an hourly or distance flown basis, by an individual or by a defined group. Furthermore, the generally accepted notion of air charter precludes charterer from reselling the chartered space to individuals solicited from the general (84) public. It is interesting to note that according to the Australian Air Navigation Regulations, charter operations include those air service operations in which aircraft are used for carriage of members of the general public when such

operations are not conducted in accordance with fixed schedules to and from fixed terminals.

Definition of "Inclusive Tour": The first attempt to define "inclusive tours" was made by the ECAC through the NSIT Study Group in association with the Institut du (85) Transport Aerien. However, so far as the national air laws or regulations are concerned, this expression is defined (86) only in the air regulations of the United States and Canada. It may be noted that these definitions nowhere mention the fact that such tours are open to use by the members of the general public. However, section 378.1 which defines the scope of Part 378 of the CAB Economic Regulations clearly states that this part enables the tour operators to provide inclusive tours to members of the general public utilizing (87) aircraft chartered from supplemental air carriers.

In this context, it is interesting to note that an "inclusive tour group" means an aggregate of persons who are assembled by a tour operator for the purpose of participation (88) as a single unit (emphasis provided) in an inclusive tour.

Inclusive Tour Service: whether scheduled or non-scheduled:

Before going into this question, it should be noted that the special inclusive tour services are being operated by private air carriers which go under different names. They are commonly known as 'non-scheduled operators'. In the (89) United Kingdom they are called 'Independents'. In the

United States, air carriers which are given 'inclusive (90)
tour' authority are known as 'supplemental air carriers'.
The character of the air operator however is not relevant
to the application of the ICAO definition. The distinction
made by the definition between scheduled and non-scheduled
international air services is independent of whether the
operator is a recognised scheduled air service operator or
(91)
not.

From the definition of the expression "scheduled
international air service" and other similar expressions it
is clear that the important concepts are that of public
transport and regularity of operation. However, the concept
of public transport would appear to be the paramount one.
This is borne out by the fact that the generally accepted
concept of charter which is linked with non-scheduled
transportation prohibits the charterer from reselling the
chartered space to individuals solicited from the general
(92)
public.

In this connection, reference may be made to
Article 96(a) of the Chicago Convention, 1944, which defines
'air service' as follows: "any scheduled air service
performed by aircraft for the public transport of passengers,
mail or cargo" (emphasis supplied). Practically, the only
point of interest in this definition is the element of
(93)
'public transport' which is closely linked with scheduled
(94)
air service.

Therefore, the issues involved in classifying the special inclusive tour services are:

- a) Are these services operated with flights so regular or frequent that they constitute a recognizably systematic series; and if so,
- b) Are they open to use by members of the public.

a) Regularity or frequency: As stated earlier, in the year ended October 31, 1966, more than 4.5 million passengers were carried to destinations in ECAC countries on inclusive flights alone. The United Kingdom Air Transport Licensing Board handled 954 applications for inclusive tours in the year ending March 31, 1967 out of which 740 applications were granted. A glance at brochures published by West German tour organisers or the operating time-tables of the charter companies would show that, during the summer season at least, the charter operators' schedules look very little different from those of the regular scheduled airlines.

The inclusive tours are not now restricted to peak periods in summers only; they cover almost the entire summer. The inclusive tours are also being operated in winter and their traffic is on the increase. Thus, these tours are being operated almost throughout the whole year.

The facts stated above would lead to the conclusion that many of the European inclusive tour services are operated so regularly or frequently as to constitute a recognizably systematic series. They certainly satisfy provision (b) of the ICAO definition.

b) Public Transport: The ICAO Secretariat study has expressed a doubt as to whether inclusive tour services satisfy provision (b) of the definition. It says that it might be maintained that, although the inclusive tour arrangement itself is "public", the flights that perform the air transport part of the arrangement are restricted to those who purchase the tours and are therefore not open to the public. This argument could be supported on the ground that in order to constitute a scheduled international service according to the definition, a series of flights must be performed in such a manner that "each flight" is open to use by members of the public (emphasis supplied). There is no doubt that every member of the inclusive tour group is solicited from the general public which is contrary to the traditional concept of 'charter', but once such a group is formulated no member of the general public may travel on such flights.

It is indeed normally a condition for the authorization of such flights that no passenger may be carried who have not purchased the whole tour. This is done in order to maintain the group concept and therefore prevent the tours from being used as a subterfuge for individually ticketed transportation.

On these services the 'operator' of the aircraft can not himself book members of the public. This characteristic of the inclusive tour services raises a clear doubt

as to whether they are really open to use by members of the public.

A scheduled international air service serves the normal day to day demand of the public for transportation and members of the public may travel or send their goods on any flight of such a service where space is available (105) (emphasis supplied). It can not be said that the inclusive tour services serve the normal day to day demand of the public for transportation.

In the Reopened Transatlantic Charter Investigation (All-Expense Tour Phase), the CAB said that the proposed inclusive tour authority would permit those carriers (supplementals) to charter to tour operators who would utilize the chartered aircraft in providing tours to groups (106) formed from the general public (emphasis supplied). In fact, in reaching its decision to grant charter authority, the Board weighed the benefits which it believed would accrue (107) to the travelling public (emphasis supplied). In view of what has been said above, it is felt that the references to 'general or travelling public' are not sufficient to conclude that these services are open to use by members of the public within the meaning of the definition. In the "Explanatory Statement" in the "Notice of Proposed Rule-making" the CAB said that "... the general concept of charter ... is, we believe, broad enough to include all-expense tour groups formed from members of the general

public. The common purpose of the individual members of such groups which would travel together as a unit sufficiently sets the group apart from individual members of the general public so that the required group identity is
(108)
achieved".

And again in the Supplemental Air Service Proceedings, it said ".... we find that with these restrictions, the tour group will be sufficiently cohesive units so
(109)
as to qualify as charter-worthy under the Act."

It is important to note that in reaching its conclusion the Board was guided not only by policy considerations but also by the legal necessity of insuring that the inclusive tours authorized were sufficiently different from individually ticketed services to be considered "charters",
(110)
within the meaning of the Federal Aviation Act. In American Airlines v. CAB, the Court answered in the affirmative the question whether "inclusive tours", as formulated by the Board, were within the meaning of the
(111)
definition of "charter trips".

If the above analysis is correct, then it may be concluded that inclusive tour services are "non-scheduled"
(112)
as they are not open to use by members of the public.

Practice of States: The conclusion of ECAC at its Fourth Session was that "flights exclusively for air inclusive tours" should for the present be classified among

the "non-scheduled commercial air transport operations".⁽¹¹³⁾

The Conference noted a proposal to the effect that it would be useful to have information on the exact practice in ECAC member States in classifying inclusive tour flights as "scheduled" or "non-scheduled" operations. It was agreed that the matter should be further studied by the Study Group.

From the information supplied by States, it was clear to the Study Group that the vast majority of States considered these flights as non-scheduled flights.⁽¹¹⁴⁾

Outside Europe, governments are about equally divided between recognizing and not recognizing inclusive tour services as a special category, but if they do so it is generally because they consider such services non-scheduled.⁽¹¹⁵⁾ As stated earlier, in the United States, at least the CAB has intention to treat inclusive tour flights as "charter" flights. After its decision in the Reopened Transatlantic Charter Investigation case, it amended the definition of "charter trips" in Part 295 to include inclusive tours.⁽¹¹⁶⁾ However, the decision in this case was appealed against and the Court held that the CAB lacked the power to authorize "inclusive tours", not because the inclusive tour services are scheduled services, but because they are not charter services within the meaning of the Federal Aviation Act.⁽¹¹⁷⁾

It is however interesting to note here some of the European States appear to have second thoughts as regards the classification of these services. They now urge that inclusive tour services have over the past years acquired the characteristics of scheduled air service as defined by the ICAO Council and there is no reason why they should not be classified and treated so. (118)

A suggestion has been made that whatever ambiguity exists could be eliminated by adopting the ICAO Council definition as binding on the Contracting States. It is submitted that the ICAO Council does not have such authority and it would not solve the problem as the definition itself contains elements which are ambiguous. (119)

On the contrary, it would be worthwhile to consider the review of this definition so as to bring under it only those scheduled services which are operated under bilateral air transport agreements. Over the period spanning almost a quarter of a century a customary law has, through the practice of States, evolved by which States have come to regard as scheduled only those services operated under bilateral agreements. (120)

Inclusive Tour Service: a special category? There is one view that inclusive tour operations are not normal scheduled services but neither are they non-scheduled operations by the general definition of this term. They are quite properly treated as sui generis. In the United (121)

(122)

Kingdom at least they are treated as a special category.

The NSIT study group had this to say: ".... in view of the considerable development of this category of flights, it appeared that, from a practical point of view, it should be considered as a class apart". The group felt that, although these are not necessarily within the scope of bilateral agreements, inclusive tour flights (i.e. those charter flights which involve ticketing the general public) could in some cases form the subject of bilateral arrangements.
(123)

From the work of the study group it is apparent that although it is working towards liberalization of this type of operations, it is also trying to develop uniform regulations in certain matters which are not applicable to non-scheduled operations stricto sensu.

The application of the principle of reciprocity
(124)
by the CAB in the Sudflug and Caledonian cases is also a pointer.

These and such other trends then indicate that inclusive tour services may come to be regarded as a special category.

Inclusive tour services and bilateralism: It has been suggested that a special category would not obviate the necessity for bilateral exchange of rights and some form of control of rates, routes and carriers similar to that in

(125)

existence with respect to scheduled services.

Through their energy and imagination both tour organisers and non-scheduled air operators have made a significant contribution to civil aviation. The inclusive tour services have not only catered for people who were not prepared to meet the cost of holidays based on scheduled service rates but also had the effect, because of the especially economical facilities offered, of attracting others to air travel for the first time. Many of the latter would become air-minded and therefore more likely in future to use the scheduled air services as a normal means of travel.

There is no evidence that the inclusive tours have been responsible for any material diversion of traffic from scheduled carriers and therefore the charter operators were in the long run conferring a positive benefit upon them by providing an ever-expanding market for their service.

In view of the above, it is submitted that any such restrictive measure capable of destroying or curbing the fundamental contribution that inclusive tour operations can make to public transport would appear to be a retrograde step.

CHAPTER THREE

Regulation and Control of Inclusive Tour Services

As stated in Chapter Two, inclusive tour services are regarded as non-scheduled operations in the United States and Europe. It would appear that the position is the same in Canada. (126) In spite of the long history of inclusive tours in Europe, the States had no special regulations governing them for a long time. However, for almost a decade efforts are being made by the ECAC to evolve a body of regulations through recommendations and the member States are gradually adopting regulations applicable to inclusive tours.

The situation ~~is~~ different in the United States and Canada. In Part 378 of the CAB Economic Regulations and Rule 30/67, both the United States and Canada have extensive regulations in this field.

With the decision of the CAB there is a new awareness among the European States who feel that the question of transatlantic inclusive tours is to be treated as a European problem rather than the problem of any given country, as any decision in the matter would affect not only the relationship of individual European countries with the United States but also intra-European relationship. (127) The ECAC has therefore recommended harmonization of regulations applicable to intra-European and intercontinental inclusive (128) tours.

Authorization: In spite of their liberal policy, the European States require that air carriers apply for

prior authorization for long series of inclusive tours. The procedures and information required for granting authorization for such operations differ from government to government.

With a view to easing the practical difficulties of the airlines, the NSIT study group was asked to examine (129) the procedure for authorizing inclusive tour services. In examining this matter the group found that many governments require detailed information on conditions under which the inclusive tours are organised. Taking these requirements into consideration the study group adopted a standard form (130) for notification of or application for inclusive tours. It however considered the details listed in item 7 of the form as optional and the information was to be supplied only (131) when specially required by a State.

This standard form went to some extent beyond the scope of Article 3 of the Paris Agreement, 1956, as well as para. 2.31.1 of Annex 9 relating to other than international scheduled air services. The group considered it preferable (132) with a view to liberalizing inclusive tour flights.

While recommending to the European Civil Aviation Conference (ECAC) to adopt the draft standard form, the group also recommended that for short series of flights (not more than 3 flights in two calendar months), prior application (133) need not be made more than 48 hours in advance.

After the draft standard form was provisionally adopted by the Fifth Session of the Conference, the group found that the majority of member States required evidence of third party and passenger insurance to cover liability of the operator. The group recommended inclusion of this information in the standard form and decided to delete the subject from its future work programme. (136)

In its Recommendation No. 4, the Sixth Session of ECAC recommended adoption of a form which followed as closely as possible the form suggested by the NSIT study group and publication of the form actually adopted in their Aeronautical Information Publication. (137) (138)

Provisions governing operation of special inclusive tours which have been adopted by the United States and Canada specify the information required to be furnished by the non-scheduled carrier. This information is much more detailed than the information required to be filled in in the standard form recommended by the ECAC. (139)

Section 378.10 of the CAB Economic Regulations requires supplemental carrier to apply for a Statement of Authorization which must include the Statement of Tour Operator's Qualifications and the Tour Prospectus. In respect of Inclusive Tour Charters originating in Canada, Rule No. 30/67 requires that each application by Canadian air carrier for Board approval of inclusive tours originating in Canada shall contain charter contract, balance sheet (140) (141) (142)

of air carrier, particulars of the tour operator, tour operator's contract with passenger and evidence that satisfactory arrangements have been made by the Air Carrier (143) and Tour Operator for establishment of trust accounts.

Programming: There are summer and winter inclusive tours which are generally operated from 1st April to 31st October, and from 1st November to 31st March of the following year respectively. How much in advance should an air carrier apply to the aeronautical authorities for permission to carry out inclusive tour operations?

The COCOLI had developed, at its second session, (144) a certain measure which it amended at its third session. According to the amended measure, flight programmes for inclusive tours should, so far as practicable, be submitted to the interested governments:

(145)

- (i) by 15th January of a given year in respect of flights to be performed during the period beginning on 1st April and ending on 31st October of that year; and
- (ii) by 1st September of a given year in respect of flights to be performed during the period beginning on 1st November of that year and ending on 31st March of the following year.

It also requires that governments shall give their decisions as soon as possible and in so far as practicable not later than 1st March and 1st October in the case of (i) (146) and (ii) above, respectively.

The Fourth Session of ECAC endorsed this measure (147) and adopted it as Recommendation No. 7. This was reinforced (148) by Recommendation No. 3 adopted at the Sixth Session of ECAC to overcome difficulties encountered in the implementation of Recommendation No. 7.

The study group had considered this subject at its (149) seventh and tenth meetings, and found that the time limits set forth in Recommendation No. 7 were not quite satisfactory to operators who desired that the decisions should reach them more than one month in advance of the beginning of the flights.

The Conference therefore recommended that when operators submit applications for series of inclusive tour charter flights by the prescribed date and supply the required information, administrations should give their decisions as far ahead as possible of the time limit set forth in Recommendation No. 7.

In the United States and Canada, such applications are required to be made at least 90 days in advance of the commencement of the proposed inclusive tour or series of (150) tours.

Technical Requirements: The NSIT study group unanimously agreed that there was no need to impose on non-scheduled operations between ECAC States (including non-scheduled inclusive tour flights) any other technical requirements than those provided in Annex 6 to the Chicago

Convention. It also agreed that for the purposes of applying the provisions of Annex 6, any series of flights for transportation of passengers shall be regarded as constituting scheduled air service. (151)

The group noted that some countries normally require a carrier applying for authority to operate a non-scheduled flight into their territories to satisfy them as to his qualifications to fulfil the conditions prescribed in Annex 6 before authorising the proposed flight, and that there is a tendency for other States to adopt this practice. (152)

The unanimous opinion of both the group on Annex 6 and the NSIT study group was that safety could not be subjected to economic considerations if such considerations had the effect of lowering the safety standards prescribed by national and international regulations. The NSIT study group therefore felt that non-scheduled operators who were unable to meet their obligations satisfactorily should be prevented from operating non-scheduled or inclusive tour flights where safety of persons on board was seriously prejudiced. (153)

It was also felt that those non-scheduled operators who scrupulously met established standards of safety in all its aspects should in no way suffer from any price competition which less scrupulous operators could offer because they worked to lower standards. (154)

However, the study group felt that as the safety aspects were of paramount importance for States, non-scheduled operators when engaged in carriage of passengers should apply very strictly not only those standards of Annex 6

which are applicable to scheduled operators but also all the other provisions of the ICAO Annexes applicable to scheduled operators (airworthiness standards, personnel (155) licensing, etc.).

The Fifth Session of the Conference endorsed the opinion of the study group. The Conference appreciated that the operator may be tempted to lower safety standards in order to reduce costs and thus be able to offer lower fares. But although there were some economic aspects of the (156) problem, it was largely technical.

The Conference has recommended its member States to provide to its non-scheduled operators a document stating that in its (State's) opinion the operator concerned is competent to secure that his international operations are conducted safely and in accordance with the appropriate laws and regulations of the State of Registry of the aircraft and that each member State should be entitled to require an operator to produce this document when that operator is applying for permission to carry out non-scheduled flights (157) into its territory.

Insurance: Airlines engaged in scheduled operations generally take out insurance covering their liability or otherwise guarantee that adequate indemnity can be provided; however, such is not always the case with operators of charter flights.

In its very first meeting the NSIT study group's attention was drawn to the fact that a point had been

reached where it had been found necessary to exercise in this field a more strict supervision over carriers operating non-scheduled and inclusive tour flights. The purpose was two-fold: i) to safeguard the interests of the public by establishing guarantees for a satisfactory protection for both third parties on the ground and passengers; and ii) to eliminate the necessity of requiring operators to provide information on insurance coverage when applying for authorization to perform non-scheduled and inclusive tour flights. (158)

While commenting on the insurance coverage, several States had indicated that either they had no regulations in this field or that such regulations, if any, were not applicable to foreign non-scheduled operators. (159)

The Fifth Session of the Conference agreed that the insurance requirements applicable to operators of international non-scheduled and inclusive tour charter flights should not be less than those for operators of scheduled international air services. It also felt that if the matter were dealt with uniformly by all member States, it would enable the aviation authorities to authorise such flights more freely and liberally. (160)

The Conference therefore made a recommendation that each member State should require its operators, when engaged in international non-scheduled and inclusive tour

charter flights, to make adequate provisions, either by insurance or some other means, to meet their third party liabilities on the ground as well as their liabilities as carriers of passengers and goods. (161)

Practically all ECAC member States have applied or are going to apply this Recommendation. There was also a wide measure of agreement on the necessity of including evidence of insurance in the standard form for notification of or request for authorization for inclusive tour flights. (162) (163)

Although Part 378 of the CAB Economic Regulations and Rule 30/67 do not make any specific provision relating to insurance coverage by the supplementals, and non-scheduled operators, such provisions are to be found in other regulations applicable to these carriers. (164)

Statistics: In order to evaluate the impact of inclusive tour flights, the study group had to collect statistics of traffic carried on such flights. It was a difficult task as no statistics of such flights is filed or required to be filed with the States. Thus, it was possible to obtain information from only five countries for the year 1959. (165)

Apart from this, the study group found that the member States were employing different methods of collection and employing different definitions. The study group therefore agreed that it was necessary to define the statistics required and, if possible, the means by which they

(166)
should be collected. The group felt that information should indicate 1) volume of traffic produced by each country; 2) the direction of the traffic flow; and 3) the volume of traffic carried by charter operators of each country. The group however found that there were many (167) difficulties in collecting such statistics.

On the question of the area for which the statistics were required, the group considered that an area which would extend beyond ECAC member States to include countries receiving traffic from within the ECAC area was (168) the most practical.

The study group thereafter convened a subgroup to finalise the draft form prepared by it (NSIT/7) and to reach agreement on the methods to collect statistical information which would make the figures comparable. This subgroup developed a form which served as a basis for collecting (169) statistics for summer 1965.

The Sixth Session of the Conference noted that the statistics obtained had improved in quality and felt that States should strive for more complete filing in respect of (170) both national and foreign airlines.

Tariffs: The NSIT study group has, since its first meeting, engaged itself with the problem of control of tariffs applicable to inclusive tours; however, the group had not yet agreed on any formal recommendation on the (171) matter, except Recommendation No. 5 of ECAC/5, which requires

that the general subject of tariffs in this field be kept under consideration.

The reason for this lack of agreement is the complex nature of the structure of tariff applicable to inclusive tours. The price of an inclusive tour depends upon several variable factors such as, the distance to be flown, type of hotel accommodation, duration of the trip, etc. Besides this, there are many unknown factors, e.g. cost of advertising to the agent, services included in the overall price of the tour, price of hotel accommodation to the travel agent, etc.

In considering the question of tariff control in this field, the interests of scheduled airlines, non-scheduled operators, the travel agent and the general public are involved. The travel agent holds an important position in the framework of inclusive tours; he not only influences the price to be paid to the operator from whom he charters the aircraft but also determines the price to be paid by the general public. The study group observed that lack of effective control over travel agents was a basic difficulty
(172)
in tariff control.

Tariff for inclusive tours may be regulated in two ways. The States could lay down the minimum price which the members of the general public shall pay for inclusive tours, and also require the operator to file with aeronautical authorities the charter price paid by the charterer.

As regards the requirement of minimum price, the study group found in 1964 that only a few States in Europe, viz. the United Kingdom, Ireland, Belgium and France exercised such control on the basis of IATA Resolution 045 (173) applicable to Charters. By 1966, Austria and the Netherlands had adopted regulations to control tariffs. Austria accepted Resolution 045 as the basis; in the Netherlands regulations (174) the minimum price was laid down.

The study group found that there was agreement among the ECAC member States on the desirability of a common approach to this question. However, they differed as to the basis on which such control should be exercised. Amongst the States which do not have any control on tariffs, some considered it desirable to apply IATA Resolution 045; others felt that this approach was too stringent. In fact, the group rejected a proposal by the United Kingdom to adopt a system which would require that the minimum charge to the public should not be less than the cheapest return fare available to the public on the route concerned, having regard to the times of the flight and the duration of the (175) tour.

Some States felt that imposing minimum price for inclusive tours would not only continue to divert traffic from scheduled services but would also make them too expensive for the lower income public. Others thought that general reduction in air price would make the scheduled

airlines more competitive whilst leaving the tour operators
(176)
to provide for all income groups.

In this connection, Sweden suggested that
scheduled airlines should take more active part in the
development of the individual inclusive tour and inclusive
tour group market by creating in the field of fares and fare
regulations competitive conditions equal with those under which
(177)
the independent operators are operating.

It has been suggested that a State which is only
a 'destination' country for inclusive tours may have a
different attitude to the problem of tariff control because
it is interested only in promoting tourism. On the other
hand, an 'originating' country is concerned with sound and
orderly development of the traffic and the interests of both
(178)
its scheduled and non-scheduled operators.

A State may control tariffs for inclusive tours
which originate within its territory and not only its own
non-scheduled operators but also foreign non-scheduled
operators who seek permission to carry inclusive tour
traffic from its territory will have to comply with it. As
things stand today, the 'destination' country has no say in
the matter and it is submitted that if inclusive tour
services are subjected to bilateral arrangements in the
future, a two way control of tariff would hardly be justified
because of the different inclusive tour markets which would
be served by the operators of the two countries. It may

indeed be unfair to the operators of one of the two countries.

So far as charter prices are concerned, the study group observed that it was not a common practice in Europe to file charter prices with the aeronautical authorities. The reasons are two-fold: i) such rates are treated as confidential due to their commercial nature; and ii) in some countries the aeronautical authorities have no legal authority to request the filing of such rates. (179)

The main object of the control of tariffs would appear to be protection of the interest of travelling public as well as striking a fair balance between the normal scheduled services and special inclusive tours. It is submitted that this object could be achieved by strict control of insurance safety requirements making the scheduled operators compete with the non-scheduled operators in this field.

Inclusive tour prices are controlled in the United States and Canada. The CAB Economic Regulations provide that the charge shall not be less than 110% of any available fare or fares charged by a certificated route air carrier. In Canada the price shall not be less than 115% of the lowest available unit toll fare applicable at the time of travel, published in the tariffs of the scheduled air carriers. (180) (181)

Regulations of both the countries also require that charter prices should be filed with the application for authorisation. (182)

Protection of Tour Participant: Apart from his protection through technical requirements and insurance coverage, the inclusive tour participant may need protection from the non-performance or part performance of the tour. It is also possible that the tour may not be performed as advertised.

Such a situation may arise if the operator or the organiser went bankrupt, or if there is a breach of contract between the operator and the organiser, or if, for unforeseeable reasons, the aircraft becomes unserviceable. Fortunately, (183) such cases do not arise too frequently.

The travelling public requires guarantee that the inclusive tours are being carried out in a satisfactory fashion. Many problems encountered have demonstrably been caused by travel agent who plays an important role in connection with the arrangements of inclusive tours. In countries where legislation for the authorization of travel agent has been established the problems may not be acute. However, only a few countries in Europe seem to have provided (184) for such legislation.

The extent to which civil aviation administrations can control the activity of travel agents varies from one administration to another; this was recognised as a serious obstacle to the protection of passengers by the aeronautical (185) authorities.

The NSIT study group discussed the idea of drafting a standard charter contract between travel agents and

carriers. This was considered as too ambitious, at least for the time being. The group therefore contented itself with the preparation of a draft recommendation. It was adopted by the Sixth Session of the Conference.

This recommendation provides that when considering an application for the operation of inclusive tour charter flights to or from its territory, each member State of ECAC may, so far as it does not contravene the national law, require the applicant to produce evidence relating to the tour arrangement and the adequacy of the advertising, publicity or booking arrangements whereby the passengers have been or will be informed before entering into contract of carriage i) name and address of the tour organiser, ii) name of the carrier, type of aircraft and number of seats offered, the tour itinerary, including the name of hotel and length of stay and iii) minimum overall price of the tour. The authorising State may request from the carrier a report on the flight(s), indicating the number of passengers carried and whether the flight(s) have been performed in accordance with the permission and if not, the difference.

Could aeronautical authorities impose upon a carrier the obligation to perform carriage for which he had not been paid? According to the NSIT subgroup, when an application has been submitted and authorization granted, the carrier is under an obligation vis-a-vis the aeronautical authorities to perform the flight for which he himself

requested permission (except in the case of cancellation of the tour). It could hardly be accepted that an authorization granted by a public authority should be subject to the (189) uncertainties of a contract in which it had no part.

In the United States, the Statement of Tour Operator's Qualifications and the Tour Prospectus is required (190) to be filed with the application for authorization. The former provides evidence of the Tour Operator's financial (191) standing. The latter includes charter contract, the contract between the tour operator and the tour participant, and the tour operator's surety bond and gives to the Board (192) opportunity to scrutinize them. Further, the terms and conditions subject to which the supplementals are permitted to operate charter flights ensure that the passenger is adequately protected against non-performance of or delay in (193) the carriage.

Similar provisions also exist in Rule 30/67 of the (194) Air Transport Board of Canada.

Control of Capacity and Equal Opportunity: The member States of ECAC have so far followed a liberal policy towards granting of authorizations for inclusive tour services. These authorizations are granted on the basis of reciprocity and there is no control of capacity or frequency. However, it would appear that in the case of inclusive tour services across the Atlantic the reaction of the European States is different. While some States have a positive

attitude to authorising the U.S. supplementals, others have a negative or very restrictive attitude. The positive attitude is based on equality of opportunity.

In its Seventh Report, the Air Transport Licensing Board of the United Kingdom has expressed the view that the adoption by the United Kingdom of a liberal policy towards the admission of United States carriers' charter operations should be conditional upon the maintenance of the principle of free and equal opportunity for the airlines of both (195) countries.

The expert group appointed by ECAC suggested as a common policy restriction on the number of incoming transatlantic inclusive tour services, such number not to exceed 1% of the number of transatlantic incoming scheduled flights performed in the corresponding month of the previous year (196) (1967). Such a control was to be of a transitional nature.

In this connection the European Airlines Research Bureau (EARB) came to the conclusion that the results of a period of at least two years (1968-9) are required in order to assist European governments to arrive at a realistic assessment of the merits of changing the present regime on (197) the North Atlantic.

In granting inclusive tour authority to two foreign operators, the United States CAB applied the principle (198) of reciprocity. In Canada, Rule 30/67 clearly provides that the application of the Rule to foreign carriers is on the

understanding that reciprocal treatment will be given to Canadian carriers by aeronautical authorities of the foreign (199) country concerned.

It is to be hoped that so far as the transatlantic inclusive tour services are concerned the European States will not adopt a new policy different from their policy in respect of intra-European inclusive tour services. If they do so, it would be contrary to the basis of their liberal policy in Europe, viz. that inclusive tour services are forerunners of new scheduled services and generate new traffic for scheduled carriers.

CONCLUSIONS

The statistics available for the intra-European special inclusive tour services indicate that they are not at all detrimental to the scheduled services and do not affect them adversely. On the contrary, with the entry of scheduled carriers in this field, the inclusive tour traffic on regular scheduled services is increasing rapidly and is greater in volume than the traffic carried by the non-scheduled operators. This situation would appear to be due partly to the liberal policy of the European States which resulted in the scheduled carriers offering competitive prices for inclusive tours.

The problem of classification of the special inclusive tours has exposed the inadequacy of the definition of 'scheduled international air service' adopted by the ICAO. Contrary views have been expressed as to the nature of these services. In Europe and North America, the governments have come to regard them as 'non-scheduled'. Over the past few years the concept of 'charter' operation has widened and more and more categories of operations are being listed as 'non-scheduled'. It has therefore, become necessary to seek a new definition of 'scheduled air service'.

The efforts which ECAC is making to liberalise the special inclusive tour services by recommending adoption of common regulations are commendable. These Recommendations would serve as guidelines to many other States in future. However, ECAC has experienced difficulties in certain fields,

particularly the control of tariffs. It is submitted that control of tariffs should be left to the individual State. Multilateral approach to this problem would not be the proper solution as the non-scheduled operators would be serving different markets in different countries.

The rapid and substantial growth of the inclusive tours in Europe is due to the liberal policy adopted by the European States. It is submitted that control of the special inclusive tour services through bilateral agreements would hamper the progress of these services. So far as intra-Europe operations are concerned there does not seem immediate possibility of such a policy. However, indications are that the situation in respect of the North Atlantic may be different because of the wide gap between the European and American markets and the strength of the U.S. supplements.

FOOTNOTES

1. The Charter Business, 9 Interavia 1334 (1966).
2. This expression is preferred to indicate the inclusive tours carried out by chartered aircraft. However, other expressions used in the source material referred to in the thesis have been retained.
3. Inclusive Tour Services in International Air Transport, ICAO Doc. 8244-AT/717, 1 para. 2 (1962).
4. A12-WP/26, EC/8 (2/3/59) 3, para. 1.
5. Ibid.
6. ICAO Doc. 8244-AT/717, op.cit.supra note 3, at 1, para. 3.
7. ECAC/3-WP/92 (13/3/59). This Working Paper is published by ITA under the title "Inclusive Tours in Western Europe" (April 1959).
8. ICAO Doc. 8244-AT/717, op.cit.supra note 3, at 1, para. 2.
9. ICAO Doc. 7977, ECAC/3-1, Recommendation No.44, 44 para. 94 (1959).
10. ICAO Doc. 8694, ECAC/6, Appendix 5, 1 para. 1 (1967).
11. Id. at 1, para. 2.
12. Id. at 2, para. 3.
13. Id. at 2, para. 4. To continue the subject of inclusive tour traffic and its general place in the framework of European air transport, is one of the permanent subjects on the work programme of the NSIT study group.
14. CAB Order E-24240 (11th March 1966).
15. CAB Order E-24697 (30th January 1967) and E-25017 (19th April 1967), Sudflüg from Germany and Caledonian from the United Kingdom.
16. The first meeting (ICIT/1) was held on 2nd February 1967 and the second meeting (ICIT/2) on 16th and 17th March 1967.
17. ICAO Doc. 8694, ECAC/6, op.cit.supra note 10, 21 (1967).

18. Wheatcroft, Air Transport Policy 32 (1964).
19. The term 'inclusive tour' is generally synonymous with an 'all-expense tour'. However, the term 'inclusive tour' is more appropriate because all expenses are not necessarily required to be included in the tour price.
20. Inclusive Tours by Air in Western Europe, ITA Study 61/2, 5 (December 1961).
21. Ibid.
22. Ibid. Air Travel New York-Rome and back with ten days stay in Italy, including accommodation, meals, etc. was offered at an inclusive price of \$698 when the scheduled return air fare cost \$748.
23. Ibid.
24. Id. at 6.
25. Wheatcroft, op.cit.supra note 18, 31. The subject of inclusive tours was discussed in 1946 in the United Kingdom Parliament in connection with Civil Aviation Act 1946; see, 425 Parl. Deb. (no. 171) (1946).
26. For a detailed list of operators in the ECAC member States entitled to carry out non-scheduled and inclusive tour flights, see ECAC/6-WP/30 (16/5/67). This consolidated list covers information received up to 13th March 1967 and contains names of 172 operators.
27. See ECAC/NSIT/3-WP/4, Annex 1 (31/1/61); also see Part 378, U.S. CAB Economic Regulations and Rule 30/67, Air Transport Board, Canada (19th May 1967).
28. See terms of reference, ECAC/NSIT/3-WP/13 (23/2/61).
29. ICAO Doc. 8244-AT/717, op.cit.supra note 3, 3 para. 5 (1962).
30. ECAC/NSIT/60-WP/7, 11 (3/6/60).
31. For comments by States, see ECAC/NSIT/60/2-WP/3 (31/10/60) and Add. No. 1 (7/11/60).
32. See Introduction, 4-5; also see supra note 14 and 15.

33. American Airlines v. CAB, United States Court of Appeals, District of Columbia Circuit, 19th July 1966, 9 Avi. 18230 and Pan American v. CAB, United States Court of Appeals, Second Circuit, 20th July 1967, 10 Avi. 17399. The prior decision which affirmed the domestic "inclusive tours" placed little weight on the floor debate but considered in detail the effect of "inclusive tours" as authorised and a previous decision which authorised "split charters" of one aircraft to two different groups. The D.C. Circuit found "charter trips" had no fixed meaning and that Congress had left the task of defining the term to CAB so as to be able to meet the changing needs. The Second Circuit reached a result diametrically opposite.
34. See ECAC/ITCR/1-Report, 6 para. 11 (17/11/67).
35. Watkins, Harold D. Supplemental Airline Surge (Pt. 2), Aviation Week and Space Technology, 4 Sept. 1967, at 40.
36. Ibid.
37. Ibid.
38. See IATA Resolution Manual, 15th edition (Sept. 1967) for various Resolutions.
39. ITA Study 61/12, op.cit.supra note 20, at 12. Also see Table I, at 11.
40. Volume and Main Traffic Flows of Charter Inclusive Tours in the Europe-Mediterranean Area, ITA Studies 66/10-E, 9 (1966).
41. ICAO Doc. 8694, ECAC/6, App. 6, at 7 (1967). For the growth trend of summer inclusive tour charter traffic (1961 to 1966) from the United Kingdom see, Air Transport Licensing Board, Seventh Report 13 (year ended 31st March 1967).
42. Development of International Air Passenger Travel - Africa, ICAO Circular 80-AT/13, 24-25 (1967).
43. ITA Study 61/12, op.cit.supra note 20, at 10.
44. ITA Studies 66/10-E, op.cit.supra note 40, at 9-10.
45. ICAO Circular 80-AT/13, op.cit.supra note 42, at 25 para. 8. Also see Table 3, at 25.
46. Id. at 26 para. 9. Also see Table 4, at 26.

47. Id. at 26 para. 10.
48. ICAO Doc. 8244-AT/717, op.cit.supra note 3, at 12.
49. The NSIT study group has gathered information on the procurement plans and orders of non-scheduled operators; for details, see ECAC/6-WP/28 (10/5/67); the European non-scheduled operators use the modern equipment such as Caravelle aircraft and jet aircraft and according to the information received by ECAC up to 13 March 1967, they have plans to buy short and medium haul and long haul jets; also see 9 Interavia 1334-1336 (1966).
50. ICAO Doc. 8244-AT/717, op.cit.supra note 3, at 7 para. 13.
51. Id. at 9 para. 17.
52. Ibid.
53. Id. at 10 para. 18.
54. See, Reopened Transatlantic Charter Investigation (All-Expense Tour Phase), CAB Order E-24240, 3-11 (11th March 1966): (In 1963) the examiner had concluded that while new inclusive tours would tap more markets, particularly among lower income groups, they would also expose Pan American and TWA, the two certificated transatlantic route carriers, to diversion of a substantial volume of their business.

... it is clear beyond any reasonable doubt that the prime basis which we rejected inclusive tour authority in our earlier decision has disappeared with the passage of time. In our judgment, therefore, the U.S. flag route operators are well able to absorb the modest amounts of diversion that may result from the operation of inclusive tour charters by the supplemental carriers.

... we believe that it is unlikely that the operation of inclusive tour charters can pose any significant threat to the established route operators.
55. ITA Studies 61/12, op.cit.supra note 20, 19.
56. ITA Study 66/10-E, op.cit.supra note 40, 9.
57. ICAO Doc. 8185, ECAC/4-2, 150-152.
- 57a. Charter Operations - A danger for IATA carriers?
9 Interavia 1335 (1966).

58. ECAC/ITCR/1-Report, App. 4 (17/11/67).
59. Reopened Transatlantic Charter Investigation (All Expense Tour Phase), CAB Order No. E-24240 (11th March 1966).
60. Sudflug and Caledonian.
61. ICAO, First Assembly, Commission No. 3, Discussions, Vol. III: "Distinction between scheduled and non-scheduled operations in international air transport", ICAO Doc. 4522, A1-EC/74, 15 (1947).
62. See Articles 5 and 6 of the Convention on International Civil Aviation, signed at Chicago, 7th December 1944.
63. Gazdik, J.G., Scheduled and Non-Scheduled Air Services 8 (hereinafter referred to as Gazdik), address delivered at the International Conference on the Freedom of the Air, Institute of Air and Space Law, McGill University (3rd November 1967) (to be published by the Institute).
64. Article 1(8) of the U.S. Proposal of a Convention on Air Navigation defined the term "scheduled airline services" as follows: The term "scheduled airline services" shall mean the regular operation of aircraft for the carriage of passengers, cargo or mail according to fixed schedules, and over fixed routes; see, The Proceedings of the International Civil Aviation Conference (hereinafter referred to as Proceedings), Vol. I, 556.
65. Proceedings, Vol. II, 795 and 817. Non-scheduled Flight: A flight over a specified air route, which is not one of the routine scheduled operations of an operating agency.
66. The expression 'non-scheduled' does not appear anywhere in the text of the Chicago Convention, 1944, except in the title of Article 5. See, however, the Paris Agreement, 1956 in which the term 'non-scheduled' is used in the preamble and Article 3.
67. ICAO Doc. 4522, op.cit.supra note 61, 15.
68. Id. at 27 para. 56.1.
69. Id. at 27 para. 56.3.
70. ICAO Doc. 7278-C/841, 3 (10/5/52).

70. Id. at 1 para. 1.
71. Id. at 1 para. 4. The "description" reads as follows:
- The Assembly Resolves:
- 1.
 - 2.
 3. For the purposes of the Convention, a 'scheduled international air service' is an international air service consisting of a recognizably systematic series of flights
 - a) which are operated between two or more points or two or more traffic areas that, considered relevant characteristics of the service such as the distance covered and the type of aircraft used, do not materially vary;
 - b) which are operated for valuable consideration; and
 - c) which are open to use by members of the public acceptable to the carrier, "who from time to time seek to take advantage of them". See, Resolution A2-18, ICAO Doc. 7670, 79-80 (1956): For the analysis of the comments by the Contracting States on the "description", see ICAO Doc. 6850, 16-17 (21/7/49).
72. Non-Scheduled Transport and International Aviation Policy, ITA Studies 65/1-E, 11 (1965).
73. Ibid.
74. Id. at 12. Recently, it has been suggested that this criterion should be included in the ICAO definition of scheduled international air service; see Seeking definition for air transport, ITA Bulletin No. 46, 1391-1394 (Dec. 1967).
75. In 1954, only a dozen out of 64 member States accepted it without qualification, two with qualification, whereas two others (France and Spain) refused it; see, ITA Studies 65/1-E, op.cit.supra note 72, 12: See also AT-WP/356 (22nd March 1954). No further information is available regarding the position of the ICAO member States in this matter.
76. ITA Studies, op.cit.supra note 72, 12.

77. Article 2(1) lists the following flights:
- (a) humanitarian or emergency flights;
 - (b) taxi-class passenger flights;
 - (c) flights on which the entire space is hired by a single person () for the carriage of his or its staff or merchandise;
 - (d) single flights limited to one flight per month.
78. COCOLI/3-WP/4, Report of the NSIT study group.
79. ICAO Doc. 8185, ECAC/4-1, 9 para. 38 (1961).
80. Id. at 10-12 para. 43.
81. E.g. Section 33 of the Air Corporations Act, 1967 (United Kingdom) defines "scheduled journey" as one of a series of journeys which are undertaken between the same two places and which together amount to a systematic series operated in such a manner that the benefits thereof are available to members of public from time to time seeking to take advantage of it. (This definition was originally incorporated in the Civil Aviation Act, 1946 and section 24(2) of the Air Corporations Act, 1949). Also, Regulation 191(d) of the Air Navigation Regulations (Australia) defines "Regular public transport operations" as being all air service operations in which aircraft are available for the transport of members of the public, or for use by members of the public for the transport of cargo, for hire or reward and which are conducted in accordance with fixed schedules to and from fixed terminals over specific routes with or without intermediate stopping places between terminals.
- The U.S. Federal Aviation Act, 1958 and the CAB Economic Regulations do not define the terms 'scheduled' or 'non-scheduled'.
82. The U.S. Draft Proposal of a Convention on Air Navigation did not include a definition of the term 'charter'.
83. E.g. Regulation 191(c)(i) and (ii) of the Air Navigation Regulations (Australia); Section 2(2) of the Civil Aviation (Licensing) Regulations, 1964 (United Kingdom); Part 295 of the CAB Economic Regulations (United States)). There are other Parts (207, 212) of the Economic Regulation which also contain a definition of the term 'charter'.

84. An attempt was made by the Senate of the U.S. Congress in 1961 to define 'charter service' as follows: "Air transportation performed by an air carrier holding a certificate of public convenience and necessity where the entire capacity of one or more aircraft has been engaged for the movement of persons and their baggage or for the movement of property on a time, mileage or trip basis, but shall not include transportation services offered by an air carrier under an arrangement with any person who provides or offers to provide transportation services to individual members of the general public other than as a member of a group on an all expense paid tour". S. Report No. 688, 87th Congress, First Session, 1 (1961).
85. See Chapter One, 8
86. Part 378 of the U.S. CAB Economic Regulations and Rule No. 30/67 (19th May 1967), Air Transport Board, Canada.
87. Part 378, Section 378.1. Applicability: This part establishes the terms and conditions governing the furnishing of inclusive tours in interstate, overseas and foreign air transportation by supplemental air carriers and tour operators. This part also relieves tour operators from various provisions of the Act and Board regulations for the purpose of enabling them to provide inclusive tours to members of the general public utilizing chartered aircraft from supplementary carriers
88. See definition of 'inclusive tour group', section 378.2(c) of Part 378; also see section 1(f) of Rule 30/67.
89. This term distinguishes them from the national air corporations, see 10 Interavia 1527 (1966).
90. "Supplemental air carrier" means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation; "Supplemental air transportation" is further defined as charter trips in air transportation to supplement scheduled services which the regular carriers provide; see section 101(32) and (33) resp. of the Federal Aviation Act, 1958. In the United States supplemental air carriers have been known by several names since the War. First they were regarded as non-scheduled carriers. In 1947, the term 'non-scheduled' was abandoned and a class of 'irregular air carriers' was created. They required to have certificates in

order to carry out charter, and in some cases individually ticketed passengers. It was in January 1959 that a new class of supplemental air carriers was established. For a brief history, see Fredrick, Commercial Air Transportation, 181-191 (1961).

91. ICAO Doc. 7278-C/841, op.cit.supra note 69, 3 para. 2.
92. Gazdik, op.cit.supra note 63, 19; however, see definition of 'charter' in Australian Air Navigation Regulations.
93. Cheng, Law of International Air Transport 173 (1962).
94. Gazdik, op.cit.supra note 63, 25.
95. See Chapter One, 10-11.
96. Report of the Air Transport Licensing Board (for the year ended March 31, 1967), Table 4, 27.
97. Hohle, K., Charter Operations in West Germany, 9 Interavia 1339 (1966).
98. Nearly 0.5 million passengers travelled on inclusive tours during the winter of 1965-66, ICAO Doc. 8694, ECAC/6, Appendix 6, 3.
99. ICAO Doc. 8244-AT/717, 15 para. 33 (1962); however, see ITA Bulletin No. 46 op.cit.supra note 74, 1391.
100. Ibid.
101. ICAO Doc. 7278-C/841, op.cit.supra note 69, 4 para. 8.
102. ICAO Doc. 8244-AT/717, op.cit.supra note 99, 15 para. 33.
103. Supplemental Air Service Proceedings, CAB Order No. E-23350, 16 (19th March 1966).
104. ICAO Doc. 8244-AT/717, op.cit.supra note 99, 16 para. 33.
105. ICAO Doc. 7278-C/841, op.cit.supra note 69, 5 para. 8.
106. CAB Order No. E-24240, Op.cit.supra note 59, 1.
107. ECAC/NSIT/ICIT/2-OP/1, 3 (10/3/67).
108. ECAC/NSIT/8-WP/2, 5 (17/1/66).
109. CAB Order No. E-23350, op.cit.supra note 103, 16-17.
110. Ibid.

111. Sayre, Note in 33 J.A.L.C. 184 (1967).
112. See, however, Gazdik, op.cit.supra note 63, 32-33.
113. ICAO Doc. 8185, ECAC/4-1, op.cit.supra note 79, Recommendation No. 3.
114. ICAO Doc. 8445, ECAC/5-1, Appendix 5, vii-5 para. 13; for comments by States see ECAC/NSIT/4-WP/3 (9/8/62).
115. ICAO Doc. 8244-AT/717, op.cit.supra note 99, 17-18.
116. Section 295.2(b)(iii) of the CAB Economic Regulations; also see CAB Order No. E-24241 (11th March 1966).
117. Pan Am v. CAB, United States Court of Appeals, Second Circuit, 20 July 1967, 10 Avi. 17399.
118. ECAC/ITCR/1, Appendix 4 (17/11/67).
119. Gazdik, op.cit.supra note 63, 33
120. See AT-WP/362 (14 April 1954) for Australian government's reply as regards acceptability of Council's definition; also see, Non-Scheduled Air Travel between Northern Europe and Spain, ITA Documents, Information Paper Ni-155, 3 (June 1960).
121. Wheatcroft, Air Transport Policy 173 (1964).
122. ECAC/NSIT/4-WP/3, 27 para. 12 (9/8/62).
123. ICAO Doc. 8445, ECAC/5-1, op.cit.supra note 114, vii-5 para. 13.
124. CAB Order No. E-24697, op.cit.supra note 15, 5 and No. E-25017, op.cit.supra note 15, 5.
125. Gazdik, op.cit.supra note 63, 34. This would affect route patterns and the designation of airlines, and many difficulties can then be foreseen; see ITA Bulletin No. 46, op.cit.supra note 74, 1394.
126. See section 3 of Rule 30/67. In its consideration of applications for inclusive tours, the Board will take into account the effect of the operation of such tours on the Class 1 (scheduled air carriers) or Class 8 (international air carriers (domestic and foreign) designated to operate international scheduled services between Canada and any other country) services provided to or near the points set out in the itinerary thereof. For classification of air carriers, see Commercial Air Services Regulations: also see definition of Air Carrier in section 1(h) which refers to charter air carrier.

127. ICAO Doc. 8694, ECAC/6, 12 para. 31 (1967).

128. Id. at 13, Recommendation No. 2.

129. ECAC/NSIT/3-WP/13, 2 para. 4 (23/4/61).

130. Id. at 20 para. 73.

131. Id. at 20 para. 74.

132. Article 3 reads as follows:

(c) the information to be furnished,, shall not exceed:

- (1) name of operating company;
- (2) type of aircraft and registration marks;
- (3) date and estimated time of arrival at and departure from the territory of the Contracting State;
- (4) the itinerary of the aircraft;
- (5) the purpose of the flight, the number of passengers and the nature and amount of freight to be taken on or put down.

Annex 9, para. 2.31.1 reads as follows:

Recommended Practice: Contracting States should not require more than the following details in the application referred to in 2.31:

- (i) name of operator;
- (ii) type of aircraft and registration marks;
- (iii) date and time of arrival at, and departure from, the airport concerned;
- (iv) place or places of embarkation or disembarkation abroad, as the case may be, of passengers and/or freight;
- (v) purpose of flight and no. of passengers and/or nature and amount of freight;
- (vi) name, address and business of charterer, if any.

There is a note to this provision which states that whenever an application contains all the above information it need not reach the appropriate agency more than two full business days in advance of the intended landing of the aircraft.

133. ECAC/NSIT/3-WP/13, op.cit.supra note 129, 21 para. 77.

134. ICAO Doc. 8185, ECAC/4-1, Recommendation No. 8, 16 para. 49 (1961).

135. ICAO Doc. 8445, ECAC/5-1, App. 5, vii-4-5, paras. 10-11 (1964).
136. ICAO Doc. 8694, App. 5, 11-12 para. 47-49 (1967).
137. Id. at 17.
138. Id. 16 para. 37.
139. Part 378 of the CAB Economic Regulations and Rule 30/67 of Air Transport Board, Canada.
140. Section 378.12.
141. Section 378.13.
142. Air Carrier means a Canadian Class 4, Group A, or 9-4, Group A, charter air carrier and a foreign air carrier on the Board's list of carriers eligible to make application to operate charters with multi-engine aircraft of an authorised take-off weight on wheels in excess of 18,000 pounds; section 1(h) of Rule 30/67. This Rule applies to foreign air carrier also. The foreign carrier has to apply under section 10. Part 378 of the Economic Regulations applies to the U.S. supplementals only.
143. Section 8 of Rule 30/67.
144. COCOLI/3-WP/17, Appendix 2 (19/4/61).
145. It was originally provided that governments should receive applications by 1st January. The purpose of postponing the deadline was to minimise the number of applications submitted by the carriers simply as a measure of protection and bearing no relation to any real flight programme; see Final Report of COCOLI, COCOLI/3-WP/17, 15 para. 23 (19/4/61).
146. The Italian delegation made the observation that the adoption of fixed time limits for replies to requests for inclusive tours might have the effect of causing the rejection of a considerable number of such replies.
147. ICAO Doc. 8185, op.cit.supra note 134, 15.
148. ICAO Doc. 8694, op.cit.supra note 127, 15.
149. ICAO Doc. 8694, ECAC/6, Appendix 5, 11 paras. 45-46.
150. Section 378.11 of Part 378 and Section 5 of Rule 30/67.
151. ICAO Doc. 8185, ECAC/4-2, 147 paras. 40-41 (1961).

152. Id. at 148 para. 42.
153. ICAO Doc. 8445, Appendix 5, op.cit.supra note 135, vii-21 para. 53.
154. Id. at vii-21 para. 54.
155. Id. at vii-22 para. 56.
156. ICAO Doc. 8445, ECAC/5-1, 11/12-6 para. 18 (1964).
157. Id. at 32-1 para. 32;2.
158. ICAO Doc. 8445, Appendix 5, op.cit.supra note 135, vii-19 para. 49.
159. ECAC/COCOLI/4-WP/13 (15/5/63).
160. ICAO Doc. 8445, op.cit.supra note 156, 11/12-4 paras. 12-13.
161. See Recommendation No. 6, id. at 11/12-5.
162. ICAO Doc. 8694, op.cit.supra note 127, 6 para. 23; also see ECAC/NSIT/7-WP/8, Table I (16/2/65).
163. Ibid.
164. For insurance coverage by the U.S. supplementals, see Part 208 of the Economic Regulations. Section 208.10 (a) provides that no supplemental air carrier shall engage in air transportation unless such carrier has and maintains in effect liability insurance coverage evidenced by a currently effective certificate of liability insurance filed with and accepted by the Board as complying with the requirements of this part; In Canada also documentary evidence that the non-scheduled operator has in effect the minimum liability insurance is required; see A.T.B. Order No. 26/66, as amended by Order No. 28/67.
165. ICAO Doc. 8185, op.cit.supra note 151, 150 para. 55.
166. ICAO Doc. 8445, op.cit.supra note 135, vii-12 para. 27.

167. Id. at vii-13 para. 28.
168. Id. at vii-13, 14 para. 29.
169. ICAO Doc. 8694, App. 5, op.cit.supra note 136, 5 para. 14.
170. ICAO Doc. 8694, op.cit.supra note 127, 7 para. 22.
171. Id. at 7 para. 23.
172. ICAO Doc. 8445, App. 5, op.cit.supra note 135, vii-19 para. 47.
173. ECAC/NSIT/6-WP/2 (24/1/64) and Addendum No. 1 (24/1/64).
174. ECAC/6-WP/13 (1/2/66) and ECAC/NSIT/9-WP/3 (26/9/66).
175. ICAO Doc. 8445, App. 5, op.cit.supra note 135, vii-18 para. 45; for the U.K. proposal, see Annex "G" to Appendix 5, vii-40.
176. Ibid.
177. ICAO Doc. 8445, App. 5, op.cit.supra note 135, Annex "F", vii-38.
178. Id. at vii-19 para. 46.
179. Id. at vii-17 para. 43.
180. Section 378.2(b)(4) of Part 378.
181. Section 2 of Rule 30/67.
182. Section 378.13 of Part 378 and Section 8(a)(i) of Rule 30/67.
183. ICAO Doc. 8445, App. 5, op.cit.supra note 135, vii-22 para. 58.
184. ECAC/NSIT/9-WP/2 (19/9/66) and Addendum No. 1 (27/10/66).
185. ICAO Doc. 8694, App. 5, op.cit.supra note 149, 10 para. 42.
186. Id. at 10 para. 41.
187. ICAO Doc. 8694, op.cit.supra note 127, Recommendation No. 1, 9.

188. While adopting this Recommendation, the Conference noted statements by Austria, Belgium, the Federal Republic of Germany and the Netherlands that, due to the nature of their national legislations, they were unable to guarantee full impementation of its provisions.
189. ECAC/NSIT/9-Subgroup/PROPA/1-DP/1 (5/1/67).
190. Section 378.11(b).
191. Section 378.12. see Appendix A.
192. Section 378.13.
193. Section 208.32(a) of Part 208.
194. Section 8(a), (b) and (c).
195. Air Transport Licensing Board (Seventh Report for the year ended 31st March 1967) 19 para. 64.
196. ECAC/ITCR/1-Report, 7 paras. 18-19 (17/11/67).
197. Id. at Appendix 4, 28.
198. See supra note 124.
199. Section 10(e).

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